Vol. 969
No. 2

Wednesday,
16 May 2018

DÍOSPÓIREACHTAÍ PARLAIMINTE
PARLIAMENTARY DEBATES

DÁIL ÉIREANN

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

DÁIL ÉIREANN

Dé Céadaoin, 16 Bealtaine 2018

Wednesday, 16 May 2018

Chuaigh an Leas-Cheann Comhairle i gceannas ar 10.30 a.m.

Paidir.
Prayer.

Ceisteanna - Questions

Priority Questions

Insurance Data

3. **Deputy Michael McGrath** asked the Minister for Finance when the national claims information database and the integrated insurance fraud database will be established; and if he will make a statement on the matter. [21455/18]

Deputy Michael McGrath: This question relates to the ongoing work of the cost of insurance working group and the implementation of its recommendations. It seems that there has been a lack of progress recently. Momentum has stalled and I have selected two items, in particular, on which I want the Minister to respond. The first is the national claims information database, while the second is the integrated insurance fraud database, both of which are central elements of the reforms promised with a view to bringing about a more competitive insurance market. I am looking for progress on both.

Minister of State at the Department of Finance (Deputy Michael D'Arcy): I thank the Deputy for his question. The development of the national claims information database is a complex project as insurers very often record data in different ways and do not necessarily use the same definitions. At the end of 2017 work was completed by a data sub-group of the cost of insurance working group on the development of the legislation which would enable the Central Bank to perform this additional function. On 19 December 2017 the Government approved the general scheme of the Central Bank (National Claims Information Database) Bill. The Bill is included in the Government's legislative programme on the list of priority legislation for publication this session. The Oireachtas Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach indicated to the Minister for Finance that it would not be conducting

pre-legislative scrutiny of the Bill, which is helpful.

On 26 January 2018 the Office of the Parliamentary Counsel assigned a drafter to the Bill with whom officials in the Department of Finance are working to finalise a draft as soon as possible. I understand good progress has been made and I am hopeful a Bill will be published before the end of this legislative session. Consultation will also have to take place with the European Central Bank on the Bill once it is published. As the Deputy is aware, it will take a certain amount of time following publication of the Bill for it to pass through the Houses. I am hopeful the co-operation of all parties will ensure it will be passed by the Houses as quickly as possible. To ensure the database can be operationalised quickly following the enactment of the legislation, the Central Bank has continued to work in parallel on the technical specification for the database.

The development of the fraud database is a matter for the Minister for Justice and Equality whose Department is working on the project. I have been informed that a working group chaired by the Minister which also comprises representatives from An Garda Síochána's National Economic Crime Bureau, Insurance Ireland and the Motor Insurers' Bureau of Ireland is carefully considering the policy and legislative issues related to the new database and has consulted appropriate stakeholders, notably the Office of the Attorney General and the Office of the Data Protection Commissioner, ODPC. I understand the group has completed a comprehensive report which was submitted to the ODPC for its consideration. In its response the ODPC identified a number of challenges from a data protection perspective which must be addressed. The working group is continuing to liaise with stakeholders to overcome these challenges and progress the recommendation. Consequently, it is not possible at this time to provide a timeline for its establishment.

Deputy Michael McGrath: Progress on insurance reforms has undoubtedly stalled. The latest update report appeared online on Friday evening. There was no press release and no alert. When one examines it, it is hard to avoid the conclusion that the real meat of the recommendations, the key reforms, is being nobbled. They have certainly been stalled, at a minimum. The national claims information database which aims to provide accurate and reliable data for claims affecting the insurance industry and policy holders was to be in place by next month, yet the full legislation has not been published. It is well behind schedule. It is a similar story with the fraud database; there is no sign of it. The Minister of State says it is a matter for the Department of Justice and Equality, but it is a key component of the recommendations of the cost of insurance working group. It is hard to disagree with the Alliance for Insurance Reform when it states progress has stalled. The protocol that requires insurance companies to notify policy holders of progress on claims has stalled. Legislation to compel insurance companies to communicate the reasons for large increases in premiums has been abandoned and there has been no progress on the Garda insurance fraud unit. These key elements of the reforms recommended are not progressing. The intent is good, but there is simply no follow-through or delivery.

Deputy Michael D'Arcy: I have to disagree with the Deputy. The cost of insurance working group has put a lot of effort and energy into dealing with this issue. We are now on the meat-and-two-veg legislative side of things that involves communication between the Department of Finance, the Department of Justice and Equality and the Department of Transport, Tourism and Sport. We must also speak to other stakeholders, including An Garda Síochána. We have to discuss the matter with the Office of the Attorney General and the Office of the Data Protection Commissioner. It is not a question of imposing my will on the people in question. I have to bring them along with me and get agreement on the reforms to be implemented. It is

the really difficult stuff that we are trying to do, but we have already done a lot. In fairness to the Minister for Justice and Equality, there are a number of measures that will be implemented in quarter three. They include data protection measures such as people having the opportunity to retain imagery and video related to a claim. A person against whom a claim is being made must be informed within the permitted period to enable the data to be retained in order that he or she can mount a proper defence. An improved pathway where a civil court judge says there is a potential element of a fraudulent or exaggerated claim has to be put in place. The legislation in that respect is fine; the pathway needs to be put in place. It is very easy to point to five areas where we have fallen behind, but it has been forgotten that we have progressed 45 other actions on time, some ahead of schedule.

Deputy Michael McGrath: I do not doubt the Minister of State's personal commitment or that of his officials. Much work has been done, but it is undeniable that there have been significant delays and that many of the key central reforms to bring about a more competitive insurance industry, greater transparency for policy holders and greater accountability have stalled. I have to call it out when I see it because it is the case in this instance. This is about reforming the claims process in order that policy holders will be given much more information at an earlier stage on claims made against them. The results of the work of the Personal Injuries Commission are available. It is benchmarking and looking at award levels in Ireland compared to those in other jurisdictions. It is absolutely vital that that work be completed. The Minister of State will have the full support of the House in driving through these reforms. Where people are not meeting their responsibilities or embracing change and driving change, including Insurance Ireland and any of the large insurance companies, the Minister of State has an obligation to call it out for what it is. Where measures are being stalled because people are not really committed, raising issues and concerns and throwing canards in the way, the Minister of State must call it out for what it is.

Deputy Michael D'Arcy: I thank the Deputy for his support. I know that the reforms are legitimately supported on every side of the House. Let us make no mistake that the biggest issue we face in the insurance sector is the extraordinary level of awards. The report conducted by officials in the Department of Finance on rewards and benchmarking them with those made in the United Kingdom, our nearest neighbour, produced startling figures. The indications are that the equivalent award in Ireland is between three and five and a half times more. That is the first piece of data we have and it is really helpful. The book of quantum has been reviewed, but the only way it can be reduced is if the Judiciary reduces the awards made. The book of quantum reflects the actual awards made, not the amounts we would like to think should be awarded. When I speak about the cost of insurance, I always make the point that the reason it is so expensive in Ireland is the level of awards. If the awards are high, we cannot hope to have low premiums.

Budget Targets

4. **Deputy Pearse Doherty** asked the Minister for Finance the resources available to him in budget 2019 based on known data; the way in which it has changed from the €3.2 billion cited in the summer economic statement 2017; his plans to use these resources to build a sustainable economy; and if he will make a statement on the matter. [21510/18]

Deputy Pearse Doherty: I want to focus on the parameters for budget 2019. The most im-

portant discussion to be made is how we can use the scope provided by the proceeds of labour to deal with the big issues and challenges we face, including the health crisis, the housing crisis and the cost of living crisis. To do this we need to know what the parameters are. Last year in the summer economic statement it was indicated that €3.2 billion - the fiscal space - would be available in budget 2019. We have been trying to elicit information on how much of that figure has been committed. In a response to a question last night the Minister informed me that €1.8 billion had been pre-committed. It amounts to €1.4 billion when account is taken of the smoothing effect of the expenditure benchmark. Will the Minister confirm that these figures are correct as of today? We understand the figures will be updated in the summer economic statement, but it means that we are looking at an amount of at least €1.8 billion being available in the budget, leaving aside the rainy day fund.

Minister for Finance (Deputy Paschal Donohoe): The 2018 summer economic statement will update the parameters for budget 2019 taking into account the publication by the European Commission of the important inputs in its spring economic forecast. The forecasts will take account of all policy changes announced since budget 2018. I am not in a position to comment on the resources that will be available in budget 2019 ahead of the statement. The 2018 stability programme update provides for an increase of €2.8 billion in voted expenditure, including pre-committed expenditure of €2.6 billion next year. The pre-committed expenditure was composed of €1.5 billion for the national development plan, €400 million to provide for the public sector pay agreement, €400 million to provide for demographics and €300 million to provide for the carryover costs next year of measures introduced in the budget for this year.

Providing for these costs means a deficit of 0.1% of gross domestic product is projected for next year. The available parameters will become clearer in the next number of weeks. The Commission has now published its spring forecasts which are an important input. It is hugely important that we ensure that the policy the next budget implements recognises the fact that we have an economy for which the prospect of full employment is within reach and which continues to make steady progress on many of the matters on which Deputy Doherty has touched.

Deputy Pearse Doherty: I do not want to use my priority question month on month just to try to elicit simple information. We have the legal parameters under the fiscal rules which we know is the fiscal space. That was identified as €3.2 billion. Government decisions on whether to use all of the fiscal space are a separate matter and I am not asking the Minister about policy choices at this point in time. I am just looking at what is legally permissible. The summer economic statement spelled out clearly that €3.2 billion was the amount of money available for budget 2019. We are mindful that this could change and that the summer economic statement could increase or, indeed, decrease that sum. According to the data we have as of today, €3.2 billion is available. An impression has been given by the Minister, deliberately in my view, to dampen expectations in the run up to the budget. That impression is that most, if not all, of this money has already been committed. The Minister has provided replies to me through both the Department of Finance and the Department of Public Expenditure and Reform, which are aligned, that of the €3.2 billion of fiscal space, €1.4 billion was pre-committed. That means there is €1.8 billion available for discretionary spending in budget 2019. That is what is legally allowed according to the current data, albeit we are mindful such data may change in the summer economic statement. Can the Minister confirm that is case? Are we looking at fiscal space identified last year of €3.2 billion, of which €1.4 billion has been committed in the interim, leaving us with a discretionary amount of €1.8 billion, which may change in future?

Deputy Paschal Donohoe: I have answered all the questions put to me on the matter in

written format. I have answered the question the Deputy put to me in writing and which was made available to my Department in advance of questions in the Dáil. To answer directly the question the Deputy has subsequently put to me, he is correct. If one looks at the amount of last year's fiscal space which was pre-committed, the figure is €1.4 billion, which means there is €1.8 billion for expenditure. That means that for total budget day packages, which is to say decisions made on expenditure, taxation and a rainy day fund, the balance available on the basis of last year's figures is fiscal space of €1.8 billion. However, I emphasise that this is on the basis of last year's figures. As to my intentions for the approaching budget, I want to be very clear. It is my objective that budget 2019 will be the same as budgets 2017 and 2018. I want a budget which makes steady and affordable progress on the issues our country faces, whether they be the huge issues within our society or the economic challenges we have to confront.

Deputy Pearse Doherty: I thank the Minister for that clarity. We all need to know what are the figures. Can he also clarify that the €1.8 billion based on last year's figures, which may increase or decrease when we see the summer economic statement, already takes into account the €500 million the Government intends to put into a rainy day fund? While that is a policy proposal with which I do not agree at this point in time, we can get into more detail about that when the legislation comes forward. Will the €1.8 billion be maintained and not reduced as a result of the €500 million for the rainy day fund?

I ask the Minister to inform the House on the Government's policy, which is very unclear but which is in agreement with its partners in Fianna Fáil, as to a one third to two thirds breakdown having regard to tax cuts. Is that one third of the discretionary amount, namely the €1.8 billion which may be available based on last year's figures? As such, will it be €600 million on taxation and €1.2 billion on expenditure with reference to last year's figures?

Deputy Paschal Donohoe: The first question put to me was on a decision in relation to the rainy day fund. It is my view that we need to set up a rainy day fund and I have already indicated my belief that the appropriate deposit in its first year would be €500 million. That figure comes from the €1.8 billion. That is the answer to the first question.

On the second question, the convention I have had with Fianna Fáil to date and which I expect will be maintained with Deputy Michael McGrath for next year is that a one third to two thirds ratio applies to budget day announcements. I am committed to implementing that.

Budget Targets

5. **Deputy Michael McGrath** asked the Minister for Finance if demographics have been included in the calculations for gross fiscal space or net fiscal space; if investment in the rainy day fund is after the calculation of net fiscal space; the final figure for carry-over to 2019 from budget 2018; the precise impact the public service pay deal has on the net fiscal space for 2019; and if he will make a statement on the matter. [21452/18]

Deputy Michael McGrath: My question is in a similar vein to Deputy Doherty's and the Minister has provided some clarity in their exchange on the last question. We should not have to put down priority questions in order to elicit this information. The Minister was before the Budgetary Oversight Committee on 18 April and committed to coming back to the committee with answers to some of those outstanding questions. Can the Minister clarify something for me in relation to demographic costs? We were told last year that the net fiscal space at that time

had already factored in demographic costs of €500 million. Is the Minister saying now that the Department has identified an additional €400 million of demographic costs for 2019 of which it was not aware this time last year?

Deputy Paschal Donohoe: Table 3 on page 22 of the summer economic statement 2017 sets out an indicative amount of €3.2 billion based on the parameters available at that time in respect of the estimate of net fiscal space for 2019. In arriving at the net amount, the fiscal space impact of certain pre-committed voted expenditure was deducted from gross fiscal space. The nominal amounts relating to these pre-commitments were set out in Table 1.3 on page 9 of the mid-year expenditure report with €400 million for demographics. Table 4 in the summer economic statement set out an indicative allocation of net fiscal space between expenditure and taxation measures and the rainy day fund. The rainy day fund is shown in the row entitled "d. contingency reserve/rainy day fund".

In relation to current expenditure, there are pre-commitments that arose from the summer economic statement of €700 million that would need to be funded from the current expenditure fiscal space amount or from savings and reprioritisations. There is a cost of €400 million arising in 2019 from the public services stability agreement. This amount was not included as pre-committed expenditure in the summer economic statement or the mid-year expenditure report as the agreement at that stage was subject to ratification by the membership of the public service unions. In addition and as outlined in the expenditure report 2018, there was a cost estimated at that time of €200 million in respect of the carry-over impact of certain measures that would need to be met from the available resources for 2019 or from savings or reprioritisation. The current estimate of the carry-over impact into 2019 is €300 million. I have already detailed the capital commitments and will not use up our time by repeating those.

Deputy Michael McGrath: One should not need to be Sherlock Holmes to piece together these numbers. These are historic figures and our questions are about what was included and already provided for in the fiscal space last year. The Minister appears to be saying that the amount of money required for demographics has doubled for next year. He says €400 million was already provided for and taken into account in the estimate of fiscal space which he provided last year for 2019. He tells us now that an extra €400 million is required for demographics for 2019. In circumstances in which I must be able to have confidence in these numbers, that is an extraordinary change and one the Minister must explain. While last year's summer economic statement said the figures did not include the extension of the Lansdowne Road agreement, there were replies to other parliamentary questions which said those figures had been taken into account. The numbers keep changing.

11 o'clock

It is hard to have confidence in what the Minister is saying. He must spell out the components. Is he telling us there is an extra €400 million for demographics and €400 million for public sector pay that were not taken into account? We understand that the €300 million carryover would not have been taken into account. Then the Minister must apply three quarters of the extra capital expenditure and take that from the fiscal space as well. Is that essentially what the Minister is saying?

Deputy Paschal Donohoe: I am happy to supply a table to the Deputy which lays all of this out. I have supplied it previously in a number of replies to parliamentary questions. The €400 million figure for demographics is unchanged. That is taking account of the move from gross fiscal space to net fiscal space.

Deputy Michael McGrath: The Minister is saying there is another €400 million.

Deputy Paschal Donohoe: No, and I will provide a table to show that. I will also outline to the Committee on Budgetary Oversight, in a further note if necessary, the difference between the net fiscal space of last year, which is going to change again, and the carryover costs we have from last year's budget in respect of capital and current expenditure. It is very clear.

Deputy Michael McGrath: It is not. The €3.2 billion last year was after demographics.

Deputy Paschal Donohoe: More broadly, when we put together the summer economic statement, I will not be using the concept of fiscal space as a key way of putting our budget together.

Deputy Michael McGrath: That is a different debate.

Deputy Paschal Donohoe: No, it is part of it.

Deputy Pearse Doherty: That is the Minister's decision.

Deputy Paschal Donohoe: I will lay out in the summer economic statement the figures that I am required to provide. Before we make decisions about how to spend resources, however, we must be clear that we have those resources in the first place. We must raise the taxes to provide them and we must ensure that by spending the resources we are making proper use of them. I wish to be clear about the demographics. That €400 million is accounted for in moving from gross fiscal space to net fiscal space. It is the same €400 million that was outlined in the stability programme update of this year.

Deputy Michael McGrath: It should not be reducing the €3.2 billion if that is correct.

Deputy Pearse Doherty: It is not.

Deputy Paschal Donohoe: It is not. I have answered that question. The difference between moving from the gross fiscal space of €3.6 billion to the net fiscal space of €3.2 billion takes account of demographics. It is very clear. We have precommitted expenditure next year of the figure I have outlined and we have to find the money to pay for it.

Deputy Pearse Doherty: We need a table showing the components of the €1.8 billion.

Deputy Paschal Donohoe: When we put the economic statement together, we will be explaining what resources we have available for budget 2019 but making crystal clear that we must ensure that it is correct to spend those resources.

Deputy Michael McGrath: It would be helpful if the Minister could take us from the €3.2 billion to the €1.8 billion and outline the key elements of that. He clearly has that information.

Deputy Pearse Doherty: For clarity, because this will go on for months, there is €1.8 billion of precommitted expenditure since the summer economic statement. What are the components? The Minister said that €700 million is commitments since then, €400 million is the public service agreement and €300 million is carryover, but that does not add up to €1.8 billion.

An Leas-Cheann Comhairle: I know this is important but I have been too flexible on the time. The Minister can give a brief response.

Deputy Paschal Donohoe: I am happy to answer all the questions. The difference between the figure of €3.6 billion for last year in moving to the figure of €3.2 billion takes account of €400 million in demographics-----

Deputy Michael McGrath: We know that.

Deputy Paschal Donohoe: -----which I have just explained. In addition, we have public capital plan commitments and Irish Water commitments which will take up fiscal space of €300 million. That takes us to the €3.2 billion figure. In addition to that, we have further expenditure commitments that were made after last year's summer economic statement. They consist of €700 million of fiscal space that has two different components - the need to take account of the public service stability agreement, which was not ratified at the time of last year's summer economic statement, and the carryover commitments of budget 2018 measures, which is €300 million. That accounts for the €700 million. On top of that we have additional capital commitments of fiscal space which are €600 million. That takes account of capital grants of €200 million and gross fixed allocation capital formation of €400 million. That is €600 million. All of that added together accounts for the €1.4 billion I gave in reply to Deputy Doherty, which then leads to a balance of €1.8 billion.

Corporation Tax Regime

6. **Deputy Richard Boyd Barrett** asked the Minister for Finance his plans to close corporate tax loopholes for special purpose vehicles, SPVs, real estate investment trusts, REITs, banks and corporations that are paying negligible amounts of tax as a result of the loopholes in the context of the next budget; and if he will make a statement on the matter. [21723/18]

Deputy Richard Boyd Barrett: The debate about the fiscal space is important in terms of knowing what we have available for public expenditure and investment. Regardless of what way one calculates it, however, there is not enough for housing, health, infrastructure investment and education. What will the Minister do about the myriad loopholes benefiting corporations, which we got a glimpse of with the Apple scandal, special purpose vehicles, SPVs, real estate investment trusts, REITs, and vulture funds? There is a host of tax expenditures which are not properly scrutinised and that result in very low, sometimes negligible, corporate tax payments by very profitable corporate interests. Is the Minister going to close some of those loopholes to increase the tax revenue available for public expenditure and investment?

Deputy Paschal Donohoe: The Deputy's question is quite wide-ranging and it is not possible in the time allowed to address in detail each of the categories listed, so I will focus on the significant work undertaken in recent years, which is still ongoing, to address tax avoidance at domestic and international levels.

Corporation tax is a significant element of Exchequer tax revenue. Projected corporation tax receipts for 2018 are more than €8.5 billion, representing 15.7% of projected tax receipts. Over and above this, companies also generate substantial tax revenues under other tax headings, including payroll taxes and VAT. The long-term sustainability of corporation tax receipts and of the corporation tax system is therefore a key consideration in every budget cycle.

In 2016, my Department commissioned an independent review of the corporation tax code by Mr. Seamus Coffey. The review was completed and published in June last year and con-

tained 18 recommendations, some of which Mr. Coffey noted were very technical in nature and would require further consultation. I commenced implementing the recommendations last year in budget 2018 with the reintroduction of the 80% cap on capital allowances for intellectual property, and a consultation was held early this year on the implementation of the remaining recommendations. More than 20 submissions were received to this consultation, many of which were detailed and highly technical. My officials are reviewing these submissions and it is my intention to continue this process of open engagement with stakeholders, including my colleagues in the Dáil, through the publication of a roadmap for the implementation of the Coffey recommendations and the anti-tax avoidance directives.

Deputy Richard Boyd Barrett: I agree it is wide-ranging, but these tax expenditures and tax reliefs are the dirty great secret of the Irish economic story. They must be examined forensically to see if money being handed back to corporations in allowances and deductions should be invested in public infrastructure and public services. Consider the jump in trading profits from 2014 to 2015. They go from €98 billion to €149 billion in one year. It is a massive jump. How much were the deductions and allowances for this record level of rocketing profits? There was €66 billion in allowances of various types and various deductions of €30 billion. There was €149 billion in profits but almost €100 billion in loopholes. The income that is taxed, therefore, is a fraction of the profits being made. These loopholes are research and development tax credits, tax credits related to intangible assets, loopholes related to intergroup transfers, losses forward so the banks do not pay any tax, capital allowances and a range of others. Will the Minister close some of these or at least examine their value for money?

Deputy Paschal Donohoe: I am committed to taking on board all the input I have received from the consultation on the Coffey report to ensure we can continue to have a tax code that is both competitive and deals with issues of international concern. However, where I differ with the Deputy very strongly is in noting that a deduction is not the same as a loophole. Companies of all natures are entitled and are able to reduce some of their tax liabilities on the basis of economic and business activity that they deliver, and under many of the clauses the Deputy has referred to that is exactly what is happening. On the other side of the balance sheet from what the Deputy has referred to are jobs that are created in Ireland and employment and investment that happens in Ireland. All of this is playing a role in our bringing our economy to full employment later in the year.

Deputy Richard Boyd Barrett: Yesterday, there were about 100 film workers protesting outside the Dáil for the second week in a row. Does the Minister know why they were protesting? They were there because €70 million is given out in tax reliefs to the film industry. The film industry came to the Oireachtas a few weeks ago and said that it accounts for 17,000 jobs. There are not 17,000 jobs. There are no jobs as a result of that money. Currently, I would be surprised if there were 500 people working, and most of those who are will not have a job in a few weeks. We are not examining whether real jobs are being created or whether real investment is happening. In fact, in his report Mr. Seamus Coffey points out that the tax breaks these firms are getting are so high that the profits are driving up our gross national income so that we have to pay bigger contributions to the European Union, but the tax breaks mean that we do not get the benefit on the other side in tax revenue. Taking research and development as an example, €708 million last year went to the big corporations in research and development tax breaks. Would it not be better to spend that money in the public universities, rather than giving it away to Apple, Google and Facebook?

Deputy Paschal Donohoe: When the Deputy looks at the companies who are accessing

research and development grants, will he also be cognisant of the fact that they are creating employment in Ireland? Many of the companies the Deputy has referred to are very large employers. Their investment, which many other countries wanted, has been secured in Ireland. The different clauses the Deputy refers to, such as grants for research and development and the recognition of such within tax liabilities, are vital ways in which we attract investment to our country and create work. In response to the Deputy's point about the need for further investment in higher and further education, I had hoped that he would point to the fact that the investment plan in Project Ireland 2040 includes a very significant increase in Exchequer funding for higher and further education. I believe that most of the research that takes place there should be funded through the Exchequer.

Criminal Prosecutions

7. **Deputy Mick Wallace** asked the Minister for Finance if he has had discussions with the NAMA chairman or CEO regarding a court case involving a former NAMA official charged with leaking information that the DPP decided not to prosecute; if so, the details of the discussions; if no other instances of leaking have occurred within NAMA, his further views on whether the Data Protection Commissioner should investigate the details regarding the case mentioned; and if he will make a statement on the matter. [21665/18]

Deputy Mick Wallace: My question relates to the recent decision of the Director of Public Prosecutions, DPP, not to prosecute former National Asset Management Agency, NAMA, official Mr. Paul Pugh for the leaking of confidential information. Can the Minister shed some light on the case? Has he spoken to the NAMA chairman or CEO about it? Is the Minister concerned that leaking is going unpunished?

Deputy Paschal Donohoe: I wish to advise the Deputy that the DPP is entirely independent in carrying out her functions and neither I nor the Department of Finance are privy to her decisions. It would not be appropriate for me to question or query any action taken by the DPP in relation to these proceedings, and I did not discuss this matter with the chairman or CEO of NAMA. However, I am aware from recent newspaper reports of the decision by the DPP not to pursue this matter. Such a decision is solely within the purview of the office of the DPP.

I wish to inform the Deputy that employees assigned by the National Treasury Management Agency, NTMA to NAMA are bound by a number of statutory obligations in respect of the confidentiality of information to which they have access by virtue of their employment by NAMA. These include obligations imposed under section 14(1) of the National Treasury Management Agency Act 1990 and under section 202 of the National Asset Management Act 2009. In addition to this, I can advise the Deputy that staff who are assigned to NAMA by the NTMA are also subject to the provisions of the Official Secrets Act 1963. Contravention of these statutory obligations constitutes a criminal offence. Under section 7 of the NAMA Act, a person who commits such offences may be liable to a substantial fine, a term of imprisonment or both.

Under section 19 of the Criminal Justice Act 2011, any party with evidence of criminal wrongdoing is legally obliged to bring such evidence to the attention of An Garda Síochána. I am advised that at all times where NAMA has had reason to suspect that confidential information has been unlawfully released, NAMA has informed An Garda Síochána and fully assisted in Garda investigations.

Deputy Mick Wallace: The Minister says that he cannot hold the DPP to account, but he should be able to so hold NAMA. The decision of the DPP raises a lot more questions than answers. We have to wonder what caused the body to feel that it could not prosecute. When did NAMA first find out that Mr. Pugh had been leaking information, and when did they report it to An Garda? These are answers the Minister should get from NAMA. NAMA would like us to believe that Mr. Enda Farrell was the only bad apple in the barrel in nine years, but we know that this is not true. Mr. Pugh was accused of intentionally disclosing confidential information about McCabe Builders (UK) Ltd. to a London-based investment company, Connaught and Whitehall Capital UK Ltd., by email on 6 June 2012. Section 202 of the National Asset Management Agency Act 2009, to which the Minister referred, states that confidential information means "information relating to the commercial or business interests of a participating institution or of a person who is or has been in a relationship with a participating institution".

The section goes on to state:

> For the purposes of this section, it shall be presumed, unless the contrary is shown, that a person knew that information was confidential information, if that person reasonably ought to have known that it was confidential information.

The information I have is that the senior executives of NAMA are able to pick and choose which information they deem confidential whenever it suits them. The case did not suit them. Can the Minister find out-----

An Leas-Cheann Comhairle: Deputy Wallace, the Minister must be allowed to respond.

Deputy Mick Wallace: -----did the CEO or chairman intervene in this case at the last minute?

Deputy Paschal Donohoe: A Leas-Chathaoirligh, we have just heard a number of allegations there-----

Deputy Mick Wallace: There were not allegations.

Deputy Paschal Donohoe: -----levelled against individuals who are not present to defend themselves.

An Leas-Cheann Comhairle: I remind Deputy Wallace that he cannot make allegations.

Deputy Mick Wallace: They were not allegations. They are known facts.

An Leas-Cheann Comhairle: As far as I am concerned, the Deputy cannot make allegations against those who are not here to defend themselves.

Deputy Paschal Donohoe: When he responds, the Deputy might explain what a fact is, as he understands it, and what is an allegation. The Deputy knows that I cannot intervene in any decision that is made by either the Director of Public Prosecutions or the Data Protection Commissioner. He also knows that it would be entirely inappropriate and wrong for me to engage in any matter which NAMA is dealing with while it is dealing with both bodies. What I have outlined for the Deputy today comprises independent decisions that have been made by both the Data Protection Commissioner and the DPP. I cannot influence any decisions they make in any way, as I know the Deputy understands. When NAMA was dealing with both of those bodies, it would have been wrong for me to be involved in any decisions it made. I have answered the

questions that the Deputy has put to me, and I have explained that I am confident that NAMA is aware of all of its duties in relation to this area. Where there are any breaches or issues, NAMA has responded to the relevant authorities.

An Leas-Cheann Comhairle: Deputy Wallace has a final question. He should be careful.

Deputy Mick Wallace: I wrote to the Data Protection Commissioner about this case. Her office seems to be the only wing of the State at present that has any interest in holding NAMA to account. The Minister might be able to help me with this. The Data Protection Commissioner asked me whether the information leaked by Mr. Pugh contained personal data. This is critical to allowing the DPP to investigate. Will the Minister instruct NAMA, as is his right as Minister, to give all files relating to this individual case to the Office of the Data Protection Commissioner, so that it can investigate it properly? The Office of the Data Protection Commissioner obviously does not have that information, but the Minister could tell NAMA to give the relevant information to it so that it can do its work. The Minister cannot wash his hands of this. The last Minister for Finance did not hold NAMA to account. Will Deputy Donohoe? I am not convinced.

Deputy Paschal Donohoe: Any investigation that is under way on the part of the Office of the Data Protection Commissioner of any matter that it is raising with NAMA is a matter for that body. If it has any concerns that information is not being fully shared with them, or any issues in relation to the investigation, it has significant power under law to deal with that matter. I am sure if there were any such concerns, the Office of the Data Protection Commissioner would be using the powers that are available to it.

Other Questions

Corporation Tax

8. **Deputy Pearse Doherty** asked the Minister for Finance if the billions of euro of intangible assets onshored during the period when there was no limit on the ability of companies to use these assets to write off tax liabilities will be taxed going forward; and if he will make a statement on the matter. [21436/18]

Deputy Pearse Doherty: In 2015, the Minister's predecessor made a bizarre move when he decided to allow that 100% of the intangible assets of a company could be written off against profits. The result was a massive onshoring of intangible assets. It effectively cancelled out billions of euro of profits for tax purposes. There is no reason this huge mistake cannot be rectified. We know from Mr. Seamus Coffey that the benefit to the State of doing that would be €750 million per year. Is this under consideration in advance of budget 2019?

Deputy Paschal Donohoe: In the Finance Bill 2017, I introduced an 80% cap on the relevant income against which capital allowances for intangible assets may be deducted in a tax year. This reinstated the cap which had been in place but which was lifted in the Finance Bill 2014 and therefore did not apply to assets onshored between 1 January 2015 and 10 October 2017. On the recommendation of the Review of Ireland's Corporation Tax Code undertaken by Mr. Seamus Coffey, the 80% cap was reinstated to ensure some smoothing of corporation tax

receipts over time. For the purposes of certainty, changes to tax law are generally made on a prospective basis such that they apply only from the date on which they have legal effect. This measure, therefore, does not apply retrospectively.

It should be noted that the operation of the cap is simply a timing matter, and to present tax paid in current years as a result of the cap as additional tax for the Exchequer would not be correct. The measure has no effect on the overall quantum of capital allowances for intangible assets available to use against the relevant trading income. Any amounts restricted in one accounting period as a result of a cap are available for carry forward and use in a subsequent accounting period, subject to the application of the cap in that period. Income generated by assets onshored during the period when the cap was not in place will therefore be taxed going forward when the capital allowances have been fully used. The allowances are one of a number of measures designed to enhance the competitiveness of Ireland as a location for companies to develop intellectual property. This recognises the fact that investment and growth in OECD economies is increasingly driven by investment in intangible assets.

Deputy Pearse Doherty: I have raised this with the Minister on numerous occasions. I argued passionately at the Oireachtas Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach that while reintroducing the 80% cap was a positive step, allowing the intellectual property that was being brought onshore to continue to claim the 100% was wrong. It is costing the State €750 million. The parameters of next year's budget, which we now know will be at €1.8 billion, could be increased by just changing this policy. The person that the Department of Finance commissioned to write the definitive report in respect of taxation has argued this should be introduced. It is not about retrospective taxation. There is nothing retrospective about this.

Mr. Seamus Coffey has said that it does not change the amount of capital allowances that are available and the total quantum of capital allowances remains the same. He has said that all that changes is the amount that can be claimed in future years. It is about how we attach them in future years. There are serious questions on where this policy came from. Who decided to raise the cap to 100%? At whose bidding was that done? Other changes were made at that time as well. Those included extending the qualifications for intangible assets and the rules relating to transferring assets. At whose bidding did this happen and why is the Minister so reluctant to bring in another €750 million to the State this year? It could be used to invest in the housing, health or cost of living crises.

Deputy Paschal Donohoe: I have supplied information to the Deputy in the context of last year's Finance Bill on the contact between my Department and my predecessor across the period when that decision was made. On the question of the decision I made, I made it on the basis of consultation I had with my own Department. I have outlined to Deputy Doherty the contact I had with bodies and organisations in the run-up to the budget. As to why I made the decision that I did and why I am not looking to change it in the way the Deputy wishes, it is because I believe the regime we have in place is competitive and stable. There is great value in those qualities given the changes happening at the moment.

It is my assessment that if I were to make the change that the Deputy referred to, it would damage our ability to attract and retain intellectual property. That is an important feature in how we can retain jobs within our economy. The current regime is competitive. Changing it in any way would undermine that competitiveness. As Deputy Doherty knows and has acknowledged, the €750 million referred to, which is a tentative estimate from the Revenue Commis-

sioners, is a question of the timing of tax revenue.

Deputy Pearse Doherty: It is not necessarily the timing of taxation. These companies are highly mobile. Companies could defer their liabilities for ten years and there is no guarantee that they will be here in ten years or that the structure of the companies would mean that the taxation would be available then. They could move their profit centre to some other jurisdiction. Let us not pretend that is not a risk. The reality is that this is a policy choice. The Minister's officials told us that. There is no other reason for this. I am asking the Minister to apply the same tax rules to intellectual property brought onshore by a company last month as we should be applying to intellectual property that was brought on to this shore post 2015.

I refer to what the Minister is allowing companies to avail of in the tax code because of this flawed decision, for whatever reason or at whoever's bidding it was made. We know Apple is one of these multinational companies. This has been written about internationally and has brought shame to Ireland in respect of our tax code. Intellectual property has been brought to Ireland and it has been possible to write down effective tax very close to zero as a result of this. The Minister is saying that he is going to apply a different tax code to that intellectual property and a separate tax policy in respect of intellectual property that was here in the past year or may come in future years.

Deputy Paschal Donohoe: I re-emphasise that intellectual property was brought to our country in the past and there was an expectation of what taxing regime would apply to that intellectual property when it was moved into our jurisdiction. I believe we should maintain that taxing regime. We gave commitments on what our international tax structure was going to be. Investment took place on that basis. If we were to change it in the way Deputy Doherty suggests, it would undermine our ability to retain investment in our country.

He is correct that it is a policy decision. I made that policy decision and I stand over it on the basis of what the long-term competitiveness of our economy can look like. Deputy Doherty pointed out how mobile a company is that moves to Ireland and that it might decide to move again in future. That is correct. Many of the companies, however, that are involved in technology and research in Ireland have had long-term relationships with Ireland and have been based here for many years. I believe this is the right regime to maintain that long-term trading relationship with those companies.

Personal Contract Plans

9. **Deputy Michael McGrath** asked the Minister for Finance his views on the contention by the Competition and Consumer Protection Commission that personal contract plans, PCPs, should be covered by the Central Bank's consumer protection code; and if he will make a statement on the matter. [21453/18]

Deputy Michael McGrath: This question relates to personal contract plans, PCPs. They are playing an increasingly important role in the car finance market. The Competition and Consumer Protection Commission published a report into PCPs two months ago. My main question relates to one of the recommendations on the application of the consumer protection code and who is going to take responsibility for that being done. The Minister might clarify if the Government accepts that recommendation and if it is going to move to implement the application of that code to these products.

Deputy Paschal Donohoe: Personal contract plans, PCPs, are a type of hire-purchase financing agreement used for the purchase of motor vehicles. They normally comprise three parts: an up-front deposit payment, ongoing monthly payments and a final payment at the end of the contract term. While the consumer will have the hire and use of the car, ownership of it remains with the finance provider. Hire-purchase providers are not required to seek authorisation from the Central Bank for the provision of hire-purchase agreements such as PCPs. The consumer protection code of 2012 is a binding statutory code on entities regulated by the Central Bank. As the category of hire-purchase provider is not authorised or regulated by the bank, however, the Central Bank advises that they are not subject, for the provision of a hire-purchase agreement, to the requirements of the code. There is, however, legislation governing the operation of hire-purchase agreements, and this is provided for in the Consumer Credit Act. Any entity providing hire-purchase agreements, or acting as intermediary in regard to such agreements, will have to comply with the relevant provisions of that Act. Both the Central Bank and the Competition and Consumer Protection Commission have certain functions under that Act. The bank has an overall role in relation to the operation of such agreements and the commission has a role in regard to the authorisation of credit intermediaries.

Nevertheless, it is important to keep this new and growing area of consumer finance under review. I welcome the publication of the recent report and the separate Central Bank economic letter on the market. These papers provide an important insight into the market. There are already important legislative provisions in place. Nonetheless, I am now examining the recent publications and will give careful consideration to what further actions, including consumer protection measures, would be appropriate in the light of the reports.

Deputy Michael McGrath: The issue is that there are gaps in regulation, the key one being that the provider of finance does not have to carry out any suitability check or affordability assessment of the product for the consumer. That is the key omission, and it needs to be dealt with. There are examples of where the product is exploited. If one looks this up online, one will see advertisements stating "Leave bad credit behind today" or "Drive away in your new car now." That is an example of the consequence of these products not being properly regulated.

We are talking about a product that has amassed a total debt of approximately €1.5 billion across over 126,000 transactions. There is nothing inherently wrong with PCPs but proper suitability checks are required. The affordability of the product has to be determined. What we now have is a game of pass the parcel between the Department of Finance and the Department of Business, Enterprise and Innovation over who will take responsibility for the products. Somebody has to. It needs to be done quickly.

Deputy Paschal Donohoe: There is no pass the parcel at all taking place in regard to these matters. The figures the Deputy has referred to are correct. Let us look at the amount of new lending in this category. In 2017, it was €835 million. This increased from €96 million in 2012. Therefore, it is a really significant increase. It is a matter that I am taking seriously. As I stated, I am examining the two publications and I will soon be deciding what further measures are needed in recognition of the scale of lending.

Deputy Michael McGrath: I thank the Minister. I welcome the fact that he is actively examining this issue. That needs to be done. Keeping the matter under review is not sufficient. The Minister now has an economic letter from the Central Bank and a detailed report from the CCPC with a number of recommendations.

The reality is that this product is currently falling between two stools in some respects. Since the contract is a hire-purchase contract, it is not a matter for the Central Bank in terms of the consumer protection code. There has to be a requirement on those providing the finance to assess the suitability of the product for the consumer. There has to be an affordability assessment. That is the key ask I am making of the Minister. A debt of €1.5 billion has been built up. The product is a really important one for the motor industry, and it is a means for consumers to get a new car. We want to protect that but the best way to do so is to ensure the product is properly regulated and that the gaps that have now been identified are filled as a matter of priority.

An Leas-Cheann Comhairle: I will take a short supplementary question from Deputy Joan Burton.

Deputy Joan Burton: Is the Minister aware that many young people are taking up these loans to purchase what are, for them, relatively expensive cars? There are very complex regulations governing the deal and when the purchase might come into the ownership of the individual. A lot of deals can fail towards the end of the period. The fact is that the young people then could get an adverse report in terms of their credit rating, which they will carry with them for a long period. Will the Minister examine specifically the social implication? When the young people seek a mortgage later on, perhaps with their partner, they will find they have an adverse credit rating. Nothing has been done to warn them of this or to prevent it.

Deputy Paschal Donohoe: In my response to Deputy Michael McGrath, I referred specifically to consumer protection law as something that needs to be considered in regard to this category of finance. It is a category of finance that has grown in the way I have described. I am aware of who might be gaining access to the finance and how it is used. I have received the reports over a number of weeks and I am now considering what further action needs to be taken, what new responsibility is required and who would need to discharge it.

NAMA Operations

10. **Deputy Mick Wallace** asked the Minister for Finance if he has discussed the Data Protection Commissioner's ruling on NAMA and a group (details supplied) with the NAMA CEO and chairman; the reason NAMA has not appealed the ruling; the steps NAMA is taking to ensure it is in full compliance with data protection law; and if he will make a statement on the matter. [21446/18]

Deputy Mick Wallace: This question relates to the ruling by the Data Protection Commissioner on NAMA and the O'Flynn Group. Could the Minister tell me whether he has discussed the ruling with the NAMA CEO and chairman? The last time we spoke about this, the Minister informed me the board of NAMA is currently considering the ruling of the commissioner and will respond to it. Could the Minister tell me whether there has been a response? What steps is he taking to ensure that NAMA is in full compliance with data protection law? Has he read the report?

Deputy Paschal Donohoe: I advise the Deputy that, as Minister, I play no role in the day-to-day operations of NAMA, which are set out in the NAMA Act 2009. As such, it is not appropriate for me, as a Minister, to discuss with NAMA how it should deal with an operational matter such as this. I can confirm, however, that my officials have been briefed on this matter. I am informed that, having considered the decision of the Office of the Data Protection Com-

missioner carefully and with the benefit of expert advice, NAMA has decided not to appeal the decision. I am advised that NAMA is instead working constructively with the Data Protection Commissioner and the parties concerned in dealing with the request, having regard to the guidance provided by the Data Protection Commissioner in the decision. In doing so, I am informed that NAMA has, since the decision, taken considerable steps to identify and isolate all potential sources of personal data it may continue to hold concerning the parties and fully address the issues raised in the decision.

This dataset was assembled some weeks ago and is in the course of being reviewed with assistance from an external provider with expertise in this area to identify the potential sources of personal data. I am advised that NAMA will begin to provide the output of this review to the parties concerned shortly. This will be done in batches given the quantity of data involved. The steps taken thus far, I am informed, have been notified to both the Data Protection Commissioner and the parties concerned, and NAMA has agreed to keep these parties updated on progress on this review.

Deputy Mick Wallace: I am glad to hear co-operation is being considered. I asked the Minister whether he had read the report. It would have made interesting reading for the Minister for Finance. If he had read it, he would have noted that the disdain and - for want of a better word - ignorance showed by NAMA not just for the O'Flynn Group but also for the Data Protection Commissioner, in particular, was a bit scary. I would be concerned if the Minister did not have concerns about that area.

The Minister gives me the impression he is not really responsible for holding NAMA to account. Am I correct in my understanding of the Minister's comment? If he cannot hold NAMA to account, who can? It does not look as if anyone is doing so.

Deputy Paschal Donohoe: I assume that when the Deputy asks if I have read the report, he is referring to the ruling made by the Data Protection Commissioner. I have not read the ruling, but I do have the summary of the commissioner's views on the matter and an update on NAMA's response. On whether I hold NAMA to account, it has a business or strategic plan and is accountable to me for its implementation. I meet its chairman and chief executive regularly. The difference is where legal issues are raised by individuals about how they believe their rights need to be protected and action should be taken in that regard. I am not involved in how NAMA responds. It is a matter for its board and chief executive who engage directly with the Data Protection Commissioner and the Director of Public Prosecutions in other matters. I am not involved, but I have outlined the areas in which I am.

Deputy Mick Wallace: The Minister says it is a matter for the board of NAMA, but is it one for him, given that NAMA publicly rubbished the Comptroller and Auditor General, Mr. Séamus McCarthy, when he published his report? If he had been Minister at the time, would he have challenged NAMA on its treatment of Mr. McCarthy?

An Leas-Cheann Comhairle: The Deputy should be careful in naming people.

Deputy Mick Wallace: It is funny if one cannot mention the name of the Comptroller and Auditor General here. Let us take all of the issues surrounding Project Eagle. We found out that some of Cerberus' money had ended up in an Isle of Man bank account. Does Minister think that in that case he is responsible for holding NAMA to account?

Deputy Michael McGrath: I wish to make two points, the first of which is that there must

be accountability in this case, while the second is that we need to know if it has wider application. It was a significant ruling by the Data Protection Commissioner, that a very powerful State agency was in breach of the Data Protection Acts in the non-disclosure of personal information held by the agency on some borrowers. As public representatives, we are regularly in receipt of grievances from NAMA debtors and must make a call on how we should deal with them. There are certain issues that we are allowed to raise with NAMA, while not making representations in contravention of the Act. However, it can sometimes be difficult to get any information whatsoever. The ruling was that there had been a breach. We need an account of how it happened and to know if it has wider application in other incidences of non-disclosure by the agency on foot of the receipt of information requests.

Deputy Paschal Donohoe: Deputy Michael McGrath referred to Project Eagle. As he knows, an inquiry is under way and any decision on accountability will have to be dealt after it has been concluded. I hold the board and the chairman accountable for implementation of their business plan and published strategy. Should matters emerge from inquiries that take place which raise issues for NAMA, of course, I will also raise them with them. I am not aware of wider consequences of the ruling, but I know that when rulings such as this are made, there may be consequences for NAMA. I will raise the matter with it and respond to the Deputies.

Tracker Mortgage Examination

11. **Deputy Pearse Doherty** asked the Minister for Finance the latest engagement he had with the Central Bank on tracker mortgage issues; if he raised the issues of prevailing rate customers, customers of a building society who have not returned to a tracker mortgage, staff tracker mortgages in a bank (details supplied) and other groups still not deemed to be impacted on by the matter; and if he will make a statement on the matter. [21433/18]

Deputy Pearse Doherty: Last week the Central Bank told us that it was still in discussions with some financial institutions on some categories or groups of victims in the tracker mortgage scandal. We know how pressure has been brought to bear on the financial institutions, at a political level from the Minister's Department or by the stories of the victims. However, I am concerned that we are not yet done in dealing with the issue. We are so far into it, yet I am concerned that time is slipping and that there are still queries or disputes between the Central Bank and the financial institutions. We have received many emails from individuals who are disgruntled at decisions that they are not within the scope of the inquiry.

Deputy Paschal Donohoe: In April the Central Bank provided me with a comprehensive update on the tracker mortgage examination. It subsequently published the update on its website. The report indicated that an additional 3,400 impacted on accounts had been identified since the previous December progress report, bringing the total number of impacted on accounts to 37,100. Progress has been made in the payment of redress and compensation. A total of €412 million has now been paid in respect of 88% of accounts so far identified as impacted on and verified pursuant to the examination. This is additional to the €47 million paid in redress and compensation to impacted on customers identified outside the scope of the industry-wide examination.

In line with its engagement with lenders via the examination the Central Bank, as independent regulator, has intervened on prevailing rate issues. This intervention is aligned with the Central Bank's functions as part of the examination to rigorously test and challenge, from a sys-

temic perspective at the macro level, the position adopted by lenders in order to try to achieve the best result for all customers within a group.

One of the lenders which indicated that there was an issue with the prevailing rate was AIB. The matter was pursued by the Central Bank and directly as a result of its intervention, AIB prevailing rate customers were admitted to the examination and will receive a compensation payment, as well as an offer of the current prevailing rate, as opposed to the prevailing rate at the time their fixed rate expired. By securing their admission to the examination, the Central Bank has also ensured those customers will have the opportunity to utilise the examination's appeals processes should they be dissatisfied with any aspect of their redress and compensation offer and can pursue their case, based on their own unique circumstances, with the Financial Services and Pensions Ombudsman. In the particular case the Central Bank examined AIB's model to determine the then prevailing rate and concluded that it was reasonable in relation to the contractual interpretation of the term "prevailing rate". The bank also advised me that it had formed the view that, at a macro level, it could not mount a legal challenge on behalf of all customers in the relevant group on this issue. Nevertheless, more generally it advises that it continues to engage with and challenge lenders on a number of tracker mortgage issues which include the prevailing rate.

Deputy Pearse Doherty: The prevailing rate has been a serious bone of contention for many individuals. My colleagues on the finance committee and I have quizzed all of the financial institutions about the prevailing rate, where they accepted that a customer should be on that rate, but it was 3.5%. What they came up with was ridiculous and we queried it with the Central Bank. When officials of the Central Bank appeared before the committee in recent weeks, I put the issue to them. They told us "it is clear that the prevailing rate issue has been dealt with in some of the entities." That was the first time we had received information that that was the case in AIB. I welcome being able to give that information. We will tease out the matter with AIB when its representatives come before the committee soon. However, the Central Bank has stated it is still in discussions with others. There are people who do not know if their issue with the prevailing rate with Permanent TSB, Bank of Ireland or any other bank has been closed, whether they should go to the Financial Services Ombudsman or if the Central Bank is still arguing on their behalf. Will greater transparency be brought to this issue in order that customers will know where they stand?

Deputy Paschal Donohoe: I will answer the Deputy's question, but I wish to return to two other matters related to staff loans included in the Deputy's original question. The Central Bank has made it clear to lenders that their staff, who have impacted mortgage accounts, are to be included in the examination in the same way as all other impacted customers. The Central Bank has now indicated that it is satisfied that all impacted customers have been identified at this point. In overall terms, however, while the bank is currently of the view that the majority of affected customers have now been identified, it nevertheless expects that there will be some further increase in the number of impacted accounts before the conclusion of the examination. This is an ongoing matter. I do not expect the number of accounts to move up in the way it has in the past where it moved up by such a quantum, but it is entirely possible it could move up again.

On transparency, I have also had a lot of contact on the matter from constituents and citizens and the general view I have received is individuals have understood where they stand on the process. If the Deputy has specific examples of where he believes that is not the case, he might share those with me and with the bank director.

Deputy Pearse Doherty: On the issue of staff loans, I received an email this morning from an employee in Bank of Ireland and it is quite interesting given the revelations in the national media this morning that Bank of Ireland's chief who has a mortgage of €2.8 million is servicing that mortgage with a payment of €1,400 per month. That is less than the current average rent in Dublin and it shows how these banks can fleece their customers with the highest interest rates in Europe, as we have seen from the Central Bank's report last week, but how they also treat their customers. This employee in Bank of Ireland was just informed that they are not impacted, despite the fact that the staff were told at the time that they would roll onto a tracker and that they did not have to do anything but then the carpet was pulled from under them. I make the point that there are still unresolved issues on some of this and we need to continue to encourage, support and challenge the Central Bank in dealing with these outstanding issues.

Deputy Michael McGrath: To add to what Deputy Pearse Doherty said, it is really important that at this late stage people are told where they stand because there are various strands of outstanding issues here and the Central Bank is clearly moving towards a conclusion on all these issues. There will be legal challenges on certain issues. That is absolutely certain at this stage.

The other key point I want to make is that while I welcome the fact that there are six enforcement investigations under way, the elephant in the room is the following question. Why did this happen and how could this happen across all the main lenders in the same way in a manner that was disadvantageous to the consumers and advantageous to the bank? That is the question that has to be answered and at the end of the day, if we are to have any accountability for what has happened, that question must be answered.

Deputy Paschal Donohoe: Deputy Pearse Doherty said that this matter is still unresolved and not concluded. I agree with him, it is. Deputies have raised a number of issues with me, as I have dealt with this matter, on where we were with staff loans, where the Central Bank was with staff loans and where we were with the issue on the prevailing rate of interest. I have now updated the House on where that stands. On the information the Central Bank has shared with me on where individuals stand, I would expect that as the investigation moves into the final stage of its work, that all individuals will know where they stand at the end of it. That is not to say every individual will be satisfied. People may take further action and I acknowledge that could happen, but I believe the appeals process that has been put in place is comprehensive. I restate that if an individual has received payment, that payment is then his or her and it will not be affected by any future participation he or she has in the appeals process.

On the question about why this happened, that is a question that I expect the Central Bank will be able to answer in the inquiry report that will be at the end of this process. As I have said on a number of occasions, this should not have happened and it should not have taken this long to resolve. The Central Bank, despite views that have been articulated to it, has risen to the challenge in dealing with what was a very complex issue which has inflicted much loss on many of our citizens.

Common Consolidated Corporate Tax Base Proposals

12. **Deputy Thomas P. Broughan** asked the Minister for Finance the strategies he is developing to mitigate shocks to corporation tax revenues arising from President Macron's proposed 2019-2020 EU reforms or other factors from 2019-2020; and if he will make a statement on the

matter. [21385/18]

Deputy Thomas P. Broughan: I know the Minister is an avid reader and follower of international affairs. Obviously, he read President Macron's book *Revolution* and his Sorbonne speech. What preparations, if any, is the Department making on the common consolidated corporate tax base on the impacts it will have on corporation tax and on the idea of a common finance Minister for Europe and a common debt? Are we doing anything? Perhaps this is the real elephant in the room. Are we doing anything to prepare for the possibility of these so-called reforms?

Deputy Paschal Donohoe: I have not read the book but I did read of the speech. I might ask the Deputy if he read either but I am sure he has. On the different issues he has referred to, President Macron, in his speech, referred to a defined corridor for corporation tax rates and increased convergence and called for a rethink on the taxation of digital companies. EU member states are currently discussing and debating various aspects of the common consolidated corporate tax base, CCCTB. By its nature, it is very complex and detailed. We are engaging constructively with the proposal but at the same time very carefully and critically analysing whether any aspect of it is in line with our long-term interests. To restate, tax remains a matter of member state competence and unanimity is required before any proposals can be agreed.

In respect of digital tax proposals, the Deputy will be aware that on 21 March the European Commission published two directives. One was temporary and one was comprehensive. There was an interesting discussion between Ministers at the informal ECOFIN in Sofia and it is clear that many countries have differing views on the merit of these proposals. There is common ground among all member states that a sustainable, globally agreed solution is preferable to the EU acting alone. Member states remain divided on the merit or need for interim measures.

The Commission's current proposal, if adopted, would result in a significant shift in how corporate tax is administered and would have many unanticipated and negative consequences for EU member states and companies. Therefore, it is crucial that they are properly considered and analysed as they are hugely complex. I restate that unanimity is required before any proposals can be agreed.

Deputy Thomas P. Broughan: There is a very serious move to bring in this equalisation levy on digital companies across the European area. Is the Minister saying that this is something he will steadfastly resist and that he expects the Taoiseach and the Government to continue to resist it? Does he see it as inevitable that digital products will be taxed in the country where the sales take place? On the CCCTB, the European directive in 2016 seemed to indicate that having common tax base rules was a very serious objective. That would have huge implications for our corporation tax on tax expenditures and the way we would frame it. Mr. Seamus Coffey, who I think is appearing before the Committee on Budgetary Oversight this afternoon, said that corporation tax is sustainable until 2020 or so but after that we are not so sure and we have had volatility in the past. Would the Minister regard these proposals emanating from the new French President, Mr. Macron, as a red flag that we need to keep a close watch on?

12 o'clock

Deputy Michael McGrath: From a Fianna Fáil perspective, we view both the CCCTB and the digital taxation proposals as a step towards tax harmonisation across the European Union. From our perspective, this is an encroachment into an area of national competence and key national sovereignty. If necessary, the Minister needs to exercise the veto on these proposals.

The Minister is doing what we would expect him to do in building alliances with other countries that would have a common view on this issue but if it comes to it and if these proposals are put, they need to be rejected and vetoed, if necessary.

Deputy Paschal Donohoe: I will not support any change that infringes the tax sovereignty of this country or poses any challenge to our ability to create and attract jobs here. As acknowledged by Deputy Michael McGrath, I am working with many like-minded countries on these matters. At this point, there is considerable concern in regard to both an interim measure and the development of a common consolidated corporate tax base that stretches well beyond Ireland, and this will become evident in the negotiations that are under way.

Leaders' Questions

An Ceann Comhairle: I implore leaders to adhere to the time limit.

Deputy Micheál Martin: When the scandal in regard to the Vicky Phelan case and the women involved in the cervical cancer screening programme not being informed of the audit outcomes first emerged in this House, I used the phrase, "Everybody knew, but nobody knew". In terms of the documentation produced yesterday by the Department, these words ring very true because everybody within the national screening programme, CervicalCheck, at senior level in the HSE and key officials in the Department of Health and Children knew. When Deputy Donnelly and I met the Minister, Deputy Harris, and his officials at that time, we got a commitment from the Minister that notwithstanding any inquiry to be established, he would publish information as he got it and he would not seek to suppress any Dáil committee or the Dáil considering the issues pertaining to the cervical cancer screening programme.

I was amazed last week when the three memos emerged at the Committee of Public Accounts. I would have thought the Minister would have summoned his officials and demanded all of this documentation and published it in an ordered and structured way. It has taken us three weeks to get to the level of documentation received yesterday. The Taoiseach said on "Six One" last week that he does not think the Committee of Public Accounts is the place to discuss this matter, in respect of which Ministers followed suit. There appears to be an agenda to push the Committee of Public Accounts and other Dáil committees to one side. We got a commitment from the Minister that no attempt would be made either to prevent publication or to prevent Dáil committees doing their work on this matter and that the inquiry would not be used as an attempt to bury information away from the public domain. The Government should adhere to this commitment.

In regard to the documentation, it is clear that the policy of open disclosure is very much a live issue throughout 2016. Every month they are meeting and the CervicalCheck audit is on the agenda. These are joint meetings between the Department of Health senior officials, the chief medical officer, the National Cancer Screening Service and CervicalCheck, and they are saying that while CervicalCheck supports the principles of open disclosure, it is recognised that there are limitations to its universal implementation, particularly for screening services where there is an inherent recognised error rate. At the same time, the then Minister is proclaiming his commitment to introduce mandatory open disclosure.

Will the Minister, Deputy Bruton, commit to the publication of all the advice received by the then Minister from the chief medical officer on the policy of mandatory open disclosure? Is

the position of the senior officials in the HSE and CervicalCheck that an exemption is required from open disclosure in terms of the screening programme, filtering across the wider policy of going against what the Minister originally proclaimed publicly, namely, that he would introduce mandatory reporting? This was subsequently changed in policy terms. What is the reason for this and will the Minister, Deputy Bruton, commit to publication of the advice in regard to the *volte-face* in terms of open disclosure?

Minister for Education and Skills (Deputy Richard Bruton): I take this opportunity to express again my personal shock and sympathy to the people who have been so appalling affected. The non-disclosure was a major failure of public policy, given disclosure has been HSE policy since 2013. It is categorically clear, however, that this never came to the attention of any Minister. When it did come to the attention of Government, very swift action was taken to protect the people affected by way of a package of services, including the provision of a helpline, the establishment of international clinical oversight for any outcomes that come to light and the ones that have come to light, cancer screening rechecks and the establishment of an inquiry, headed by Dr. Scally, through which we will get answers such that this can never happen again. I assure the Deputy that no document that will be withheld from those who want to inquire into what has happened in this instance. There is no attempt by Government to restrict access to information, which the Minister made clear from the outset. The fact that the Committee of Public Accounts is receiving information shows there is no attempt to withhold any information nor is there any attempt to confine the work of Oireachtas committees. Oireachtas committees must work with others who are seeking to get clinical facts, but it is up to those committees to decide how they conduct their business. I fully support this.

On the reason for a staged approach to mandatory disclosure, this has been debated in the House. I understand that an all-party Oireachtas committee recommended the approach of a introducing a voluntary disclosure process initially to encourage a culture change where people could openly discuss failures where they occur and not have this process constrained by liability issues blocking the honest conversations that should happen in a system. We are moving, via the health information and patient safety Bill, to introduce mandatory disclosure for serious incidents. This will be legally binding such that it will be an offence to fail to do so. It was signalled in the programme for Government that we would do this over the five-year programme and we are doing it. The change in regard to civil liability, the policy of disclosure and the legislative framework put in place in this regard was openly debated in the Oireachtas and it was done in the knowledge that mandatory disclosure was to follow.

Deputy Micheál Martin: I will make two points. First, the Taoiseach made a statement to the effect that the Committee of Public Accounts should not be involved in this matter, which was supported by some Ministers. A meeting was held by the Committee on Procedure and Privileges to discuss whether the Committee of Public Accounts should do so and Deputy Harty, as Chairman of the Committee on Health, has stated in writing that he does not believe it should. I am not saying any of this is connected and I am not joining any dots. As party leader, I have never interfered with the Committee of Public Accounts nor given any guidance or instructions in this regard to anybody. It is important that the Government does not attempt to muzzle a key committee of this House. Whether one agrees with what it does or how it does it is beside the point. It is a parliamentary committee. Dr. Scally has also referenced the fevered atmosphere and so on. I am raising this issue in a plenary session of the House because I do not think we would have had sight of those documents last week but for the Committee of Public Accounts. The Minister, Deputy Bruton, said the Minister, Deputy Harris, is committed but he

gave a commitment three weeks ago and we did not get information. I find it inexplicable that people did not front up at that early stage and provide the documentation.

Second, on open disclosure, what is evident in this documentation is an attempt to exempt the cervical screening programme from the strict rigours of open disclosure. The templates for the letters to the women concerned provide consultants with a way out in terms of the use of the word "may". It is clear there is a circumvention of open disclosure. Is there any link between this and the decision of the then Minister, Deputy Varadkar, not to proceed with his original commitment to introduce mandatory open disclosure? It is an interesting point from a policy perspective. Many people are making decisions without Ministers' knowledge and, equally, on substantive issues of policy, this appears to be the case also.

Deputy Richard Bruton: The documentation shows categorically that neither the Taoiseach nor the current Minister for Health had any knowledge of the non-disclosure and, as such, it cannot be linked to any decisions that were made by Ministers or the Oireachtas in terms of how they should deal with this. It is very clear that there can be no link because no information was made available to the Ministers concerned.

Deputy Micheál Martin: Will the Government publish the advice?

Deputy Richard Bruton: The Minister will make available any documentation that is required by committees. That is always the case. What the committees should do is entirely a matter for them, and I fully acknowledge their independence. I have been around this House for a long time and I fully recognise the rights of committees to do their business. I must also be conscious, however, that the Dáil is anxious that Dr. Scally would produce a report in June so we can have timely answers around the clinical implications, the protection we need to provide for women and the further follow-up that needs to occur to help women who are concerned. It is not just about who knew what and when.

It is important and the House needs to take account of comments that come from an individual like Dr. Scally, if he has concerns. While we do not want to impede that, we also want to do our business. It is for the Oireachtas to make its decision and for the committee to makes its decision. I respect that but we also have to recognise that we have asked Dr. Scally to do an important job that clearly involves a wider range of expertise than we have. In striving to get accountability, we must ensure that we do not interfere with a process that is important, valuable and vital to the people concerned.

Deputy Pearse Doherty: Over the past 24 hours we have learned that two women with cervical cancer who had contacted CervicalCheck in 2016 were refused direct access to the results of the audit of their smear tests. This information is contained in a letter from CervicalCheck to the chief medical officer, Dr. Tony Holohan, in October 2016. A separate memo in March 2016 says that doctors were told to use their judgment when deciding whether to inform women that their smear test results were wrong. Such revelations highlight once again the urgent need for mandatory open disclosure to be legislated for as soon as possible. I welcome the all-party support for Sinn Féin's motion last night calling for this legislation to be introduced before the summer recess.

As Minister for Health, the Taoiseach promised to introduce mandatory disclosure but, following advice from the chief medical officer, he changed his mind. That was the wrong advice and the wrong decision in 2016. Many of the women who are affected by the CervicalCheck

scandal are only now being informed of their misread results. The fact that the then Minister did a U-turn on his previous position on the basis of his advice indicates that the chief medical officer was a trusted and valuable source of advice for the Minister. When one considers the fact that the chief medical officer was informed of this scandal around the same time, it would be useful and important to know the nature of the advice given to the then Minister in that regard. Was it informed by knowledge of the CervicalCheck scandal or was it informed by any other medical scandal?

If the chief medical officer knew of the issues surrounding CervicalCheck, it raises questions around how or why he did not inform the Minister of the issues at the time, as has been claimed by the Minister. As the lead medical expert in the Department of Health, it is the job, duty and responsibility of the chief medical officer to advise and inform the Minister. The fact that he claims not to have raised these matters with the Minister raises profound questions on the operation of the Department of Health and what exactly Ministers are told. I ask the Minister, Deputy Bruton, to respond to this point.

Cultural, organisational and management failures have been identified as a result of this scandal. Central to building confidence in every aspect of our health service must be the need for information, clarity and accountability. All of that can be done if the political will is there. Sinn Féin supports cancer screening services. Let there be no doubt about that and let the message ring load and clear. Screening services are vital in assisting in the early detection of cancers, but we need to ensure there is full public confidence and trust in the service. Getting to the bottom of the failures identified as part of the CervicalCheck service can assist in rebuilding trust.

I put to the Minister a question that I put to the Taoiseach yesterday. Will the Minister tell the House when the cervical cancer screening audit and documentation relating to the US laboratories, which was promised to the Oireachtas Joint Committee on Health last week, will be published? Will the Minister ensure that this information is published today? He is in the Government, after all, so can he ensure it is published? Perhaps the Minister will also respond to reports in the media that despite the resignation of Mr. Tony O'Brien on Friday, he will continue to be paid until the end of his contract in July? Will the Minister inform Members what the Minister did when this information broke on the public airwaves as a result of the bravery of Vicky Phelan? Did the Minister not have a conversation with the chief medical officer? Did the Minister have a conversation with the director general of the HSE? What assurances did they give to the Minister about the knowledge they had on this scandal and around the fact that they had failed to provide the information to these women?

Deputy Richard Bruton: I believe it is very clear, and everyone in the House accepts, that there have been failures in this situation. It raises issues about the longer-term accountability of the HSE. The Minister has signalled that he will introduce legislative change to change the oversight mechanisms for the HSE. The House will have ample opportunity to discuss how best we do this. The Minister continues to consult and he will endeavour to ensure that the new structures deliver accountability with real cultural and structural change within the HSE to deal with some of the issues that have been unearthed.

With regard to the timing of individual documents and when they will be published, I cannot give the Deputy an answer because I do not have that information. A trawl is being completed of all documents. Any document that is needed will be furnished and there is no attempt to restrict access to any documentation.

Who knew what and why it was not escalated is one of the issues that needs to be assessed. Assessing this aspect and why it happened will be a central role for Dr. Scally. We all recognise that this was a failure. From the perspective of the women who have been affected, it has been appalling that they were kept in the dark on this. We see that and we understand the anguish it has caused. We have to make sure that we can get to the truth of why it happened, if there was responsibility, who was responsible, and how we can ensure it never happens again. We also need to make sure that women who are in any doubt have access to an international clinical audit, which we are now providing. This will be available to women to support them with regard to any tests that should have revealed issues but which failed, and independent clinical experts will be available to assist them.

We are seeking to resolve a massive failure that has occurred. There are immediate issues that must be addressed, which we are doing, and information must be provided to all the necessary parties so it can be done. We also recognise the longer-term issues. The Minister will revert to the House with details of how we ensure better information flow, accountability, culture and structures within the health service.

Deputy Pearse Doherty: The information that is at the disposal of the Minister for Health and the Minister for Justice and Equality about the advice the former Minister for Health received on not proceeding with mandatory open disclosure is within the Government's own Departments. It can and should be published and there should be full transparency. We need to know why the Taoiseach did a U-turn on this issue when he was the Minister for Health. We need to know what advice was provided. When legislation was passing through the House in November 2017, which included sections on mandatory open disclosure, why did Fine Gael decide to vote against it? Why was Fianna Fáil convinced to abstain on that issue? These are important questions that need to be answered. The advice needs to be published at this point.

The Minister, Deputy Bruton, has said that all documents will be furnished, but they are not being furnished. The cervical cancer screening audit that has been available since 2014 has not yet been published, despite the requests for it to be published. It should be published and the Government needs to ensure it is published today. The information on the US laboratories' detection rates also needs to be published today. This information has been requested for more than one week now. The Oireachtas Joint Committee on Health was told this information would be published. We need to restore faith and confidence in the cervical cancer screening test to ensure that every woman has confidence that it will be dealt with accurately and appropriately, regardless of where the tests are sent for analysis. Will the Minister answer those questions and the questions around Tony O'Brien who resigned last Friday? Is Tony O'Brien still receiving a salary until the end of his contract in July?

Deputy Richard Bruton: I assure people that no concerns have been raised about the operation or value of the cervical screening process. It identified 50,000 cases in which there needed to be detailed information and saved 1,000 lives as a result of that work. The quality and worth of the clinical smear testing regime have not been thrown into question. Rather, what has been revealed is a problem with disclosure. It is important to distinguish between the two.

The centres where evaluations take place have been audited and found to meet international standards. Dr. Scally will need to look beneath those audits to provide additional assurance on the situation, but none of these documents has raised questions about the value of clinical screening. We are moving to a better test, namely, the HPV test, which will have a lower error rate. The Government is committed to doing that. I would not like the Deputy's comments to

be construed as meaning there is some cloud over the value of clinical screening.

The payments to the former public servant will be in line with the contract under which he was employed.

Deputy Brendan Howlin: The CervicalCheck scandal shows the importance of vigilance in our efforts to improve the health of our country. Essential tasks for our health service are screening and disease prevention. Ensuring that we prevent unnecessary blindness is one example. Approximately 75% of sight loss is avoidable. At the end of last August, the inpatient waiting list for eye procedures was almost 12,500 people, the largest of any medical specialty. If sight-saving treatment is not delivered, it puts people at risk of irreversible damage to their vision.

Cataract surgery can restore impaired vision, but a survey by the Association of Optometrists Ireland published today shows incredibly long waiting lists across the country. The average waiting period is 28 months, with up to a shocking five-year wait in some parts of the country, such as west Cork. The survey also expressed concern about inconsistency and gaps in eye care services for children, in respect of whom there is an average waiting time of 15 months.

The opening last year of a new eye and ear unit in the Royal Victoria Eye and Ear Hospital doubled the number of procedures it could perform. The Minister for Health, Deputy Harris, stated then that this would over time eliminate waiting lists in the Ireland East Hospital Group. That is welcome, but a nationwide programme is required. When will a plan for the rest of the country to deal with these unconscionable waits be rolled out? The lowest waiting time is in Sligo-Leitrim due to its award winning scheme. There have been repeated calls for the Sligo post-cataract scheme to be rolled out nationwide. Up to 20,000 procedures are carried out each year in Ireland, so this innovative scheme could radically reduce the number of appointments needed by people suffering blindness because of cataracts. The scheme is referenced in the programme for Government, the benefits are known by everyone and there have been repeated requests for it to be rolled out. As such, what will be done to increase the overall capacity for cataract operations in Ireland? We have an ageing population and we must be equipped to meet future health needs as well as the current health needs of people whose quality of life is immeasurably improved by having better vision after cataract operations. When will the proven Sligo model, which has had a positive impact on waiting lists in that area, be rolled out to every part of the country as promised in the programme for Government?

Deputy Richard Bruton: I thank the Deputy for raising this issue, which the Department and Minister have developed a plan to address. I checked the figures this morning. Just over 11,000 people are on the inpatient waiting list for cataract or ophthalmological surgery, with 75% of those seen within nine months. The Minister's plan is to eliminate waiting times of over nine months. To do that, he will use the National Treatment Purchase Fund, NTPF, which has been assigned €55 million this year. I understand that 5,000 cataract cases will be included in its programme for this year. That is significantly more than the number of people waiting longer than nine months. This matter is a high priority for the Government.

Large numbers of people are on the outpatient waiting list, but a target has been set for 80% of patients to receive an appointment within a 52-week period. There will be a joint initiative by the NTPF and the HSE to address that issue.

I am not aware of the strengths of the Sligo model, but I will ask the Minister to take heed

of it as he rolls out this plan. If there are procedures that can accelerate access to care in a field where, as the Deputy rightly stated, any time lost is critical, the Minister will consider them. Significant emphasis is placed on this issue in the Government's plan and the Minister is confident that the targets will be delivered on this year-----

Deputy Michael Healy-Rae: The Government let a lot of people go blind.

Deputy Richard Bruton: -----and that no one will be waiting for longer than nine months by the end of the year.

Deputy Brendan Howlin: The bottom line is that people have been waiting for inexcusably long periods. One patient described the return of vision after a cataract treatment as the difference between day and night. It is not an expensive or complicated procedure and a sophisticated country like ours should be able to provide access to such an operation within a couple of months at the longest.

The Minister's statement that the future objective is to have 80% of patients dealt with within 13 months, which means that 20%, or one in five, would have to wait for much longer, is not acceptable. We have no details about how that target will be met, where specifically the new procedures will be carried out and where the new surgeons will be appointed. Will the Minister give specific focus to the questions I have asked and detail how the objectives that he set out are to be achieved?

Deputy Richard Bruton: The Deputy is confusing-----

Deputy Michael Healy-Rae: What did the Labour Party ever do for them? Nothing.

Deputy Danny Healy-Rae: It let them go blind.

Deputy Michael Healy-Rae: The Labour Party let them go blind when it was in government.

Deputy Danny Healy-Rae: What was it doing for those five years?

(Interruptions).

An Ceann Comhairle: Deputies, please.

Deputy Michael Healy-Rae: The Government let a lot of people go blind.

Deputy Richard Bruton: To clarify the question on procedures for Deputy Howlin, that is, where a person has been seen and a procedure identified as being necessary, the target is for there to be no cases waiting for over nine months by the end of the year. At the moment, a little over 2,000 cases have been waiting for longer than nine months. The NTPF will make provision for 5,000 operations, which is more than double that number. The Minister and the NTPF-----

Deputy Brendan Howlin: Where will they be performed?

Deputy Richard Bruton: -----are confident that, between the existing flow of work and the additional procedures that will be contracted privately, the target will be met. I will ask the Minister to provide the Deputy with the additional detail he requires in terms of locations and service providers.

Deputy Róisín Shortall: Given the demand from many Deputies for answers about a number of aspects of the cervical cancer issue, it is regrettable and unsatisfactory that neither the Taoiseach nor the Minister for Health is present to respond.

Notwithstanding that, more than two weeks ago on 1 May, the Minister for Health informed the House of a considerable additional number of women who had developed cervical cancer but had not been included in the CervicalCheck audit. We have been told that these cases were not audited because the National Cancer Registry had not notified them to CervicalCheck. This in itself raises important issues with the reliability of cancer data. There is a question of data protection concerns preventing the registry from notifying CervicalCheck, but I understand that has since been resolved. One must ask why it took so long to resolve such a basic issue. We have since discovered that some 1,631 women were not included in the audit. It is estimated by the Department of Health that approximately 20% of the women had a smear test prior to their cancer diagnosis, meaning that approximately 320 women are involved. Many of them will have had their cancer indicated from their smear test but some will not and are left with major questions as to whether their smear test result was a false negative. On the basis of the false negative rate among the cohort of women whose test results were audited, approximately 15% of the test results for the second group of 320 women are likely to be false negatives. Thus, approximately 45 women who had false negative smear test results but who subsequently developed cervical cancer have not been responded to by the Government. One woman in that position contacted me recently and was highly frustrated and annoyed that she had not been contacted. How many of these women have been contacted and how many have had to contact the CervicalCheck helpline themselves? Have their smear test results now been audited? Will the Minister set out the Government's response to the women in terms of the provision of supports and services because they have not heard any information to date?

Visit of Czech delegation

An Ceann Comhairle: Before calling the Minister, I extend a very warm welcome to the members of the Czech Parliament EU affairs committee led by their Chairman, Mr. Václav Hampl. They are most welcome.

Leaders' Questions (Resumed)

Minister for Education and Skills (Deputy Richard Bruton): I thank Deputy Róisín Shortall for raising this issue because it is a matter of concern for her and the House. The 1,631 cases to which she referred were not part of the CervicalCheck system and did not come through its process. The women concerned were not included in the CervicalCheck audit of its client base. As the Deputy stated, they are now being included. Each case will have to be gone through to identify whether there is a history which can be checked to see if anything was missed. The identification and analysis of these cases are quite time-consuming. Some 987 have been identified and excluded. A process will be put in place to identify and work with the remaining women involved. They will have access to the new international clinical team appointed by the Government and the audit of their cases will be carried out under its oversight. There will be full international team oversight of the standard of the audit. Those carrying out the audit will assess the clinical significance of any misreading of a smear and work with the women concerned to identify what happened and the potential consequences. They will have

the support of the new team, with existing services.

On access to services, should there be a case in which an individual developed cancer following an undisclosed misread smear, such an individual will have access to the services decided on by the Government for the 209 women, of whose cases we are aware. Any such woman will have access to the service package put in place. These cases are being taken extremely seriously. However, there are a large number of cases which must be worked through individually and there is less ease of access to their histories compared to those of women who were dealt with by CervicalCheck. I am assured that work is being done and that the women concerned will have the support of the international clinical team which will work with them in any such case revealed.

Deputy Róisín Shortall: There must be a look-back on the larger number of women. The Department of Health estimated that some 320 of the women had had smear tests. It is likely is that some 45 of them received false negative results. It is not an enormous number, but it is an extremely pressing and concerning issue for each of them. They have real concerns about the lack of access to vital information on their health. The least that could have happened in the past two and a half weeks was that all of them should have been contacted by CervicalCheck. That has not happened and some of the women had to make contact themselves and wait several days for a call back. There is an urgent need for a Government response to this group of women. I seek an undertaking that all those who can be identified in a very straightforward exercise will be contacted by CervicalCheck before the end of this week and that all of the supports and services available to the 209 women who are in exactly the same position will be made available to them. Will the Minister give that undertaking?

Deputy Richard Bruton: The difficulty is that there is work to be done to identify the individual cases. The Deputy may apply a statistical calculation to determine that there is probably a certain number of cases. The difficulty is that CervicalCheck must go through the case histories to identify the individual cases and then move on to check the smear test result in each case to determine if there was a misreading. A process is in place. As soon as CervicalCheck has valid information on the identity of individuals, it will work with them to ensure they are fully included in the process with a full open disclosure approach. However, as of today, it does not have the identities of those persons who, as all Members understand, are rightly concerned. As soon as it is able to access the identities, it will share the information with those affected. The women in question will have also access to the international clinical team such that they will have the support of very experienced persons in helping to identify if there was a misreading and, if so, what should be done about it.

An Ceann Comhairle: That concludes Leaders' Questions. In so doing I note that Deputy Micheál Martin made reference to the convening yesterday evening of a meeting of the Committee on Procedure. As Chairman of the committee, I wish to make it very clear to the House that in convening the meeting I was not influenced by the Government or anyone in it or acting on its behalf. I did so on foot of correspondence received from the Joint Committee on Health------

Deputy Mattie McGrath: Hear, hear.

An Ceann Comhairle: -------and having regard to the remits and terms of reference of the Joint Committee on Health and the Committee of Public Accounts.

Deputy Micheál Martin: My questions were addressed to the Government.

An Ceann Comhairle: Yes. However, I wish to make my position clear.

Questions on Promised Legislation

Deputy Micheál Martin: In the context of the recent CervicalCheck scandal and litigation, the Government has been at pains to point out that it does not wish to take an adversarial approach to victims of State institutions. However, I recently met the Minister for Education and Skills, Deputy Richard Bruton, to discuss the cases of Mr. John Allen and a number of other men from Limerick who had been pursuing the Government for access to the redress scheme in the context of child abuse in primary schools. These are individuals about whom there is no issue in terms of their having been abused in primary schools. The paedophiles concerned have been convicted by the criminal justice system and are in prison. Louise O'Keeffe had to go the whole way to the European Court of Human Rights to get justice in her case, and I hasten to add, previous Governments of which I was a member were wrong in that respect. We are now on the cusp of John Allen and others having to go back again to the European Court of Human Rights to get access to the redress scheme. They have been to the High Court and the Supreme Court and they have been harassed the whole way by the State and threatened with costs. In the midst of all the justifiable angst all week, meanwhile, parallel to all of that, the UCC legal department and others are assisting these victims of abuse because of a very limited interpretation-----

An Ceann Comhairle: The Deputy is way in excess of the time allocated to him.

Deputy Micheál Martin: -----by the Government of the Louise O'Keeffe judgment in terms of prior complaint. Standing back from it the Minister must know this is morally wrong, that we are going to force these men to go all the way to Europe to get clarification on the Louise O'Keeffe decision because of the Government's adversarial approach.

Minister for Education and Skills(Deputy Richard Bruton): The position is that as a result of the Louise O'Keeffe case and the subsequent ruling the Government set up an *ex gratia* payment scheme to make payments to people who were in a similar category to her. People have applied to the scheme and some have been successful while others have been refused. I have appointed an independent assessor, Mr. Justice Iarfhlaith O'Neill, who will independently assess applications that have been refused and where people appeal. I understand he is currently assessing both the case made to him and by the State as to whether those refusals were validly made. He is assessing that information and we are awaiting his decisions.

Deputy Pearse Doherty: The data published this morning by *daft.ie* shows that more than half of all rental properties in Dublin are being listed as short-term lets. That is something we in Sinn Féin and Deputy Eoin Ó Broin have focused on in particular. We are concerned that professional landlords with multiple listings are misusing the system and using short-term platforms to boost their profits. We know the lack of affordability has been a key driver in pushing up rents in the private rental sector but also in terms of forcing people into homelessness. We also know that the Minister responsible has dragged his heels over introducing legislation on the issue because the working group that was set up by the Department in June 2017 has reported and the report is on the Minister's desk. Last year the Oireachtas committee on housing made a series of recommendations on how to deal with this issue and how to regulate short-term

lettings. The Minister has failed to act although the report is sitting on his desk. In that sense he is fuelling the crisis in the rental sector. When will the Minister take action in this regard or will he just turn a blind eye to what is going on and what *daft.ie* has told us this morning?

Minister for Housing, Planning and Local Government (Deputy Eoghan Murphy): *Daft.ie* is a great platform which I use myself but it has a direct interest in the property sector so we should not elevate its reporting to the same level of what a Government or State agency report might say. We look to the Residential Tenancies Board for reports on what is happening in the rental sector. *Daft.ie* is only one of many platforms with properties to rent so it does not show the totality of the market.

Airbnb is also a great platform but we do know that we have an issue with Airbnb lettings taking away rental properties in high demand areas from long-term renting and we know we have to manage those issues. We also know that more than 80% of the hosts on Airbnb in Ireland are home sharing. They go away for a week or two or a weekend and they let out their property. That helps them pay for the holiday, pay their bills and cover the mortgage. Airbnb is an important platform as well but it is true to say that we do have to make changes to protect the rental sector from too many properties being lost in high demand sectors to Airbnb. The lack of supply is what is pushing up rents. New protections that we are bringing in for renters is priority legislation for the Government.

The report on Airbnb is not sitting on my desk. It is being finalised at the moment in the Department and we will come forward with the report shortly and the changes we are going to make in relation to Airbnb and what is happening in the rental sector more generally.

Deputy Brendan Howlin: I think Deputy Burton wants to be on your list of speakers, a Cheann Comhairle.

An Ceann Comhairle: All right.

Deputy Brendan Howlin: I am sure she is. We understand that the commission of investigation into the Grace case was granted a 12 month extension yesterday. It has been under way for a year now under Marjorie Farrelly and was due to submit its phase 1 final report around this time. We understand issues have been identified about possible witnesses and examining all the necessary documents. We also understand concerns have been expressed by victims' families of the highly confrontational and indeed adversarial nature of the commission's work. This is an issue of grave concern that this House debated at some length a year ago. Could the Minister bring us up to speed on exactly where the investigation is at? I accept it is a matter entirely for the independent commission but this House set it up. When is it expected that its first phase of work will be completed?

The Minister will know that there is a group of very vulnerable people who were to be subject to further work once the first phase was completed. There are a lot of concerned individuals who are very anxious that there would be further delay in investigating their treatment. Could I ask the Minister please to update us on exactly the state of play in relation to the Grace commission?

Deputy Richard Bruton: I understand that the sole member, Marjorie Farrelly, SC, requested on 27 April an extension of 12 months to complete phase 1. The request for the extension was on the basis of the enormous volume of documentation disclosed to it from a wide range of public bodies, organisations and individuals and also the number of potential witnesses

involved. The commission believes that a further 12 month period would be consistent with the objective of having the investigation for the first phase of its work conducted and the report submitted as expeditiously as possible. The Minister has granted that extension of time for 12 months.

Deputy Brendan Howlin: Were any additional resources requested?

Deputy Richard Bruton: No, I have not got details of any requests for additional resources.

Deputy Gino Kenny: Kenny Tynan is a father of four from Roscommon who has been diagnosed with brain cancer. He is treating his condition with medicinal cannabis. A number of weeks ago the Customs and Excise seized his medication which is prescribed by a doctor in Spain.

Noreen O'Neill is a mother of one from Kerry who has pleaded for the Government to provide access to medicinal cannabis for her son Michael who has been treated with ten anti-convulsant drugs without success. In January she began to administer CBD oil to her son and in the space of three days he became seizure-free. She said CBD oil has done what 13 months of treatment involving ten anticonvulsants has failed to do. Kenny and Noreen are not the only ones in this situation. People in this State have been forced to emigrate, go public, go to the black market and to break the law. Medicinal cannabis, which I have in my hand, is what it is all about. The Government has issued seven licences for the product. For some it is medicine while for others it is illegal.

An Ceann Comhairle: The Deputy's time is up.

Deputy Gino Kenny: The law is completely broken on this issue. It is up to the Government to legislate on the issue. If the Government does not legislate it will let down thousands of people that are using this medicine.

Deputy Richard Bruton: It is my understanding that the Minister has made arrangements whereby if a medical consultant indicates that such medication would be appropriate that it will be made available. He has simplified the regime in that regard. He has not made a commitment to introduce new legislation that I know of.

Deputy Gino Kenny: What about our Bill?

Deputy Richard Bruton: It is my understanding that in any case where there is a medical indication and it is endorsed by the patient's consulting doctor the treatment is made available.

Deputy Gino Kenny: I wrote to the Minister and he has not come back to me.

Deputy Richard Bruton: I will get the Minister to confirm exactly the basis on which a person can get access but that is my understanding of the position.

Deputy Mattie McGrath: Under the eighth amendment, Article 40.3.3°, I wish to ask the Minister about the referendum. We heard confirmation by French students in Galway university that they had been added to the voting register for the referendum despite being ineligible and despite having made no request to be added to the register of electors. The Taoiseach made reference to Google and its integrity in the context of the referendum campaign. Will the Government investigate this and find out who illegally and fraudulently registered French citizens who are here on an ERASMUS student programme at NUIG? The integrity of the student pro-

gramme is being called into question too. Ms Caroline Sourisseau and her friends got polling cards this morning. The integrity of the electoral register and of the forthcoming referendum is being challenged here. Will the Government ask the Referendum Commission to investigate this? What is the Government going to do about it? These students never applied to be included on the register and they are not Irish citizens. At the same time, eligible people cannot get on the register of electors. This is widespread throughout the country and a cabal is organising it. It is just not acceptable.

An Ceann Comhairle: Thank you Deputy. We need to get an answer from the Minister now.

Deputy Mattie McGrath: Can I get an answer please? This must be stopped.

Deputy Eoghan Murphy: A number of claims are circulating about people being put on or taken off the register and about polling cards being delivered with certain types of literature but not all of them are true. We have to be careful about fake news being spread around this on social media-----

Deputy Mattie McGrath: This is not fake news; it is fact.

Deputy Eoghan Murphy: -----and traditional media but we are looking at the matter at the moment.

Deputy Mattie McGrath: What is the Minister going to do about it?

An Ceann Comhairle: Details of who is eligible-----

Deputy Mattie McGrath: Will he defend the integrity of the voting process?

An Ceann Comhairle: Details of who is eligible to vote are contained on the website of the Referendum Commission. That is where all of the relevant information can be obtained.

Deputy Mattie McGrath: These people never asked to be registered.

Deputy Róisín Shortall: Alcohol abuse has a hugely negative impact on many aspects of Irish society. It is a very significant factor in our very high rates of mental illness and it also places a huge burden on our health service. It is two and a half years since the Public Health (Alcohol) Bill was first published but the progress of that legislation has been painfully slow and very much dogged by the undue influence of various vested interests. Why is Fine Gael dragging its heels in respect of this much needed legislation? When will it be back before the House?

Deputy Richard Bruton: I understand the Bill to which the Deputy refers is on Committee Stage. The Government is determined to push ahead with it but obviously it has to make its passage through the Oireachtas.

Deputy Róisín Shortall: What is holding it up? Why is the Government not progressing it?

Deputy Michael Collins: On page 59 of the programme for Government is a commitment to update the national eye care plan. A report released today by the Association of Optometrists Ireland confirms that the average waiting time for cataract surgery is 28 months and up to five years in areas like west Cork. It is more than two years since the Government promised to tackle the issue. Were it not for the cross-Border directive, the numbers waiting would be much

higher. Deputy Danny Healy-Rae and myself have sent bus loads of people, most of whom were in their 80s and 90s, to Belfast for cataract surgery. Children are also waiting up to 15 months for an appointment. It is nothing short of scandalous the way patients, many of whom are elderly, are being treated. I have raised this time and again in the Chamber but to no avail. It is Belfast or blind. Will the Government treat this issue with the urgency it requires and arrange for cataract surgery to be carried out in Bantry or Mallow general hospitals to reduce the waiting lists in the Munster area?

Deputy Danny Healy-Rae: I am glad the Labour Party is now waking up to this problem but it was in power with Fine Gael for five years. People are going blind and have gone blind on this and the previous Government's watch because of delays in being treated for cataracts. The aforementioned survey refers to waiting times of between 28 months and five years but there are people in Kerry and west Cork who have been waiting even longer. I know of one man who was waiting for seven years for surgery. His grandfather had a cataract removed in 1968 in Tralee Hospital. This country is going backwards. The Government is failing these people who are going blind. Myself and Deputy Michael Collins have arranged for several buses to travel to Belfast and we have more buses ready to go. They will be going for all of this year. Whatever the Government is claiming it is doing is failing because people are not getting called to have their cataracts removed.

Deputy Richard Bruton: The National Treatment Purchase Fund, NTPF, will be providing 20,000 procedures this year, 5,000 of which will be cataract operations. One quarter of all of the work funded by the NTPF will be devoted to cataract surgery. The number of patients waiting more than nine months is 2,800 so the NTPF will be providing procedures for more than double the number of those waiting beyond the target period.

Deputy Mattie McGrath: They are going blind.

Deputy Richard Bruton: That is on top of the normal cataract service that is being provided by the HSE.

Deputy Mattie McGrath: The Minister should stop digging when he is in a hole.

Deputy Richard Bruton: This issue is being prioritised by the Government through the NTPF.

Deputy Danny Healy-Rae: It is not working in Kerry or Cork.

Deputy Joan Burton: This morning a damning report was published by the British Houses of Parliament on the collapse of the Carillion company, leaving debts of over £9 billion. Carillion has significant contracts in the schools system in Ireland, including school buildings in Wexford, Wicklow, Meath and Carlow which are actually finished. Is the Minister going to make arrangements so that the school community in Loreto in Wexford, for example, can enter the finished property? Teachers had already put their equipment in but it has now been taken out again. It now appears that the school community may have to wait another year while the Department of Education and Skills remains lost in a fog and is unable to act. At the height of the Celtic tiger-----

An Ceann Comhairle: We cannot get into discussions about the Celtic tiger-----

Deputy Joan Burton: Even when the Celtic tiger was beginning to collapse, the then Tao-

iseach Brian Cowen could make arrangements to allow school communities to occupy properties but that seems to be impossible on this Government's watch.

An Ceann Comhairle: Will the Deputy allow the Minister to answer please?

Deputy Richard Bruton: I am aware of the report by the British Parliament relating to the audit companies involved with Carrillion in the UK and obviously we will study that with interest. In terms of the individual schools, it remains the case that the Dutch Infrastructure Fund, DIF, which is the remaining partner in the consortium that is delivering these PPP projects has an obligation to hand over the schools in completed form before it will receive any payment. Under the PPP contract, DIF is obliged to do that. It does not fall to the State to complete projects for which the liability under the PPP contract falls to DIF. We must respect that contract because to do otherwise would be to undermine the position of the State. DIF has a responsibility to deliver these schools. It has spent a lot of money getting to this point but it needs to complete the projects before receiving payment from the State. We are very actively working, through the National Development Finance Agency, NDFA, with the schools and with DIF to try and secure that outcome.

Deputy Jackie Cahill: A report was published in 2000 into the presence and influence of lead in the Silvermines area in County Tipperary. In January 1999, the Environmental Protection Agency, EPA, had concluded that the Gortmore tailings pond site represented a perpetual risk to human health and the environment. The then Department of Environment and Local Government spent a considerable amount of money remediating the tailings pond without acquiring ownership of the site. Unfortunately, activity now taking place on the site is undoing all of the work that was done in the past by the Department. Locals are extremely concerned. They have suffered for many years because of the presence of lead in the area. What plans does the Department of Communications, Climate Action and Environment have to bring this situation to a satisfactory conclusion by taking ownership of the tailings pond and making it safe and healthy?

1 o'clock

Deputy Richard Bruton: I am not in a position to respond to the Deputy but will ask the relevant Minister to revert to him.

Deputy Fiona O'Loughlin: A spotlight has been shone on the HSE in recent weeks, and rightly so, in the context of the appalling CervicalCheck scandal. There are many other problematic areas within the HSE and it is vitally important that public representatives and ordinary citizens have the opportunity to scrutinise the work of the executive as outlined in its quarterly reports. Why is it that the most up to date quarterly report for the HSE was published last September? We should have had two further reports since then. I also want to know why the long awaited operational plans for mental health, disability and older people have not yet been published.

Deputy Richard Bruton: I will have to ask the Minister for Health to revert to the Deputy with information on the publication of those reports.

Deputy Michael Healy-Rae: The programme for Government includes commitments with regard to job creation. The Minister and his Government colleagues are aware of what has happened with the proposed €850 million Apple project in Athenry because of the planning process. That project could have had positive knock-on effects for our country, but instead it has been pulled out of Ireland. Surely the Government will have to look at the question of

objections to planning permissions. We appreciate that people have the right to object, but in this case a couple of people have been able to stop a project that was going to involve an investment of €850 million. This will have knock-on effects on contractors and everybody who would have worked on the project. It would have brought money into the local area, but now it is gone. Another project that was started in another country at the same time is now up and running. That is symbolic of what is happening with the planning process here. I ask the Government to ensure shambolic episodes of this nature are never again allowed to happen in this country. We have to do something about this.

Deputy Eoghan Murphy: The failure here was not a failure of the planning process. I recognise that improvements have to be made. That is why the planning Bill that is currently going through the Houses categorises things like data centres as part of our strategic infrastructure and allows them to go directly to An Bord Pleanála. We have seen from Mr. Justice Peter Kelly, who is the President of the High Court, that strategic infrastructure projects are under the new accelerated judicial review process. The judicial review process for planning applications will be improved in a second planning Bill that is to be introduced later this year. The Bill in question will streamline the timing around such applications and make sure someone who is making an objection has a significant interest in that infrastructure. It will ensure all the things that are a part of this process, including preliminary hearings, can be shortened and can happen more quickly. This is necessary to avoid unnecessary delays or interference in good plans that will deliver jobs and employment to all parts of our country.

Deputy John Curran: I wish to ask the Minister about capitation rates in the context of page 90 of the programme for Government, which contains a commitment to "set out capitation rates to schools on a rolling 3-year basis". I recently visited two DEIS schools in my local area, both of which have just over 200 pupils and therefore receive annual capitation fees of approximately €35,000. This is the only funding that is available for each school's operational budget, from which the cost of lighting, heating, insurance and cleaning, etc., has to be deducted. As both of these DEIS schools are located in areas of significant economic disadvantage, they do not have the capacity to raise funds to meet the significant deficits at which they are running. Will the Government, in the context of the three-year rolling capitation fee it intends to set out, review the adequacy of the capitation fee, particularly in DEIS schools? Will it consider an enhanced fee for such schools?

Deputy Richard Bruton: The programme for Government and the confidence and supply agreement both contain a commitment to provide additional capitation funding. When this Government was examining its priorities during the preparation of its first two budgets, it prioritised reducing the pupil-teacher ratio, enhancing the DEIS scheme, expanding the number of schools involved in the scheme and providing support to children with special educational needs. We have put almost 6,000 additional teachers into the system. We have been seeking to meet the most urgent needs. I fully recognise the pressure that schools are experiencing for reasons of capitation. We will assess this matter as we approach the 2019 budget.

Deputy Eugene Murphy: Page 53 of the programme for Government deals with health, for which a significant budget of €15 billion is provided. As we all know, waiting lists are a huge challenge. The Minister for Health recently provided me with figures relating to the orthopaedic waiting list at University Hospital Galway. Over 6,000 people are now on the inpatient and outpatient waiting lists, which are spiralling totally out of control. Some people have been waiting four years for an outpatient appointment. Many of these people are suffering from rheumatoid arthritis, which is an extremely painful experience, as the Minister and many other

Members of this House will be aware. I do not expect the Minister, Deputy Bruton, to be able to give me a full answer. I would like him to ask the Minister for Health or the Taoiseach, with whom I have raised this issue previously, to intervene to do something for the many people who are suffering horrific pain. This problem is spiralling out of control. We need to tackle it.

Deputy Richard Bruton: I know the Minister is very conscious of the need to tackle waiting lists. It is worth mentioning that 7,000 people, including 5,000 elective patients, are treated in our hospitals every working day and are therefore having their pain and concern relieved. Of course there is always increasing pressure to provide more services. Technology is delivering new procedures. The Minister has increased the number of procedures by more than 20% in recent years. Additional procedures are being delivered through a health service that is smaller than it once was. This is a priority. As a result of the initiative I have mentioned, the National Treatment Purchase Fund will this year provide specific care to 20,000 people who have been waiting for a long time.

Deputy Mary Butler: Once again, I feel compelled to raise the matter of the CervicalCheck helpline. Last week, I asked the Taoiseach whether the Government was satisfied with the response rates and staffing levels and whether calls were being answered as a matter of priority. Like Deputies on the Government side, Members on this side of the House are being contacted in all our constituency offices by people who are still waiting to be called back. I understand that it takes a while to get people's medical history and have the right information for them when they are called back. Some people are distressed and upset because they have waited eight or nine days to be called back. We are three weeks in and people are still very distressed. Does the Government intend to provide more staff to cope with the number of calls being made to the call centre?

Deputy Richard Bruton: I am aware of the considerable level of demand for the helpline. I understand that it has received 18,000 calls and that 10,500 women have asked to be called back. As the Deputy has recognised, a process has to be followed when checking records and data quality and assigning calls to the appropriate health professionals. To date, 7,103 women have been called back. Considerable progress is being made every day in responding to those who have called the helpline. This process is being managed closely with the hospital groups to ensure people are called back as quickly as possible. A big effort is being made to ensure not only that people are called back promptly, but also that the appropriate person calls back with the right information. I will draw the Deputy's concern to the attention of the Minister. Those involved with the helpline seem to be dealing with a significant level of demand. They are getting through all cases systematically.

Deputy Brian Stanley: My question relates to promised legislation. The Dáil ratified the UN Convention on the Rights of Persons with Disabilities on 7 March last. It is an important element of any international agreement that those who do not receive proper treatment by the State under the agreement have a system of recourse at international level. The Government has failed to ratify the optional protocol to the UN convention, which provides a means of ensuring the rights set out in the convention are affirmed and provided for. It is important for this to be done in tandem with the promised confirmation that the convention itself has been ratified. There has been a failure to ratify the protocol. There are 11,393 people with disabilities in County Laois and 11,154 people with disabilities in County Offaly, to mention just two of the 26 counties in this State. We need legislation to ensure the optional protocol provides redress and recourse to those people who feel failed under the current system. When will such legislation be introduced and enacted? When will the Government ensure people with disabilities

enjoy full rights?

Deputy Richard Bruton: I understand that a monitoring framework for the convention is being put in place. It will include the Irish Human Rights and Equality Commission and the National Disability Authority. The Act was designed to ensure they will meet the standard of independence. That is being guaranteed. I understand the optional protocol referred to by the Deputy is not being ratified at this time, but will be ratified as soon as possible following the completion of Ireland's first reporting cycle.

Deputy Brian Stanley: What is the timeframe for that?

Deputy Richard Bruton: A particular date for the completion of the first reporting cycle has not been provided to me.

An Ceann Comhairle: Maybe someone will get that information and revert to the Deputy with it.

Deputy Richard Bruton: I will revert to the Deputy on the matter.

Deputy Imelda Munster: For the past four years the special needs assistant allocations were published in July, which meant that hundreds of special needs assistants finished the school year without knowing whether they would have a job or an income the following September. Last year special needs assistants called off industrial action purely on the basis that the Minister and his Department had given a firm commitment that the allocation figures would be published much earlier this year. We are now halfway through the month of May. Will the Minister confirm when he or his Department will publish the special needs assistant allocation figures for this year?

Deputy Richard Bruton: I made an undertaking. We changed the way the budgetary arrangements were made. Previously, Ministers had to go back to the Cabinet to seek an additional budgetary allocation. That was recognised by us and the Department of Public Expenditure and Reform as a very unsatisfactory way in which to plan. We made budgetary provision for this year and I expect to announce the allocations within days.

Deputy Kevin O'Keeffe: My question is for the Minister for Finance, Deputy Paschal Donohoe. Two weeks ago the Department of Public Expenditure and Reform, through the OPW, launched a major multi-million euro flood relief programme, which is to be welcomed. However, I want to take the Minister back a step. In Fermoy we have the weir and the fish pass. Somehow or other the town council in Fermoy got possession of them from the OPW a number of years ago. We have had the dissolution of the town council, as a result of which Cork County Council inherited a red herring and a multi-million euro debt.

An Ceann Comhairle: I hope they did not catch the herring in the river.

Deputy Kevin O'Keeffe: We cannot get the fish pass and the weir fixed because of a money issue. I, therefore, ask the Minister to give the project some priority. We acknowledge the great flood relief works that have been done, but they are jeopardising the amenities and sports and recreational facilities in Fermoy and on the River Blackwater. If we lose the weir and the fish pass, it will cause untold damage.

Deputy Richard Bruton: I will have to ask the Minister of State, Deputy Kevin Boxer Moran, to respond to the Deputy on this matter. He is a much better catcher of red herrings

than I am.

Deputy Darragh O'Brien: He is also a good producer of them.

Residential Tenancies (Rent Pressure Zones and Student Accommodation) (Amendment) Bill 2018: First Stage

Deputy Darragh O'Brien: I move:

That leave be granted to introduce a Bill entitled an Act to amend the Residential Tenancies Act 2004 (as amended by the Planning and Development (Housing) and Residential Tenancies Act 2016) to extend rent pressure zone regulations to student accommodation.

With this Bill my party and I are seeking to expand the provisions for the rent pressures zones to cover purpose-built student accommodation. As the Minister for Housing, Planning and Local Government will know, student accommodation is not covered by the Residential Tenancies Act 2016 as it constitutes a licence to reside similar to a hotel rather than a tenancy. The Bill will extend the rent pressure zone rent cap of 4% to student accommodation by extending the definition to encompass student accommodation.

I have produced the Bill in the light of massive increases in rent for student accommodation from Dublin to Galway. The Bill will ensure students will not pay way above the odds for rental accommodation in what is already a very competitive market. I look forward to working on the Bill with others and the Government in order to address the issue. I know that the Government is also aware that we cannot allow a situation to continue where students are being charged rent increases of 27% or 30% year on year. The provisions included in the Bill will apply to purpose-built student accommodation.

I thank students' unions all across the country for feeding into the Bill and those who came to me with their own testimonies and stories. We have had students leaving college because they could not afford to pay for accommodation. The Bill is a step towards resolving the issue.

An Ceann Comhairle: Is the Bill being opposed?

Minister for Housing, Planning and Local Government (Deputy Eoghan Murphy): 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 Darragh O'Brien: I move: "That the Bill be taken in Private Members' time."

Question put and agreed to.

Topical Issue Matters

An Ceann 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 Peter Fitzpatrick - to discuss the cut in funding for the Louth-Meath branch of

Down Syndrome Ireland; (2) Deputy Dessie Ellis - to discuss the threat to rental accommodation scheme tenants owing to the number of landlords exiting the scheme; (3) Deputy Louise O'Reilly - to discuss the Assisted Human Reproduction Bill; (4) Deputy Peter Burke - that Lough Ennell in County Westmeath be included in the wild brown trout fishery designation by the Minister for Communications, Climate Action and Environment; (5) Deputy Michael Harty - to discuss the future of rural post offices; (6) Deputy James Browne - to discuss the issue of unqualified specialists in consultant roles in mental health services; (7) Deputies Aengus Ó Snodaigh, Eoin Ó Broin, Darragh O'Brien, Richard Boyd Barrett and Bríd Smith - to discuss the development of social and affordable housing on council-owned sites in Shanganagh Castle, County Dublin and St. Michael's estate, Dublin city; (8) Deputy John Brassil - to discuss the decision to refuse an SNA post to Scoil Naomh Eoin Baiste, Lios Póil, Contae Chiarraí; (9) Deputy Thomas P. Broughan - the need to ensure all gardaí receive full competency based driving, CBD2, training for emergency responses; (10) Deputy Fiona O'Loughlin - to discuss the withdrawal of Coca-Cola operations from Athy, County Kildare; (11) Deputy Joan Collins - the lack of services for children in Saint John of God Hospital, Islandbridge; (12) Deputy Marc MacSharry - to discuss personnel resources in occupational therapy for persons with physical and sensory disabilities in Sligo; (13) Deputy Robert Troy - the need for the Minister for Children and Youth Affairs to review her recent decision to decline an application in Longford town for a much needed family resource centre and to make a statement on the matter; (14) Deputy Brian Stanley - to discuss the relocation plan for St. Francis school, Portlaoise, to the former St. Paul's site on Borris Road; (15) Deputy Jackie Cahill - to discuss the protections for subcontractors in State procurement contracts; (16) Deputy Pat Buckley - to discuss the need to address rising unaffordable rents outside the rent pressure zone areas; (17) Deputy Martin Ferris - the imminent departure of a cardiologist at University Hospital Kerry; (18) Deputies Mattie McGrath and Michael Collins - the extended delay in patients accessing cataract treatment; (19) Deputy Imelda Munster - the matter of the transfer of small public service vehicle, SPSV, licences to nominated persons in the event of a licence holder's death; (20) Deputies Mick Wallace and Clare Daly - to discuss the reopening of the Iranian embassy; and (21) Deputy Peadar Tóibín - to discuss the need for a Navan rail line.

The matters raised by Deputies Peter Fitzpatrick, Marc MacSharry, and Aengus Ó Snodaigh, Eoin Ó Broin, Darragh O'Brien, Richard Boyd Barrett and Bríd Smith have been selected for discussion.

Ceisteanna - Questions (Resumed)

Migration Data

1. **Deputy Richard Boyd Barrett** asked the Taoiseach the current rates of emigration. [19859/18]

2. **Deputy Michael Moynihan** asked the Taoiseach the current rates of immigration. [21098/18]

Minister of State at the Department of the Taoiseach (Deputy Joe McHugh): I propose to take Questions Nos. 1 and 2 together.

I thank both Deputies for their questions. Statistics for migration are included in the CSO's annual Population and Migration Estimates release. The principal source of information for the estimation of annual migration flows, incorporating both emigration and immigration, is the labour force survey, formally the quarterly national household survey. The latest release was published in August 2017 and the latest annual figures available are for the year to April 2017. The release shows that an estimated 84,600 persons migrated to Ireland in the year from April 2016 to April 2017, while an estimated 64,800 left Ireland in the same period, with net inward migration of 19,800 persons. In the previous year to April 2016, there were 82,300 inward and 66,200 outward migrants, giving net inward migration of 16,200 persons.

Deputy Richard Boyd Barrett: It is becoming increasingly apparent that there are shortages of skilled workers in a number of areas. I am forever hearing that the problem in dealing with the housing crisis is capacity, by which we mean the capacity of the local authorities to have skilled workers who can build houses. There are capacity problems in the health service. I am referring to qualified health workers such as nurses and midwives. In education, in providing services for persons with special needs, and the mental health service there is a real deficit which is becoming a problem in the provision of skilled workers. Part of the problem at least is that a lot of younger people who are skilled and whom the State has paid to educate are leaving the country because wages are not sufficient to enable them to put a roof over their heads. They go elsewhere, taking their skills and abilities with them and consequently robbing the State of the ability to deal with the lack of capacity in key public services and the provision of infrastructure. The figures bear it out. The Minister of State will say there is net inward migration. However, it is clear from the further breakdown of the figures he has given that the biggest cohorts among the 64,800 leaving every year, a big number, are younger people who are educated. The biggest cohort is young people with a third level education, while the next biggest is young people who have completed the leaving certificate programme. It is obvious why they are leaving - they cannot afford to live here. They are moving elsewhere, to places where they will be better paid and can afford to live. It is a real problem which has to be acknowledged. We are going to run into deep trouble if we do not find ways to retain them to use the skills they have developed in a publicly funded education system to actually contribute to and benefit our society. We have to make it possible for them to stay here. Will the Minister of State comment on who is leaving? From the figures available from the CSO, it is clear who is leaving, namely, the 18 to mid-30s cohort. That is a terrible loss and one we cannot afford if we are going to resolve some of the key challenges facing this country.

Deputy Michael Moynihan: On the other side of it, regarding the people coming into this country, as Deputy Boyd Barrett said, there is a chronic shortage of skilled workers. For example, in the mental health debate both in this House and on the national airwaves, the shortage of clinical psychologists and psychiatrists was raised. There is a problem attracting skilled workers into various sectors.

Has the Government the details of which sectors are affected by skills shortages? There is a whole raft of different issues in the construction industry. Some local authorities tell us their planning offices are short-staffed. Recently, an announcement was made by the Minister for Business, Enterprise and Innovation, Deputy Heather Humphreys, on fast-tracking work permits. There are difficulties for people to get work permits validated. This process goes at a snail's pace.

Our health service is running because of a significant number of people from outside the country working in it. While they are doing excellent work, there is a chronic shortage of

workers in the health service. We are educating the finest people but they are leaving almost immediately after being educated. Young people are saying the cost of living in Dublin city is beyond them in terms of setting up a home, escalating rents and so forth. We need to ensure that the Government and the State knows where the skills shortages are.

There has been a nonsensical drive for development on the east coast. For the past couple of weeks, there were many debates about people leaving the western seaboard and the significant crisis on the eastern seaboard. Will the Minister of State accept that for young people to live and set up home in the capital city is now simply beyond them?

Deputy Joe McHugh: I thank the Deputies for tabling these questions because this is a space where we do not have enough time as a Parliament to debate and plan for future projections and the country's direction. The idea behind the national development plan is to look at where people will be living and what type of demographics we will be dealing with.

Many of our young highly skilled, highly qualified and highly educated people left over the past ten years. It is complex. From Donegal, I know anecdotally that over the past four years many people were moving back from Australia but not as many from Canada. Reasons included that they were well paid and there was a good quality of life and long-term opportunities in Canada. That is anecdotal and not definitive to explain the movement.

As a former sociology student, I thank the Deputies for the chance to delve into the figures again. Ten years ago, we had net migration of more than 104,000 people which compares with 19,000 this year. We had net immigration of 151,000 versus net emigration of 46,000. In 2007, 90,000 houses were built which suggests a massive influx of people to pick up the trades and do the work required.

It is important we identify the skills shortages. That is the job the CSO can do. In fairness to the CSO, while it is strict about its independence, it welcomes input from politicians to look at a piece of work. The CSO could be identifying the skills shortages.

In the past year, 64% of inward migrants had third level education qualifications. This is pointing to recruitment in the health and financial services sectors which are looking for highly qualified and highly trained people. Up to 56% of those inward migrants get work straight away.

In planning for the future, we have to be conscious that the birth rate since 2014 has started to decline. Another peak was at the time of the visit of a very famous person in 1979. Maybe in the next month, we might be looking at a peak again.

Deputy Richard Boyd Barrett: I find it hard to get my head around that 1979 peak, given the rather conservative attitudes towards sex the person in question had.

Deputy Joe McHugh: That was tongue in cheek.

Deputy Richard Boyd Barrett: The statistics do not break down those leaving by trade but by whether they are at work, unemployed, students or other. By far the biggest cohort is the "at work" category. Those working, who have come out of college or school, discover, as have the nurses with whom I was protesting outside St. Vincent's hospital, that they have to leave, although they would like to stay. The reason they cannot stay is because they cannot afford the rents and the health services are a nightmare because there are not enough people. They all

know people who are working abroad in far superior conditions and where the cost of living is affordable. We are haemorrhaging these people, whom we badly need, out of education, health and construction. I do not know as much about the agricultural sector but I am sure it is true. Skilled people are leaving and we need them. It is a real problem.

At least we do not have the crazy xenophobes like they have in Britain and the racist far-right groups like they have in Europe who do not seem to understand that Europe needs people. At least, we do not have that horror here. People are leaving because we are not looking after our young people and providing the basics. We need to provide conditions of employment which are decent. Precarious employment is another reason many are leaving. I welcome those workers who are coming in. They are often willing to put up with worse housing conditions, lower pay and more precarious employment conditions because in some cases they are only planning to stay for a short while. There are other people, however, who want to make a life here. These are people who were born, raised and educated here. They say they cannot do it and that it is simply not possible for them to do it. That is a bad indictment of our position as the fastest growing economy in Europe. We need to look in detail at who is leaving. We need to address their concerns to enable us to get them to stay. This means providing decent terms and conditions of employment, decent pay and affordable housing.

Deputy Michael Moynihan: The Minister of State mentioned the national development plan, the various debates in the House on the plan, what underpins the plan and so forth. The national development plan must not be only about the physical infrastructure that we are going to build. The physical infrastructure needs to be built to accommodate the people. It has been said that we do not often discuss the future.

Let us consider why the Central Statistics Office does not have the data on shortages in the workforce, in industry and in the health service right across the spectrum. Are the Government and the Department of Health aware of the shortages of staff and the resources needed in the health service to enable it to operate at reasonable capacity? We should ensure it is not only operating on the basis of crisis management. All aspects of the health service must function well.

The Government should take bold steps to provide for the CSO to gather this information. This information should be readily available to any Government embarking on a national development plan. We saw all the bells and whistles associated with Project Ireland 2040. What about the people integrated into that development plan? Surely that development plan was about how we are going to have people living and working in the country.

I am somewhat aghast that the figures are not readily available on the shortages throughout the spectrum. What plans are in place? What programmes are in place for Irish people who have left in the past ten years that will encourage them back to Ireland? What programmes and incentives are under way within Government?

It is not often that Deputy Boyd Barrett and I agree, but I noted the question of conditions of employment and Deputy Boyd Barrett alluded to these as well. Conditions of employment are of great importance. The Minister of State said the national development plan is not only about the physical infrastructure. More important, he said it is about people. What is happening in the country at the moment with unbalanced regional development will have serious knock-on effects in the decades ahead. We need to cater for education now. We have seen the pressures when it comes to catering for education and college places. Indeed, as people grow and live longer there will be major democratic decisions for Government right into the decades ahead.

There is no integration. First, the CSO needs to get all the data on where the shortages and employment opportunities are and make that information available to the Government. We need to use that to sell the island and encourage more people to stay. We also need to ensure that the plans are about people as well as physical infrastructure.

An Ceann Comhairle: We are over time. Perhaps the Minister of State could give a brief reply.

Deputy Joe McHugh: The important thing today is the follow-up. There are two suggestions for separate projects. One relates to the data and analysis of where skills shortages are emerging. The second project relates to the categories of employees who are leaving. Do they include young doctors or plumbers? The question is who is leaving. That is important because it is complex.

A friend of mine went to London to work as a teacher a year and a half ago. I met him a month ago. He came back home and was getting his CV ready. He wanted to go to the education and training board and the schools. He wanted to put his name out to get a job in a school in Donegal. He was all excited about it. I met his mother last night. His mother said that he had got a promotion in the school in London as head of the biology department. Now, he is faced with a decision. Does he take that promotion and get that good experience? It would help his CV. Does he come back home?

It is complex. I am a former emigrant, having lived in Dubai. I remember spending a year there. I was warned at the time that if I spent more than two years there, the temptation would be to stay. A variety of complex push-pull factors are at play. There is work we can do to analyse them because we have skills shortages in various areas. People are in different parts of the world. How we can try to reach out to them and incentivise them?

I thank both Deputies today for the question. This is an area of work I am keen to pursue as well. I will suggest some follow-up. I met one of the officials from the CSO yesterday. He is from west Cork. I will not name him. He is a pragmatic and interesting person on this subject. Perhaps a meeting with him and the two Deputies might be appropriate. I would be happy to do that.

An Ceann Comhairle: That sounds like a good idea. That brings the morning's business to a conclusion.

Written Answers are published on the Oireachtas website.

Sitting suspended at 1.35 p.m. and resumed at 2.35 p.m.

Topical Issue Debate

Services for People with Disabilities

Deputy Peter Fitzpatrick: I have been contacted by the campaign co-ordinators of Down Syndrome Ireland's Meath-Louth branch about the Health Service Executive's devastating decision to cut its funding by 60%. The branch provides a vital programme for children with

Down's syndrome aged between one and five years. There are 52 children enrolled in the programme, under which early intervention specialists visit the homes of children with Down's syndrome for 90 minutes every two weeks throughout the year. The specialists work with the child and his or her parents, providing a wealth of knowledge, experience and support. The goal is to ensure every child reaches his or her full potential and is equipped to lead as independent a life as possible in adulthood.

The early intervention programme does not have administration costs as it has been run by parents on a voluntary basis since its establishment in 1982. For 36 years it has provided great support for children and parents. Of the €75,000 it costs each year to provide services for more than 50 children, approximately €50,000 is raised by parents, with the balance of €25,000 being met until now by HSE funding from lottery grant money. In January the HSE reduced the grant it provides from €25,000 to €10,000, or by 60%. It is extremely unfortunate that this meaningful and necessary programme will have to consider what impact the cut in funding will have. It is highly likely the branch will have to reduce the number of home visits made to children for the first time since the programme began. That would be devastating for the 52 families involved. The €15,000 the programme will lose is a significant amount and goes a long way towards helping children with Down's syndrome and their families.

In recent years the organisation has shielded this vital programme from cuts because of a decline in fundraising income. Unfortunately, it may no longer be possible to do so from September onwards. We do not want children with special needs to fall behind. Early intervention is vital and the specialists provide speech and language therapy and teach basic skills such as how to hold a pencil. The aim is to allow the children to start primary school at the age of five or six years on the same terms as children without special needs.

Parents raise €50,000 per annum for the programme, which is a substantial amount of money. In fairness to the Health Service Executive, for some years it also provided €25,000 in annual funding before this funding was cut at the stroke of a pen. As I stated, the Meath-Louth branch of Down Syndrome Ireland has been operating for 36 years. It is an extremely important organisation and we must ensure it can continue.

Minister of State at the Department of Agriculture, Food and the Marine (Deputy Andrew Doyle): I thank the Deputy for raising this important issue.

On behalf of my colleague, the Minister of State at the Department of Health with special responsibility for disabilities, Deputy Finian McGrath, who cannot be here, and also the Minister of State at the Department of Health with special responsibility for mental health and older people, Deputy Jim Daly, who is currently in the Seanad, I am happy to outline the position on funding for the Louth-Meath Down Syndrome Ireland branch.

The Louth-Meath branch is one of 25 branches of Down Syndrome Ireland. The goal of the Louth-Meath branch is to help those with Down's syndrome make their own futures as bright and independent as possible by providing them with education, support and friendship every step along the way.

The branch manages an early intervention home teacher programme for preschool children aged from one year to six years with Down's syndrome in counties Louth and Meath. The branch, in co-operation with Clinical Assessment Therapy and Training Services, CATTS, Ireland also runs a speech and language-occupational therapy programme.

Over the past number of years, the HSE has provided lottery grants to the Louth-Meath branch of Down Syndrome Ireland.

In 2015, the number of lottery grant applications increased significantly, in fact, by 200% on 2014 applications, and it was necessary to review the amount of lottery funding to organisations in order to accommodate this higher number.

Initially, in 2016, a number of organisations which applied for lottery funding were advised of reductions in the grants being approved. However, this reduction was reversed and the grant was restored pending a review of the overall funding allocation process. The disability manager then met the DSI Louth-Meath branch and agreed the funding allocation for 2016 and subsequently for 2017.

The Minister of State, Deputy Finian McGrath, met officials from the HSE on Monday afternoon and was informed that the HSE has committed to continue to fund DSI Louth-Meath branch for 2018, based on the previous year's allocation pending the completion of a review of the overall funding allocation process in line with the criteria for allocation of the national lottery grants.

Deputy Peter Fitzpatrick: This early intervention therapy programme over the past 36 years has been managed on a completely voluntary basis by parents of children with Down's syndrome.

Last month, *The Irish Times* published an article which described early intervention as vital for children with special needs. Without it, children with Down's syndrome will fall further behind with life-long effects on levels of independence.

Early intervention, if provided at the levels needed, allow children with Down's syndrome to reach their full potential with a view to leading lives as independent as possible as adults. This would reduce the need for interaction with adult disability services in later life leading to savings in future HSE budgets.

It is getting more likely that the branch will have to reduce the number of home visits its earlier intervention specialist makes to children on the programme for the first time since the programme began in 1982. This will have a detrimental effect on the 52 children who greatly benefit from participation on the programme and will increase demands on already overstretched State early intervention services provided by Enable Ireland and the HSE.

I am disappointed with the Minister of State, Deputy Finian McGrath. He was always the one to stand up for Down Syndrome Ireland.

We have 52 families in Louth and Meath who are looking for a bit of help. The families are not afraid to put their hands in their pockets. We are getting money from the lottery. Fifteen thousand euro is not too much to ask from the Minister of State, Deputy Finian McGrath, and the Department. If one looks over the past number of months, the amount of money that the HSE and the Department of Health are squandering is an absolute disgrace.

These children with Down's syndrome deserve their rights. The families are working hard. Everyone involved is working hard. We are not asking the HSE to come and educate the children. These specialists are organised to call to these children's houses every second week during the school year for those up to six years of age. All the parents want is to help these children

with special needs.

On behalf of the 52 children and their families who benefit greatly from this parent-led programme, what can be done to reverse this devastating 60% funding cut? I know a 60% cut sounds like a great deal and €15,000 is a great deal of money, but the Minister of State, Deputy Finian McGrath, will definitely have to dig into his pocket. I beg him to just give the €15,000.

Deputy Andrew Doyle: While it is not an area for which the Department in which I am Minister of State is responsible, I have something of an in-depth knowledge of the matter because I have a cousin in another branch who is looked after very well.

As I stated, the HSE has committed to continue to fund Down Syndrome Ireland's Louth-Meath branch for 2018 based on the previous year's allocation pending the completion of the review. Thirteen and a half thousand euro was dedicated to the early intervention home teacher programme 2016 and 2017 and this amount will continue to be allocated to the branch for this programme in 2018.

The HSE is currently engaged in a major reconfiguration of its existing therapy resources for children with disability into multidisciplinary geographically based teams as part of its national programme on progressing disability services for children and young people aged zero to 18 years. The key objective of this programme is to bring about equity of access to disability services and consistency of service delivery with a clear pathway for children with disabilities and their families to services regardless of where they live, what school they go to or the nature of the individual's difficulties. Evidence to date from the areas where this has been rolled out shows that the implementation of this programme continues to have a positive impact on the waiting lists, both for assessments and therapies.

Occupational Therapy Staff

Deputy Marc MacSharry: I welcome the Minister of State, Deputy Doyle, to the House. It is not his fault. This is a matter specifically to do with health. It is good to have the Minister of State at the Department of Agriculture, Food and the Marine with responsibility for food, forestry and horticulture here to give the response but it does not inspire confidence in the level of prioritisation we are giving to key matters when he should be engaged in important work in his own brief and he is being sent in here to give a pre-written response by some official in the Department.

I wrote, on 3 May, to the Minister in relation to a patient who has given her express permission to mention her name and wishes it to be mentioned. Ms Haughney lives in Sligo. She has cerebral palsy, asthma, arthritis and a shoulder complaint. The seriousness of the condition is such that she is in a wheelchair.

Under the Government's report, Time to Move on from Congregated Settings – A strategy for Community Inclusion, in 2011, Louise moved from residential care to independent living with a range of supports including physiotherapy, access to an occupational therapist on demand, home help hours or personal assistance hours. Obviously, she was given access to a wheelchair. She had a social worker, a case co-ordinator and a GP.

What has happened since is Louise has effectively been abandoned by the system. Through

no fault of her own, she has not been provided with essential physiotherapy since 2015. She has had no access to occupational therapists since April 2017, despite requesting and urgently needing one since July 2017 given her condition, and an urgent requirement for a new mould for her wheelchair. She has no back-up wheelchair. She has had no social worker since August-September 2017 and she has no case co-ordinator since a year ago.

In a letter, Ms Haughney's GP states that in the past he sat around the table at primary care meetings, which are obviously time consuming, with all these individuals and it appears now that he is the only individual left on her primary care team. He writes that she has been abandoned by the system, stating that this is an absolute joke. The occupational therapist, who is the acting primary care occupational therapist, wrote back stating that she has seen some service users in Sligo town but just does not have the capacity to see Louise.

I put it to the Minister of State that if this was the subject of an "RTÉ Investigates" programme, which may not be far away, or an afternoon hearing on the Joe Duffy show, this Chamber would be alive with calls of condemnation for the fact that this vulnerable person has been abandoned by the system. Ms Haughney loves living independently and loves her home. She was thriving with the supports that were put in place that the Government and those it manages have stripped out.

Since this letter went to the Minister for Health, Deputy Harris, on 3 May, I received the standard acknowledgement from the Department. I also sent a message to the director general of the HSE, now out of post, whose replacement referred it to the parliamentary affairs division. In the meantime, nothing has happened to this lady. On the back of a referral from this doctor months ago, she was contacted by the community physiotherapist who, with an over-the-phone consultation, decided she needed to see an occupational therapist first before she saw the physiotherapist. We are going around in circles. I am beginning to know where all the managers are in our health service. They are all talking to each other, writing to each other and referring to one another and the people who need care are being abandoned.

I appreciate it is not the Minister of State's brief and it is not his fault he was sent here today but it is an indication of the level of autopilot and hands-off approach we are taking when it comes to individuals' care. She wanted her name mentioned; it is Louise Haughney of McNeill Drive, Sligo. I want to know by the end of the day that people have contacted her about occupational therapy, about moulding a new seat for her wheelchair, about providing the additional hours she needs and about providing the physiotherapy, occupational therapy and all other services she needs because it is unacceptable. If I do not hear from her today, I will telephone the people from RTÉ "Prime Time Investigates" and bring them to visit her at her home.

Deputy Andrew Doyle: I thank Deputy MacSharry for raising the matter and for articulating the issue in the context of a real life that has been affected. I am here on behalf of the Minister of State, Deputy Finian McGrath.

The Government is committed to providing services and supports for people with disabilities that will empower them to live independent lives, provide greater independence in accessing the services they choose and enhance their ability to tailor the supports required to meet their needs and plan their lives. Significant resources have been invested by the health sector in disability services over the past number of years. As the Deputy will be aware, the overall health budget is in the order of €15.3 billion. Of this, the Health Service Executive has allocated funding of €1.772 billion to its disability service programme.

The HSE funds a range of community services and supports to enable each individual with a disability to achieve his or her full potential and to maximise independence. Services are provided in a variety of community and residential settings in partnership with service users, their families and carers and a range of statutory, non-statutory, voluntary and community groups. Voluntary agencies provide the majority of services in partnership with, and on behalf of, the Health Service Executive. The Minister of State, Deputy McGrath, has been advised by the HSE that a number of therapy positions in its Sligo-Leitrim physical and sensory disability services and its Sligo-Leitrim primary care services are unfilled at present. These posts include a neurological case co-ordinator key-worker position as well as vacancies in social work and occupational therapy. The Minister of State fully appreciates the pressures that these vacancies are placing on service delivery. However, he has been assured by the HSE that a process is under way to address these staffing deficits. It is being progressed by the HSE through both its national recruitment service and its human resources department.

In terms of specific services, this Government has committed to increasing the number of occupational therapists in primary care. Funding of over €1 million was allocated in the budget to provide for 40 additional occupational therapy posts to address waiting lists and improve access to services. These posts are due to be recruited from quarter three. Occupational therapists play an important role in primary care teams and work to meet the health needs of individuals, families and the community. Their role is to provide individual intervention, assessment, advice, therapy or retraining for patients in the appropriate setting such as their institution, home, work, school or other centres. The HSE has also established a service improvement group to develop a new model of provision for occupational therapy to ensure resources are effectively managed and service are maximised. The work of this group is nearly completed.

Deputy Marc MacSharry: I know it is not the Minister of State's brief which is why I would love to be getting stuck in to the Minister of State who is responsible. These pre-prepared responses from the Department are always a celebration of all that is great and all the money that is being spent. I can tell the Minister of State one thing for certain. The money being spent is not being spent on the care of Louise Haughney, 10 McNeill Drive, Sligo town and that is a problem. Is it being spent on extra managers? We hired three new managers a week in 2017. There has been an 11% increase in senior managers since 2011 and a 50% increase in middle managers since 2013. We are over-complicating something that is very simple. Louise Haughney needs 45 hours per week personal assistance, physiotherapy as is required for her condition, occupational therapy, a social worker, a case co-ordinator, a back-up wheelchair and a mould for the seat of the wheelchair she is currently in. During Storm Ophelia, because somebody did not call to her house, she was confined to her bed for 19 hours, unable to avail of toilet facilities. We cannot stand over this. There is no announcement of resources, models or processes. Let us simplify what is simple. It is about having front-line staff in place and having them provide the care.

I will not walk out of here thinking it is dealt with. I expect the Minister of State to lift the phone to the Department and tell it to get someone on the case today. Louise Haughney needs progress. She has been abandoned by the system. The GP, in his own words, is now the only person left on her primary care team. He described it as a joke. The occupational therapy manager down there has been an acting primary care occupational therapy manager, through no fault of her own, for over a year because we are not filling these positions. Why are we not filling these positions? If we cannot find people, why are we not using the National Treatment Purchase Fund to procure people from the private sector to look after critically urgent cases

such as this one?

Deputy Andrew Doyle: On the Deputy's last point, I am not sure if the National Treatment Purchase Fund can recruit people for primary continuing care.

Deputy Marc MacSharry: The Minister said he was considering it some months back so I hope it can be done.

Deputy Andrew Doyle: That is fair enough. I was not sure about it. Anything the Deputy has said is on the record. I will ensure his concerns are communicated straight away to the Department.

Deputy Marc MacSharry: I thank the Minister of State.

Deputy Andrew Doyle: It is unacceptable that anybody will spend that length of time without any support especially during an incident when they probably feel very isolated. The primary care delivery model, which centres around social work, primary care, occupational therapy and physiotherapy, along with an individual's general practitioner, is something that needs to be strengthened but the real problem here is recruitment. The money has been allocated for 40 additional posts in occupational therapy. It is very important we ensure these positions are filled as quickly as possible and that the people are assigned to the relevant areas. As I said in my opening remarks, the Sligo-Leitrim area has a significant deficit in resources in terms of the skillsets needed for the delivery of a full independent living support package for individuals with significant challenges. The Deputy can take it from me that as far as I am concerned, it is something not just in Sligo and not just for the lady he mentioned, it is a priority and should be rolled out around the country.

Social and Affordable Housing Provision

Deputy Aengus Ó Snodaigh: The purpose of this Topical Issue matter is to ask the Minister of State, Deputy English, who has responsibility for regeneration, to discuss a social and affordable housing scheme model for two sites in particular, one in St. Michael's Estate and the other in Shanganagh, and that the scheme be publicly funded. The model we are proposing, which we have discussed before, is different from that which is being considered and which has been lauded by the Department for a good while. We propose that the sites be publicly funded to ensure we do not repeat the mistakes of the past and that we do not see, as the community in Inchicore, in particular, has seen, the collapse of the PPP model in St. Michael's Estate. Depending on the private sector left us in the mess we are still suffering from. Depending on it again would leave us at the mercy of those developers who are still plying their trade.

3 o'clock

The model we are talking about brings benefits to the local society and society as a whole. I do not know how much the Minister of State knows about St. Michael's Estate. It was originally Richmond Barracks then Keogh Square. We want to make sure that the next chapter is totally different and that the local authority housing there is affordable to rent and affordable to purchase. Regeneration has been promised for many years and it is not just a question of homes but of society. We do not want to see hopes being built up and dashed again. Our proposal is aimed not only at helping those on the housing and homeless list but also those who are excluded from the housing list who cannot afford the obscene, higher-than-ever rents being

demanded everywhere in the city and beyond and who cannot afford a mortgage for the few homes that are for sale because of the runaway prices.

Deputy Eoin Ó Broin: The Minister of State knows we have been strongly critical of the land initiative model being used elsewhere in the city and country. This originated at a time when capital budgets were more constrained and local authorities were desperately trying to find some way to fund public housing. That is no longer the case and, according to the current senior Minister and his predecessor, money is no object and capital investment has increased.

There are very strong arguments why these developments in particular, Shanganah Castle in Dún Laoghaire and St. Michael's Estate in Dublin city, should be taken out of the land initiative funding model and directly funded as part of the capital programme 2019. Publicly funding them would give the Minister much greater control of the tenure mixture and the ratio of affordable and social, or affordable sale, if that is included, would be based on local need, not on what the market can bear. The Minister would have much greater control of the development, particularly the timeline for its delivery. Affordable rent and purchase could be controlled and guaranteed at rates that are genuinely affordable for families with modest incomes. Sinn Féin is strongly of the view that if there are affordable sale options in either of these developments those units can never be sold into the private market and only ever sold back into the affordable scheme.

Shanganagh is a unique proposal. It has unanimous support from the elected members of Dún Laoghaire-Rathdown County Council as well as the local community. It is well designed and considered and is ready to go. It has applied for stage 1 approval and I would welcome the Minister of State's confirmation of that. It could be up and running by the end of this year, following approval from the Department.

St. Michael's Estate has, unfortunately, despite the enormous campaigning by the local community experienced several failed public private partnership, PPP, regeneration projects. Rather than force it to go through the process again there is a strong argument for leaving it out, as well as concerns about gentrification, given its location. We have made this point privately to the Minister for State and now we are making it publicly. Both of these sites provide unique opportunities for direct public funding for social and affordable, including cost-rental housing and we urge the Minister of State to consider including them in the capital budget 2019.

Deputy Darragh O'Brien: I support what my colleagues have said. The average rent in Dublin is over €1,500 per month, up 56% on 2012. Rents are out of most people's reach as are mortgages on homes. We must use public land better. Public investment in public land is a real part of the solution to our housing problem. Between Shanganah and St. Michael's in Inchicore over 800 units could be delivered. That is more social housing than the Department delivered in all of last year. These are two very significant sites. I know the Minister of State wants to get moving but it is taking far too long. I urge the Minister of State to see where Government stands.

My colleagues have spoken about the mix of housing, rental and affordable. There is no affordable housing scheme. The Oscar Traynor Road, Irish Glass Bottle and O'Devaney Gardens sites are held up because Government has not proceeded with an affordable housing scheme. These are two particular estates that could be worked on quickly. I had the pleasure of meeting the community in St. Michael's Estate, Inchicore with Senator Ardagh. It has been badly let down through the PPP model. There is a strong desire there for new homes for new families

which it is fantastic to see when in many other instances people object to new homes for new families. Even Ministers in this Government have done that recently. I ask the Minister of State to strongly consider what has been put forward today across parties, to publicly fund these two schemes, get them up and running, off the ground and deliver homes for new communities.

Deputy Richard Boyd Barrett: I have been campaigning for social and affordable housing on the Shanganah site since it was closed down as a prison and transferred to Dún Laoghaire-Rathdown County Council, before I was even elected to the Dáil in 2011. It is a matter of immense frustration to me, to the people on the housing list and the people in the area that a publicly owned site is sitting there, which is ideal for housing and could help alleviate a dire housing crisis. People are waiting 15 years and up to 19 years on the housing list.

It is being held up by the Government's obsession with involving the private sector. This is messing everything up. It is tied up with questions of how to make money out of the site and to what extent the private sector is needed and it is just not working. I do not believe in it in the first place and it means nothing is happening.

Now finally there is a consensus across all parties in Dún Laoghaire that this site should be 100% social and affordable. There is some debate about the balance between those two but we can work that out among ourselves. The key issue is that there has to be direct public funding of it. If we have to depend on the private sector it will take forever. We just need to build the houses. The current scheme, in so far as it has been appraised, and which has been proposed and agreed on an all-party basis cannot work or deliver the affordable housing unless we get subsidies from the Government. It brings into question the wider failure of the Government to come up with an affordable housing scheme. For all the talk about one, it has not come up with a mechanism to fund and deliver it.

Deputy Bríd Smith: The biggest hoarder of land in this country is the State. It is hoarding thousands of acres. In St. Michael's Estate in Inchicore this is very obvious as soon as one walks into the square. Where the flats used to be there is a big unsafe space of approximately 12 acres. It is about time we used it because in Dublin South Central there are over 7,000 people on the housing list and in Inchicore approximately 2,000. Those are amazing figures. I recall being a councillor at a time when there were 7,000 people on the housing list for the whole of Dublin city. These figures are startling. Despite the Minister's attempt to disguise the housing figures by saying those who are illegal should not also be registered as homeless, one can be both. Despite his attempt in different ways to disguise the homeless list, it is growing. There were 10,000 on it in April and some 3,755 of them were children. We have a serious problem and the State needs to end the hoarding of land and to use initiatives such as the residents of St. Michael's Estate are proposing to have a cost-rental model that will allow immediate building instead of hoarding the land in the interests of the developers so that the price goes up and the deal can suit private development rather than land for public use. This is public land and the only thing that should go on it is public housing.

We will have to consider a model that will deliver that. I do not know if the Minister of State has read the St. Michael's Estate document but I encourage him to read it. Tremendous work has been done in the community on fair-rent homes. The proposal is to allow people who have jobs and are not eligible to be on the social housing waiting list because they earn too much to be able to rent at an affordable price. The State will continue to own the homes. It is a very sensible model and I think there is cross-party support for it in Inchicore. Would the Minister of State please read it?

Minister of State at the Department of Housing, Planning and Local Government (Deputy Damien English): I thank the Deputies for raising the very important issue of the State land bank and the role it is playing and can play in delivering affordable, social and private housing of all types and sizes, on which we are all in agreement. The issue revolves around who will pay for the private part of a development and who will sell the relevant houses.

It is wrong for people to continually say the Minister, Deputy Eoghan Murphy, is disguising the homeless figures because that is not the case. He is very honest in that regard, as am I and the departmental officials who are dealing with them. Nobody is trying to disguise them, but if we believe a person is not homeless, we will say so. A person who is living in a house is not counted as being homeless. Others might believe he or she should be counted as such, but we do not. We have engaged with the local authorities to identify who needs intervention from the State and who does not. We must formulate policies to help those most in need. We are doing all we can to ensure the figures are correct. Whether the correct figure is 9,500, 9,800 or 10,000, it is far too many. That is the reason we are here week after week debating the issue. I, therefore, ask Members to stop saying the Minister is disguising the figures because he is not. That is not what he is about. He is trying to find solutions.

Deputy Bríd Smith: The Minister is sensitive.

Deputy Damien English: Increasing and accelerating housing delivery, particularly social and affordable housing, are at the heart of the Government's action plan for housing and homelessness, Rebuilding Ireland, which I accept and acknowledge is everyone's motivation. The two sites referred to are key housing authority assets that must be mobilised for the sustainable development of Dublin as a whole. They are key sites that can be used to deliver a lot of houses. I have visited both sites and recognise their importance in the delivery of housing.

While the development of residential land in housing authority ownership is, in the first Instance, a matter for the local authority concerned, including its elected members, we need to see new social and affordable homes realised from State housing land without delay, with particular emphasis on prioritising sites, including those mentioned, with the greatest potential to deliver housing at scale in the short to medium term. Both sites fit into that category. The issue is how we can develop them as quickly as possible. Like others, I am frustrated by the lengthy delays in developing some of the sites. We need to find ways to develop them a lot quicker.

St. Michael's Estate is one of three significant sites being developed by Dublin City Council under its housing land initiative, the aim of which is to ensure the delivery of mixed tenure homes in the Dublin City Council functional area. It envisages the potential to yield a minimum of 420 mixed tenure homes and the elected members of the council have determined that they will be provided on a 30% social, 20% affordable and 50% private tenure mix basis. I understand a general discussion in that regard is under way. Most people acknowledge the need to provide affordable, social and private housing. I think I am correct in saying most Members present want to see some private housing on the sites mentioned, but the issue is who should build them. Given the strategic importance of St. Michael's estate, my Department is working very closely with the city council on its optimum development. I am conscious of the motion recently received from the city council which is being reviewed and discussed. I was asked by Deputy Eoin Ó Broin to meet the residents on the site, which I did. The Minister was also asked to visit the site and did so earlier today when he met local residents. I have not yet had an opportunity to discuss the matter with him. It is a great site which is located beside the Luas and in the heart of the city. We are all determined to deliver a top class housing project on it.

Shanganagh Castle is another great site which is also located near amenities and public transport services. It is very positive that the members of Dún Laoghaire-Rathdown County Council have come together on a cross-party basis with a view to achieving the optimal outcome on the site which can deliver over 500 new homes on a mixed tenure basis. I acknowledge that Deputy Richard Boyd Barrett has been campaigning on the issue for many years. My Department has met council officials on a number of occasions, including on site, to discuss the optimum development approach. Woodbrook-Shanganagh is a designated major urban housing delivery site and in recognition of this my Department is keen to support its development and has committed funding of just over €4 million from the local infrastructure housing activation fund, LIHAF, to build public infrastructure which will open up the site for earlier development.

On the delivery of affordable homes on the two sites, it is ultimately a matter for the elected members of the councils to decide whether the homes should be affordable for purchase or cost rental. I firmly believe there is a need to ensure the rental sector, particularly in cities and major urban areas, is accessible and affordable. We are all agreed that the sector is not where it needs to be. To this end, we need to invest in a different rental offering, a so-called cost rental

sector which operates between the social and private market sectors. We are learning from pilot projects and the examination of similar models elsewhere. We are working with the European Investment Bank and other key stakeholders with a view to announcing shortly the first major cost rental project in Dublin city, with a broader programme of cost rental projects across Dublin and other cities to follow. The key issue is how we can stretch available resources to maximise these public developments. That is what we are trying to do.

Deputy Aengus Ó Snodaigh: It needs to happen urgently. On the land initiative, as proposed, I believe it is the public private partnership, PPP, model dressed up. The State needs to get a handle on housing proposals. The proposals put forward by Sinn Féin and others, including my colleague, Councillor Shane O'Brien, in dealing with the Shanganagh Castle site, bypass the private developer-led models in favour of a method of delivering social and affordable purchase and rental homes on these two key sites. I will go further and argue that such development should take place on all sites, but these are two sites which, if developed, would show the Government and private developers that the State was willing to intervene when necessary to deliver homes to those who deserved them. This model needs to be pursued urgently.

Deputy Eoin Ó Broin: It is not for the Dáil to get into the details of either scheme. Rather, this is a matter for the communities concerned and their local elected representatives and the councils. They are unique sites on which there is strong local community involvement. There is strong political consensus in both areas for the proposals we are putting forward.

The Minister of State's reply is disappointing in that it does not tell us anything different from what he has been saying up to now on this matter. I ask him to respond to the following specific questions. Will he consider taking the two projects out of the land initiative model? Will he consider funding directly the two projects, either through Exchequer funding by way of the capital programme or by approving local authority access to Housing Finance Agency loans to proceed? Has Dún Laoghaire-Rathdown County Council applied for stage 1 approval for such a project in Shanganagh Castle and will the Minister of State actively consider the request of all of the elected representatives in these two areas at local authority level to fund the projects publicly to ensure the best quality social, economic, residential and community dividend?

Deputy Darragh O'Brien: In his reply the Minister of State referenced the fact that these

are great sites, but nothing is being delivered. They present a real opportunity for the delivery of significant housing in Inchicore and Shanganagh. Like Deputy Eoin Ó Broin, I want to know if the Minister of State will consider direct funding. They projects require direct funding to get them off the ground. The Dáil cannot, nor should it, micro manage every social and affordable housing site, but as a flagship project response to the housing crisis, these can be two very significant sites. I have discussed the matter at length with my colleagues, Senator Catherine Ardagh and Councillor Cormac Devlin. There is cross-party support in Dún Laoghaire-Rathdown for this to happen.

On investment by the credit union movement, which was approved on 1 February, there has been no move on the part of the Department in the utilisation of credit union funding. Credit Union funding could also be looked at for the projects. I would like to know if the Minister of State will consider directly funding the projects from the Exchequer and perhaps partnering with the credit unions.

Deputy Richard Boyd Barrett: As I said, the Shanganagh Castle site could deliver 540 social and affordable homes. I have been campaigning on the issue for six or seven years, but nothing is happening. Two of my colleagues, Councillors Lisa Halpin and Hugh Lewis, put forward the first motion calling for social and affordable housing on the site. There is cross-party support on the issue. The question now is whether the Department will fund it or allow the local authority to access the finance to do so. I have made a proposal in that regard. We need departmental officials who can make decisions to sit down with Deputies, council officials and cross-party representative of the political parties to identify the blockages. That is all we need to do. Instead of continuous engagement backwards and forwards on who is to be blame, blockages and so on such that the issue is lost in communication and nothing happens, we need people who can make decisions. Will the Minister of State agree to a meeting of all of the major stakeholders to iron out what needs to be done to deliver housing?

Deputy Bríd Smith: The Minister of State said the elected members of Dublin City Council had determined that the homes in St. Michael's Estate would be provided on a 30% social, 20 affordable and 50% private tenure mix basis. The residents of St. Michael's estate and the community association in the area are actively campaigning against this proposal in favour of a cost rental model. The Minister of State also said he was working with the European Investment Bank and other key stakeholders with a view to announcing the first major cost rental project in Dublin. Will he tell the House the location of the project and spell out how it would work? If it is not St. Michael's Estate, why would the Minister of State not choose St. Michael's Estate?

The Minister of State, Deputy English said that we are all in favour of private housing so people can buy housing. I agree absolutely, but on public land it should be public housing. We obsess all the time about social mix in areas such as Inchicore but one would never hear an obsession with social mix in areas such as Foxrock or Castleknock because where there is a lot of wealth they are not worried about social mix. I do not believe we should obsess about social mix in the way that we do in areas like Inchicore. The cost rental model will deal with the fact that it could provide for people who are working and earning.

Deputy Damien English: I want to clarify that Deputy Bríd Smith is not the only voice in Inchicore looking for housing projects, and not everyone would agree with the Deputy in this regard. We strongly believe that the best use of publicly owned land is a combination of public housing through social, affordable and private accommodation use. Most people here would agree that the concept is right but the big question mark is around how we fund it. Deputy

Smith wants only social housing. I do not believe that is best planning. I agree with the Deputy that areas with not enough social housing should be corrected also, but it is about getting the balance right. The days are gone, however, when social housing was put into just one area and private housing was put in another area. This is not what the Department is trying to achieve.

Deputy Bríd Smith: I call for public housing.

Deputy Damien English: The Deputy keeps saying public housing-----

Deputy Bríd Smith: Housing that could be rented out to people who are working.

An Leas-Cheann Comhairle: The Minister of State, please, without interruption.

Deputy Damien English: I understand that, but the best use of State-owned lands is accommodation for all. The question that we are asked most is whether we are open to different models of funding. With every site the State owns we have asked the local authority to bring in all the different concepts for that land. They have all brought in their plans for delivery of social, affordable and private accommodation. We look at every option available to deliver those sites. I did not meet the residents this morning. The Minister, Deputy Eoghan Murphy has met them. We will look at every option for how we can best deliver housing as quickly as possible and how we can stretch taxpayers' money as much as we can from a capital perspective.

These sites should have houses on them. I see Deputy Bríd Smith nodding and shaking her head. I agree that there should be houses on these sites and we have to find a way to move this on. It has been stuck in the system but this is what we are trying to do. We have changed the system to allow the sites to move forward a lot quicker. A lot of effort has gone into working with local authorities. There is engagement. Under the direction of the Minister, Deputy Eoghan Murphy, the housing delivery team and I have engaged directly with local authority officials and councillors, site by site, to see how we can make these decisions, remove barriers and move on. We can do this on those sites also. There has been enragement there, the Minister has been out there again, and-----

Deputy Richard Boyd Barrett: Will the Ministers please just do it and involve us?

Deputy Damien English: It is the officials and the councillors who will make the decisions. Some of the councillors are from the Deputies' own background and are part of that conversation also. We will look at every option to get these houses delivered.

With regard to credit unions providing funds, the changes were made to allow this. I met the credit unions recently. We want them to be involved in housing projects. We have explained to them how they can do this. It is about being able to fund projects off balance sheet. The credit unions are finding ways to partner up and they are engaging with some of the approved housing bodies. They are interested and the credit union money is there. It is not the €8 billion that people say credit unions have, but they do have a lot of funds available. We are very interested in having them on board, along with other bodies that want to fund houses, and we have made this very clear to them. We will do this site by site and will look at all suggestions.

Deputy Bríd Smith: Will the Minister of State answer my question on the first major cost rental model-----

Deputy Damien English: There is no site picked yet-----

Deputy Bríd Smith: There is no site picked yet.

Data Protection Bill 2018 [Seanad]: Report Stage (Resumed)

Debate resumed on amendment No. 13:

In page 28, after line 34, to insert the following:

"Micro-targeting and profiling of children

30. It shall be an offence under this Act for any company or corporate body to process the personal data of a child as defined by *section 29* for the purposes of direct marketing, profiling or micro-targeting, for financial gain. Such an offence shall be punishable by an administrative fine under *section 140*.".

-(Deputy Róisín Shortall)

Deputy Donnchadh Ó Laoghaire: This group of amendments, Nos. 13 to 15, inclusive, deals with similar matters. My amendment No. 14 and amendment No. 13 both deal with the issue of micro-targeting of children under 18 years of age. The difference between my amendment and that proposed by Deputies Clare Daly, Wallace and Shortall is a few words; the presence or absence of "for financial gain". I am not particularly precious about whether it is mine or the other, but I do believe that they are important amendments. The purpose is to restrict the profiling, harvesting and targeting of data on children by companies which advertise on social media. This is vitally important, perhaps more important than some other measures that are considered in the Bill, if we are truly to protect children from harmful online marketing. Deputy Micheál Martin and the Fianna Fáil health spokesperson stated as recently as Monday that they want to see children protected from such practices online. Both these amendments do exactly that. I hope that we will have the support of Fianna Fáil for these amendments.

In response to these amendments on Committee Stage, the Minister selectively quoted recital 47 of the general data protection regulation, GDPR, that such activity was a legitimate activity, but he omitted that the purposes of direct marketing were superseded by the public interest and that Governments had the option to provide for the legitimate public interest in that context. I would love to hear the Minister's argument that this type of targeted and cynical direct marketing supersedes the health interests of the children of Ireland. Without the amendment, sugary drinks, for example, and other harmful items and agendas such as those that promote a particular body image could be marketed directly at children in a very exploitative way. This is in a context where the population in Ireland is set to be one of the most obese in Europe by 2030.

Currently, young people are very exposed to data profiling and targeting by commercial organisations and businesses. This needs to be tackled. There are very serious risks in this regard, especially when marketing harmful goods or products or pushing a harmful agenda, such as making young people excessively conscious of their appearance and body. We must tackle this issue, not only for children but for society as a whole. The Cambridge Analytica story shows how these strategies can be used against us all. Facebook has confirmed it has recently banned some 200 apps for that reason. It shows the scale of the risks for us all. Children, however, are particularly vulnerable. Many children will not be aware how their actions online influence the adverts that they see, and they will not be aware of the extent to which their data is being

gathered, the profile that is being built up on them and the way it is being used to exploit them.

On the digital age of consent, Sinn Féin believes that 16 is a more appropriate age for young people to be in a position to make informed decisions about their safety and about the data that they are sharing. Putting the digital age of consent at 16 is not a silver bullet but it means that children, in general, will have reached a greater level of maturity when making decisions about when and how they can share their data with companies. Some commentary has intimated that perhaps the digital age of consent does something beyond that. It relates specifically to the capacity to make decisions on sharing data.

This is not a position we have arrived at lightly or without consideration. We have engaged at length with people arguing for both perspectives. I believe all concerned have the best interests of children at heart. There are expert organisations with significant weight on both sides of the argument, which we have considered carefully. On balance, however, it is Sinn Féin's view to err on the side of caution on the very important issue of the online safety of children and to favour 16 years of age as the age of digital consent. We are conscious that this is not a silver bullet. People have expressed concerns about a false sense of security. I recognise their concerns. Some of the responsibility for dispelling any such sense falls on all of us, but that can only happen if we allow it. I urge those in the media who are covering this story not to mischaracterise it and to reflect upon the fact that much is still required if we are to ensure safety online, not only for children, but for us all. I urge the media to inform parents not to take from this a false sense of security. Parental discretion, oversight and education on social media remain crucial. We favour this issue being kept under ongoing review.

There remains the possibility of young people finding ways around this measure regardless of whether we set the age at 13 or 16 years. Age verification processes are weak and many young people will simply lie to get around them. We need to force companies to tighten up on age verification.

Sinn Féin has tabled amendments on micro-targeting of under 18s. They are supported by the Irish Heart Foundation and many other organisations. Our amendments would go a significant distance towards tackling the exploitative practices of many companies. We also want to see progress on our Digital Safety Commissioner Bill, which passed Second Stage in 2017 and is awaiting Committee Stage. In the context of the significant debate on online safety, I hope that the Government will provide a money message for the Bill if so required. It is important legislation, there is broad consensus on its proposals and it is largely supported by the Taoiseach and the Minister for Communications, Climate Action and Environment. Setting up the office would provide national minimum digital safety standards, codes of conduct and certification of platforms and websites, and create for the first time a statutory body responsible for digital safety.

In the context of a properly resourced digital safety commissioner, a ban on micro-targeting of under 18s and other measures to ensure proper online safety, we would be open to re-examining the digital age of consent, be that through a review built into statute or via other means. At this juncture, however, it is our belief that it is best to err on the side of caution. We will favour 16 years of age in the amendments.

Deputy Clare Daly: Amendments Nos. 13 and 14 aim to protect children older than the digital age of consent of 13 years but younger than 16 years of age from being targeted, including through the use of sophisticated means, by companies online in a marketing context. The

right decision is to have a digital age of consent of 13. All of the child protection experts tell us that this is so if we are to vindicate the legal rights - that is what they are, not aspirations - of children to participate and to be heard. These rights are enshrined in Article 12 of the UN Convention on the Rights of the Child, UNCRC, and Article 24 of the EU charter. Children also have rights to freedom of expression and assembly.

Obviously, it is less desirable that children should be micro-targeted by sophisticated algorithms designed to use their data to manipulate them. Indeed, that would be undesirable in anyone's case. Unfortunately, the GDPR does not give us that protection or the right to raise the bar for everyone, but we should at least do it in respect of children. It is important that children are able to exercise their autonomy in using online services from the age of 13, but we should throw the onus back on the companies that would exploit their data for profit. It is unrealistic to place another responsibility on parents by increasing the age of consent to 16. The increase would run the risk of violating children's fundamental freedoms and create privacy risks for parents. It would be far better if responsibility for policing platforms was placed on the providers, whose bread and butter is the kind of sharp practice we are trying to prevent.

Amendment No. 15 seeks to raise the digital age of consent from 13 years. We agreed the current age on Committee Stage and strongly believe it should be retained. We welcome the Social Democrats' move to a position of upholding the current age. The heat and noise created around this issue by sections of the media are an indictment of the laziness of these individuals in their coverage of important matters. The Bill has 162 pages, but all they can concentrate on is one line. It is pathetic, given the ramifications. A number of political contributions were slightly similar, but I mainly blame the media in this regard. It is the modern equivalent of "Just say no" in respect of drugs and sex education and it denies our young people access to social media and the Internet. They should be educated and enabled in taking a harm reduction approach. Instead, we are perpetuating the myth that we can protect them, which is nonsense.

One of the issues that have been downplayed in this discussion is the question of how to go about verifying children's ages online. It is significant that we thrash this out now, as raising the age of consent to 16 will bring many more children and websites into the dragnet. How do we verify children's ages? In the US, the COPPA Act has been in force for almost 20 years. It obliges operators of child-focused websites to get verifiable parental consent to allow children under 13 years of age to use those websites. In that sense, it is a more limited proposition than requiring parental consent for anyone under 16 years of age to access any commercial website. Despite being narrower, COPPA has been subject to heavy criticism because of the privacy implications of obtaining verifiable parental consent. In the US, ways of getting that consent include requiring a parent to scan and send a copy of his or her credit card or government-issued IDs, which would be held in a central database. A few years ago, the Federal Trade Commission, FTC, approved the use of knowledge-based authentication for verifying children's ages online. That is mad stuff.

As should be clear, all of these methods of verifying parental consent are privacy nightmares and an opportunity to hoover up sensitive parental data. As such, it is not surprising that, in the GCHQ's most recent Cyber Accelerator funding round, it provided a grant to a company called Trust Elevate that, according to itself, solved the problem of age verification and parental consent for young adults and children in online transactions. Interestingly, Trust Elevate was recently recommended as a possible solution to online age verification by some of the loudest voices calling for the age of consent to be increased to 16, the same voices that told the Oireachtas committee that they believed that robust age verification online was one of the most crucial

requirements. It is not surprising that individuals with a security and intelligence background have an interest in getting people to reveal their identities online.

If we want to protect children, we should be listening to the people whose primary focus is on doing just that. Every single person and organisation involved in child protection has stated clearly that the current digital age of consent is the best option. People from the security and intelligence industry undoubtedly have valid reasons for their emphasis, but those are not child protection reasons, so the House should not use them as an excuse to follow those people's arguments.

The alternative to tight verification controls that hoover up large volumes of data are light controls, which are basically the type of box ticking seen with WhatsApp. If people are asked whether they are over 16 years of age, they will tick the box to say they are. That is it and good luck. It is nonsense. Who are we conning with this unenforceable digital age of consent? It will have the downsides of denying young people access to important websites that could protect their interests and shutting down many child services out of fear of being implicated in data breaches. It would be a nightmare, so we should uphold best practice and keep the digital age of consent at 13.

Deputy Sean Sherlock: Our amendment No. 15 substitutes "16 years" for "13 years". I have spoken on this issue on Second and Committee Stages so will not overly detain the House. I have made clear that I favour a digital age of consent of 16. The advocates for a digital age of consent of 13 have argued that children have a right to a voice online and to participation. However, the digital age of consent applies only when the personal data of children is being gathered and processed. Children under the digital age of consent should be provided with platforms that do not exploit their personal data as a condition of their use, which is particularly important for vulnerable younger children who should not have to rely on parental consent. The issue here is the provision of safe spaces online that protect children's anonymity and platforms which do not profile them on the basis of personal data. Relying on commercial platforms such as Facebook, Instagram, Snapchat and others to provide such safe spaces or attempting to use them as such arguably put vulnerable children at risk. Risk may also arise from an unintentional breach of a child's anonymity, his or her targeting through advertising and marketing campaigns based on his or her interactions online or potential exposure to individuals online who might not have the child's best interests at heart. I am speaking euphemistically there but people will understand to what I refer. A digital age of consent of 16 would be in line with that in place in Germany, the Netherlands, France and other countries which have best-in-class approaches to protecting children online. The political position in the Netherlands in adopting 16 as the digital age of consent was based on two simple principles: that parents must parent and that medical consent is granted at the age of 16 and, that being so, it followed that the digital age of consent was also set at 16. Many parents with genuine concerns about the age being set at 13 have contacted me on this issue.

The Committee on Children and Youth Affairs had a discussion with Professor Barry O'Sullivan of University College Cork and Dr. Mary Aiken on this issue in the context of cybersecurity for children and young adults. Professor O'Sullivan stated:

> For clarification, the digital age of consent is not about when a child can access the Internet, it is merely the age at which a child can consent to a profiling of their personal data and that is it. It is not about access, it is just the age at which a child can say he or she is happy to be profiled by a social media company or by a game. Notably, Ireland has opted

for 13, the lowest age of digital consent allowed under the GDPR. The Data Protection Bill 2018, which enshrines an Irish digital age of consent of 13, was submitted to the Seanad on 8 February 2018 and is currently under consideration.

He further stated:

> There is a need to stop conflating a child's right to access information online with the digital age of consent which specifically relates to the age at which a child can sign legal agreements with online service providers who gather, profile, sell, and commercialise personal data. We both agree that this conflation has mis-stepped the entire debate on the digital age of consent in Ireland because people think it is about access when it is not.

One could argue that the GDPR, which sets a digital age of consent of 16 but allows member states to lower it to 13 or otherwise, does not take account of the points dealt with by amendments Nos. 13 and 14. Amendment No. 13 states: "It shall be an offence under this Act for any company or corporate body to process the personal data of a child as defined by section 29 for the purposes of direct marketing, profiling or micro-targeting, for financial gain." It would be useful to hear the Minister's justification for not having within the legislation very clearly delineated lines regarding the exploitation of children in terms of the use of their information for direct marketing or profiling purposes or for micro-targeting, as the amendment states.

One could argue the digital age of consent is a moot point because the age verification issues of which all Members are aware have not been resolved. Members are quite tuned in to the fact that notwithstanding what we legislate for, anybody of any age will be able to access information and create false profiles. However, on the balance of probability, to set the digital age of consent at 16, as is the case across Europe, would be the best possible course of action here. A digital age of consent of 16 is the best of a bad set of choices in terms of seeking to provide some legal protection for those under the age of 16. The issue of self-verification was also dealt with at the Committee on Children and Youth Affairs. It was told that self-verification does not work but that there is potentially a role for Ireland to be a leader in that regard and that could be done through the Data Protection Commissioner and so on.

We intend to press amendment No. 15. This is about legislating to provide maximum protection against the exploitation of children.

Deputy Jim O'Callaghan: The three amendments under discussion all seek to provide greater protection for children under the Bill. Amendment No. 15 seeks to raise the age of digital consent from 13 to 16. I mentioned on Committee Stage that Fianna Fáil supports a digital age of consent of 16. I will not address that amendment today as my colleague, Deputy Thomas Byrne, will do so.

I wish to address amendments Nos. 13 and 14, which seek to provide greater protection for children by protecting them from micro-targeting and profiling. All Members should support that objective provided it does not conflict with the provisions of the GDPR. There is too much commercialisation that tries to target children with products such as fast food or particular games. If we can, we should provide protection from such targeting.

It is instructive to note that a child is defined in the Bill as a person under the age of 18, so amendments Nos. 13 and 14, if passed, would apply to all persons under the age of 18 rather than only those aged between 16 and 18. I would rather support amendment No. 14 as tabled by Deputy Ó Laoghaire because I note he has removed from it the term "for financial gain"

which caused me concern on Committee Stage. I have a slight concern that the amendment only makes it an offence for a company or corporate body to engage in the micro-targeting or profiling of children. Companies may be able to get around that by purchasing data from individuals who carry out the profiling and targeting of the personal data. However, that is not sufficient reason for me to oppose the amendment. If I oppose it, it will be for the reason I gave on Committee Stage, when the Minister indicated that the amendment would constitute a breach of EU law because it would impose a limitation on the type of processing of personal data that is permitted under the GDPR. The Minister stated on Committee Stage that the State would be exposed to infringement proceedings and that had an impact on me.

Following Committee Stage, I went back and had a look at the issues in respect of the GDPR. What we need to recognise is that we have limitations imposed upon us in the Oireachtas when we are debating the Data Protection Bill. The reason we have limitations is because the Bill itself seeks to give further effect to a regulation - the GDPR - that we know will come into effect on Friday week. No matter what we do, the GDPR is coming into effect on Friday week. It does not need to be transposed into Irish law because it will become a part of Irish law on Friday week. The Data Protection Bill also has other provisions in it which seek to give effect to other directives. The issue that causes concern is whether the amendments are consistent with the GDPR. If they are consistent with the GDPR, then I and Fianna Fáil will support them.

I went back and had a look at the GDPR and it is instructive to note that it does give very special recognition to the protection required for children. Recital 38 says that children merit specific protection with regard to their personal data. The other relevant recital is recital 47 to which the Minister referred. This indicates that the legitimate interests of a controller may provide a legal basis for processing, and therefore the processing of personal data for direct marketing purposes may be regarded as carried out for a legitimate interest.

We then need to look at the other recital that deals specifically with profiling, and that is recital 71. It says that a data subject should have the right not to be subject to a decision which is based on profiling. An issue that arises is whether amendment No. 14 will have the effect of constituting a decision that is created by profiling. It is also instructive to note that recital 71 says that such measures which are introduced should not concern a child. The recitals are very clear. They want to provide protection for children. They also recognise that certain types of processing are legitimate. Article 4 in the GDPR makes clear that profiling is a form of processing. It is described as any form of automated processing of personal data consisting of the use of personal data to evaluate certain personal aspects relating to a natural person.

The Minister has relied on Article 6 on numerous occasions. Article 6.1(f) states that one lawful basis for processing is where processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child. Again, the GDPR gives express recognition to the vulnerability of children and the fact that they are deserving of special protection under the regulations and under any transpositive laws that are introduced in member states.

Article 22 refers to automated individual decision-making, including profiling. It says the data subject shall have the right not to be subject to a decision based solely on profiling. That will not apply, for instance, if it is authorised by the Union or member state law to which the controller is subject and which also lays down suitable measures to safeguard the data subject's

rights and freedoms and legitimate interests.

I and Fianna Fáil want to support amendment No. 14 but we do not want to expose Ireland to infringement proceedings down the road. I have had another look at the GDPR and it seems to be that the protection of children is very much at the forefront of the recitals in the GDPR and indeed in respect of certain articles. What the Minister has to do is satisfy my colleagues and me that if we introduce the amendment, we will not be in flagrant breach of the articles contained within the GDPR. It does not stand out that that is the case but I am interested to hear what the Minister has to say as that will very much dictate how Fianna Fáil votes in respect of the amendment.

Deputy Thomas Byrne: I am delighted to speak on the amendment relating to the digital age of consent. There is no doubt that this has resulted in quite a fiery debate online, in the media and among politicians in recent weeks. That is welcome because when policy is informed by experts on both sides of a debate, it makes for better policy. Listening to the arguments put forward on both sides gets better outcomes. In fairness, that is what Fianna Fáil has tried to do in recent weeks and months, namely, to listen to the voices urging us in particular directions. Each side of the debate is worth listening to. Some people who have been in favour of having 16 as the digital age of consent have been grossly denigrated in the debate which is very unfortunate given that we are talking about some of the most important scientists in the country, for example, who advocate the age of 16, and we are talking about children's rights organisations-----

Deputy Clare Daly: Could Deputy Thomas Byrne name a few of them? Who are they?

Deputy Thomas Byrne: Professor Barry O'Sullivan is responsible for €140 million-----

An Leas-Cheann Comhairle: Deputies should speak through the Chair.

Deputy Thomas Byrne: -----worth of research-----

Deputy Clare Daly: That is very interesting. Could Deputy Thomas Byrne give us a few more names?

Deputy Thomas Byrne: -----but that is completely dismissed.

An Leas-Cheann Comhairle: Deputy Clare Daly should not interrupt.

Deputy Mick Wallace: Unfortunately, all he did was on one side.

Deputy Clare Daly: Yes.

An Leas-Cheann Comhairle: Deputy Wallace does not usually interrupt.

Deputy Thomas Byrne: I have acknowledged that there are people in this debate who favour having 13 as the digital age of consent and I have listened to them respectfully. In the GDPR the default age is 16. There is no argument about raising the digital age of consent, but the proposal from the Government, supported by Independents 4 Change and some other Deputies, is that we would reduce the age to 13. The truth is that there is very little evidence that one age is better than another. The precautionary approach must be that we would go for the highest age, which is the standard age favoured by Germany, the Netherlands and many other countries because that is the default age in the GDPR. The GDPR requirement for parental con-

sent for processing does not apply to preventative or counselling services, so the concerns that have been raised by some in terms of whether children will be able to get access to the services they need in that regard is not an issue. That is covered by the GDPR and it is covered by the legislation.

There is also a review built into the legislation that the Minister introduced relating to the age of 13, and that is welcome but it could also apply to the age of 16 so that if there are unintended consequences, there would be a review. That is welcome and it must happen. There is very little empirical evidence on either side and the position that we have taken is to take the precautionary approach, namely, to opt for the standard, which is the older age. This is about the processing of data and the profiling of data subjects who happen to be children. It is not about giving them access to services online. That is the truth of it. That has been conflated and it is wrong simply to take the approach to this debate of a child's right to participate when we are not discussing the child's right to participate. We are merely discussing-----

Deputy Clare Daly: We are not-----

Deputy Thomas Byrne: Tá mé ag iarraidh cainte. Ní raibh mise ag cur isteach ar na Teachtaí nuair a bhí siadsan ag caint. We are not talking here about the child's right to participate. We are talking about the tech company's right to participate in what the child is doing online. That is the key difference here. This debate has been well rehearsed at this point and it is now being rehearsed on the floor of the Dáil. I do not understand the bitterness in this debate. There are important views on both sides of the debate, including within political parties, but we have to make a call and Fianna Fáil has made a call on the age of 16 as being the best possible approach in this particular case. That is what we are advocating and supporting. There will be a democratic vote in the Dáil. There is a review and children will not be prevented from participating.

The point about setting the age at 16 is that if there is a breach and someone is profiled without parental consent under that age, the penalty is not on the child or the parent but on the tech company. Let us be honest. Tech companies lobbied extremely hard through Chambers Ireland for this particular provision to be reduced to 13. We should also admit that there are some organisations that are very vocal on this issue, whom I am sure are worthy organisations, but they are sponsored by tech companies or some members of their boards of directors are employees of tech companies. We have to take all of those voices and consider them carefully, but that has not been mentioned in the debate and I think it is an important point.

4 o'clock

We must protect our children as best we can. We need to keep an eye on the operation of this section, whatever age the Dáil decides to choose today. I will support that, but we must take the most precautionary approach possible to our children and, accordingly, go for what is in the law, namely 16, and not reduce it to 13.

Deputy Michael Collins: I am glad to have the opportunity to speak on the eagerly awaited Data Protection Bill 2018. The Bill incorporates Ireland's national implementation measures required under the GDPR and creates a new regulatory framework for the enforcement of data protection laws in Ireland. The digital age of consent has been the subject of considerable debate in the Oireachtas. Many child protection experts, psychologists, mental health specialists and those working on the front line with children have expressed the strong view that the age of digital consent should be set at 13 years. There are compelling child protection reasons for this

being the best option to keep children safe online. We need to face the reality that our children will be accessing online information and using Internet enabled devices from a young age but by reducing the age of digital consent, we are providing more protection for our children.

The draft scheme of the Bill as published last year did not make provision for representative action to be taken. There was much debate on this issue during the pre-legislative scrutiny stage and the Bill has now shifted quite a bit. It now permits a data subject to mandate a not-for-profit body to lodge complaints with the data protection commission. A mandated, not-for-profit body may also bring a civil claim on behalf of a data subject before the courts. However, such a body will not be able to claim compensation on behalf of data subjects. In effect, a not-for-profit body will be able to seek injunctive relief but not damages on the data subject's behalf. The Bill does not address how the rules and regulations on legal costs will apply to actions taken by non-profit bodies. In particular, guidance will be needed on whether a court can award costs against the data subject as well as the non-profit body in the event of an unsuccessful civil claim.

As Deputies, we possibly need to be educated further on the issue of data protection. How are we, as politicians, going to cope with this new data protection regime? We are finding it more difficult to access information as it stands. Sometimes bodies or individuals hide behind data protection and use it as a handy way to get rid of one or not to give one an answer. That is a very serious issue and a worry for politicians.

On the positive side, I visited Spearline last Friday, a west Cork technology firm based in Skibbereen. This company is a huge asset to the local community. The Minister of State at the Department of Justice and Equality, Deputy Pat Breen, launched the first phase of the company's development. The company will employ up to 60 people in its new risk compliance and data protection division. Spearline will also produce a new line of software called Spearline Data Protection which will focus on supporting organisations and data protection officers in meeting the requirements of GDPR that are due to come into effect on 25 May this year. Spearline is a wonderful example of why we need a Data Protection Bill. Not only will this Bill protect people in the context of data usage and storage, it will also create many jobs across the country in towns like Skibbereen, thus keeping rural communities alive.

Deputy Stephen S. Donnelly: I want to talk about the digital age of consent and whether it should be set at 16 or 13. I strongly believe that it needs to be set at 16 but I acknowledge that everybody in this debate, including the Minister and others who are advocating setting it at 13, wants to act in the best interests of young people and provide them with the best protection. Some of the debate has been fractious, which is unfortunate but nobody engaged in this debate has anything but the best of intentions for the children involved.

Should the age of consent be set at 16, 13 or somewhere in between? As Deputies Thomas Byrne and O'Callaghan have pointed out, Fianna Fáil's position is that it should be set at 16. I support that position and want to explain why. The question that the Minister, in advocating for 13, will have to answer is whether 13 or 14 year olds should have to consent to being profiled by Internet companies and to sharing their online activity including text messages, photographs and location with service providers. Should they, for example, consent to Facebook permanently owning all of the photographs they put up online and all of their location information? Should they consent to companies psychologically profiling them based on their use of applications and then using their images, online behaviour, location and demographics to target them and sell to them? That is what the online providers want to do because that is how they make

money and stay in business. The industry wants the age of consent to be 13 because it wants to be able to tell potential advertisers that young people aged 13 or 14 have said that they consent to technology companies having full access to their photographs, contacts, text messages, location, everything they like, dislike or express a view on; to being profiled; to being sold stuff; and to the selling of the information gathered about them to other third party providers. That is what the technology companies would like because they will make more money that way. Should 13 to 15 year olds have to consent to being profiled as products in order to be able to use Teamer or WhatsApp or any other application? No, they should not have to do that.

The argument I have heard from those advocating 13 as the age of digital consent is that if we opt for 16, the service providers will argue that no-one using their platform is below the age of 16 and will create an environment or platform that is only suitable for those aged 16 and over. The suggestion is that 13 to 15 year olds will still access those platforms and that therefore, we are implicitly accepting that 13 to 15 year olds will end up on platforms that the service providers have designed for those aged 16 and over. They will be accessing inappropriate platforms. That is one argument. The other argument is that if the above does not happen, the 13 to 15 year olds will be locked out of the platforms or services. The evidence provided for this argument is WhatsApp saying that it will not let 13 to 15 year olds access its product. The argument is that if the digital age of consent changes to 16, service providers will not provide a service for younger people. Do 13 to 15 year olds have the right to engage in online activity and to communicate with their friends through social media applications? Of course they have that right. Let us follow the argument through. Let us say we opt for 16, which I hope we do for all of the right reasons. The argument is that then a bunch of 13 year olds will go onto sites or platforms and be exposed to an inappropriate environment. If that happens regulators, parents, consumer groups, politicians and journalists will be all over those applications very quickly. We know that they need good publicity and are sensitive to how they are portrayed. We have just seen Facebook and Google pull back from running referendum advertisements in Ireland. We would have to believe that service providers would knowingly allow 13 year olds onto platforms designed for those aged 16 and over and would be okay with taking that risk. They would not be okay with that and those dumb enough to take such a risk would very quickly be found out and shut down. That is what happens if there is non-verification of 13 year olds.

If there is verification, the argument is that the 13 to 15 year olds will be locked out of applications like Teamer or WhatsApp. However, for that to be true, we would have to believe that we live in a world where another service provider would not immediately move in and offer an age appropriate platform to 13 to 15 year olds. That age cohort is the fastest growing consumer group for digital platforms so it is simply not credible that if 13 to 15 year olds are locked out of current platforms age-appropriate equivalents will not be provided immediately. In fact, what will happen is that those companies that say they will not provide access to their application to those under 16 will actually do so. They will do it very quickly and will do it for all of the countries that opt for a digital age of consent of 16 because if they do not, they will be turning their backs on the biggest consumer group in the country for no good reason.

I repeat that I believe everyone is coming at this with the best interests of young people at heart. I believe the arguments put forward for the relevant age to be 13 simply do not stack up against reality. The best way to ensure young people are suitably protected from having to give up ownership of their texts, photos and online activity to companies so that they can be profiled and sold to, while still having access to an online world, is to set the age at 16.

Deputy Mattie McGrath: I am happy to speak on this Bill and particularly on amendments

Nos. 14 and 15. Amendment No. 14 reads:

> In page 28, after line 34, to insert the following:
>
> **"Micro-targeting and profiling of children**
>
> **30.** It shall be an offence under this Act for any company or corporate body to process the personal data of a child as defined by *section 29* for the purposes of direct marketing, profiling or micro-targeting. Such an offence shall be punishable by an administrative fine under *section 140*.".

While I accept the argument underpinning that amendment, I have to point out that fines often do not mean an awful lot to big technology companies. They are so wealthy and have so much turnover that fines often do not punish them in a proper way. It is probable that "punish" is the wrong word, so I will say instead that fines do not have much of an impact on their balance sheets. Amendment No. 15, in the names of Deputies Sherlock, O'Callaghan and Thomas Byrne, reads:

> In page 29, line 2, to delete "13 years" and substitute "16 years".

As we all know, the issue of data protection must be addressed as we contend with the ever-expanding powers of social media platforms and online companies. Deputy Donnelly has referred to the impact of the decision made by Google and Facebook to shut down certain activities during the ongoing referendum campaign. It is strange that they have not made the same decision when other elections have been taking place across Europe since the 2016 US election. I have issues in that regard.

In an article in the *Irish Independent* last week, Charlie Weston provided an excellent example of the issues we are talking about when he revealed that "the AIB banking group has been accused of playing Big Brother with its customers after it emerged that it spies on customers' social media accounts". I remind the Minister that we owned over 90% of this bank after we bailed it out some years ago. Mr. Weston pointed out that "the lender is trawling through Facebook, Twitter, YouTube and other social media accounts held by customers for comments on its service". As the service is now pretty unfriendly to customers, the comments are not going to be very good. When one tries to meet a teller, one has to deal with a machine. Mr. Weston's article continued:

> The bank tells customers that the move "helps us understand your behaviour" [how ironic]. As part of the mortgage application process, customers are now required to sign a consent form, which gives permission for a range of things, such as a credit check, to be carried out on them and to allow their social media accounts to be looked at by the bank. It applies to those seeking mortgages with AIB [which does not give many of them anyway] and its subsidiaries, EBS and Haven. AIB Group is 71pc-owned by the State and is the Republic's biggest mortgage lender. Mortgage broker Karl Deeter accused the bank of invading the privacy of customers by spying on them. He said: "I'm confident that people would not be comfortable knowing that the bank can play Big Brother with their social media information." Mr Deeter, of Irish Mortgage Brokers, said it wasn't clear if someone who posts on Facebook that he or she attends the likes of anti-eviction protests would end up having a mortgage application refused if the bank was to see this.

Of course such an application would be refused because the bank would have to help its

friends.

In my capacity as a Member of the Oireachtas, I recently attended an excellent briefing provided by Dr. Mary Aiken and Professor Barry O'Sullivan on the digital age of consent. I would like to quote from an email that was sent by Dr. Aiken on behalf of herself and Professor O'Sullivan this morning:

> As you know there will a vote this afternoon regarding the Irish Digital Age of Consent. We take the opportunity to clarify:
>
> - The Digital Age of Consent is about protecting the personal data of children.
>
> - This issue is not about when children can go online.
>
> - Parents have the right to parent their children.
>
> In two years of campaigning on this issue, every parent we have spoken to supports a Digital Age of Consent of 16. I am a Cyberpsychologist, Prof. O'Sullivan is a Data Scientist we are internationally recognised experts in this area - we strongly support 16.

I expect that everyone is coming at this from a different angle, but the email from which I have quoted sets out the factual situation as far as I understand it. The email had to be sent out after very unfair allegations were put in the public domain by opponents of Dr. Aiken and Professor O'Sullivan. After I brought this matter to the attention of those who made the allegations, they sent out an apology and took down the allegations. If they had not done so, they would rightly be dealing with litigation and facing Deputy O'Callaghan or one of his colleagues. One is entitled to one's good name. The email sent by Dr. Aiken and Professor O'Sullivan, in which they say they "believe that the vast majority of parents of Ireland want 16 as a Digital Age of Consent, as do the teachers, the Gardaí and doctors of Ireland", makes it perfectly clear what is at stake here. The harvesting of children's data is not something we should actively encourage and promote, but that is exactly what this Bill will allow. For that reason, as I have said, I will be opposing the Bill and supporting those who are seeking to set the digital age of consent at 16.

An Leas-Cheann Comhairle: Go raibh maith agat.

Deputy Mattie McGrath: Níl mé críochnaithe fós, a Leas-Cheann Comhairle. Tá nóiméad eile fós agam.

An Leas-Cheann Comhairle: On the amendments.

Deputy Mattie McGrath: Of course. I have read the two amendments I am speaking about.

An Leas-Cheann Comhairle: The Deputy's comments should relate to the contents of the amendments.

Deputy Mattie McGrath: I am talking to the subject matter of the amendments.

An Leas-Cheann Comhairle: It is Second Stage every day.

Deputy Mattie McGrath: Not at all. People have come at this issue from different angles. I accept everyone's bona fides in this regard. As legislators, we have to make a choice when we are dealing with and voting on these two amendments. I appeal to the Minister to show under-

standing to the people who are here. There is a big difference between processing and profiling, or between profiling and processing. It is a question of use and abuse. We can never be too aware of how data is used nowadays. Those between the ages of 13 and 16 comprise the fastest-growing market. My children have just come through those years. My youngest child is 16. I understand totally that they want to be on these platforms. Being on them is one thing, but their personal data should not be allowed to be compiled, processed, used and misused. I believe the potential for misuse and abuse of their data is what we are talking about. I am concerned about these issues. I do not want to see Ireland being ridiculed for being out of kilter with many other countries in not taking the opportunity to safeguard our children's data. It is for this reason that I am supporting these amendments and opposing the Government's stated position.

Minister for Justice and Equality (Deputy Charles Flanagan): When this Bill was discussed in the Seanad and when it went through the rigorous select committee process, I explained comprehensively the consultation processes that resulted in the Government proposing a digital age of consent of 13 years. I do not propose to repeat those points this afternoon, not least because I thought the argument in favour of 13 being set as the relevant age was well made by Deputy Shortall in her constructive contribution last night. She outlined the reasons that a digital age of consent of 13 years will serve to protect children.

I want to take this opportunity to say I fully agree with the contribution of Deputy Clare Daly. I am seldom in a position to say that. I agree with the really good case she made. I also agree with what Deputy Wallace has said on this issue. I will add to what they said by making the point that Ireland's decision to choose 13 years as our digital age of consent is firmly in line with many other EU member states, including Denmark, Sweden and Finland. We look to these countries, more than most, for examples of good practice in the areas of child support and child protection. Countries like Latvia and Estonia can also be regarded as examples of good practice. Estonia perhaps gives more Government time to issues of e-activity, e-learning and e-government than any other EU member state. Our neighbours in the UK have also opted for 13 years as the digital age of consent, as have Spain and Portugal.

I want to acknowledge that there has been a rigorous process going back over a number of years. This has included the process of pre-legislative scrutiny on the part of the Joint Committee on Justice and Equality, which comprises Deputies and Senators of all parties and none. There was also the matter of the public consultation which fed into the decision of Government. Through the Seanad, Committee Stage and now Report Stage in the Dáil, this was not done lightly and it was not a decision taken without due careful and comprehensive consideration.

If I may now focus on amendments Nos. 13 and 14 tabled by Deputies Clare Daly, Wallace, Shortall and Ó Laoghaire, these amendments seek to criminalise the processing of children's personal data for direct marketing and profiling purposes. I wish to state again that while I am sympathetic to their objective, I am not in a position to accept the amendments. As Deputy Wallace stated last night, the processing of personal data for marketing and profiling purposes takes place under the so-called "legitimate interests" ground in Article 6.1(f) of the GDPR, and recital 47 states this particularly. During the select committee meetings, we addressed the issue of whether national law can impose additional conditions on processing carried out under the data protection directive. The court underlined the importance of free movement of personal data under the 1995 directive and concluded categorically that member states could not add new principles or impose additional conditions that have the effect of amending the scope of any of the grounds in Article 7 of the directive. Put simply, the imposition of prohibitions in national law on the processing of personal data that is lawful under the GDPR, or the criminalisation

of processing that is lawful under the GDPR, will be in breach of EU law. I think Deputy O'Callaghan acknowledged this. If he was not convinced, he certainly saw the difficulty. The State will be exposed to infringement proceedings and possible sanctions. We all know what that means.

I draw attention to the important difference between the wording of "legitimate interests" in Article 6 and the text of Article 7(f) of the 1995 directive. In the 1995 directive, Article 7 states that the personal data may be processed where necessary for the purposes of the legitimate interests of the controller, except where such interests are overridden by the fundamental rights and freedom of the data subject. The corresponding text in the GDPR contains an important addition, namely, "in particular where the data subject is a child". Taken together with the statement in recital 38 that children merit specific and special protection with regard to personal data because they may be less aware of risks or consequences and safeguards concerning their rights in respect of the processing of data, we can see that the GDPR itself imposes stricter conditions, which is worthy of consideration.

I share the concerns expressed by Deputies during earlier debate in respect of child protection. For that very reason, I have introduced section 31 providing for codes of conduct with regard to the processing of personal data of children for the purposes of direct marketing. I said on previous occasions that I expect this issue to be dealt with as a matter of urgency. In the light of concerns expressed here again, I assure the House that I will make early contact with Commissioner Jourová requesting the Commission to do all in its power to advance child protection issues. I met her last year. I will convey to her the concerns that have been expressed here on all sides of the House.

I am satisfied that it would not be in the interests of child protection to insert the section concerned into the Bill. The inclusion of provisions designed to criminalise processing that may be lawful under the GDPR would expose the State to infringement proceedings and distract attention from the overriding issues of child protection which have been amplified here by everybody on all sides. I agree with the Deputies. As far as the exposure of the State is concerned, it is not just my view nor that of my officials and Department but also the firm view of the Attorney General.

Deputy Thomas Byrne: On the digital age of consent, I do not think the full picture has been given in terms of the public consultation. There was a consultation in 2016, and while a number of organisations submitted for a digital age of consent of 13, they were not the majority of submissions. There were other submissions arguing for 16, as has been mentioned, by Dr. Aiken and Professor O'Sullivan along with others. Since that public consultation, we do know that other organisations have contacted the Department. I raised a question last night in the Dáil as to why these have not been put on the record. We know the paediatricians' section of the Royal College of Physicians of Ireland has advocated for 16, as have some other organisations. The teachers' unions, as I understand-----

Deputy Charles Flanagan: There has been no secrecy.

Deputy Thomas Byrne: There has been secrecy. I would ask the Minister to set out who has urged that we retain the age at 16 and is not listed on the public consultation. That was a little bit of a disservice to the debate. Deputy O'Callaghan, as our spokesperson, will be considering our position on the profiling amendments. There is no doubt that we can properly choose to protect children by having the digital age of consent at 16, as it is in the regulation the

Europeans have set for us. The Minister has helpfully listed countries that are going for 13. We have also listed large and important countries that are going for 16. I urge the Minister to let us know who has advised him for 16. If there are any others advocating for 13 who contacted the Department but have not been part of the public debate so far, I would certainly be interested in hearing about them.

Deputy Róisín Shortall: I will repeat what I said last night about everybody in this House being interested in and concerned about child protection. We all share the same objective. The question is as to the best way to do that. We cannot ignore the very strong representations we have heard from Barnardos, the Children's Rights Alliance and the ISPCC. They make a number of very cogent points. The predominant point is that raising the age of consent to 16, or whatever age, does give a false sense of security that it solves the problem when we know that simply is not the case. This is a once-off action a parent takes in handing over consent. If they say no, it means the child is denied access to that platform. If they say yes, which an awful lot of parents will do because they do not know what they are handing over, that is a problem also. If we recognise that it is a reality that many children lie online, we have to accept that it is a significant factor. Children also have ways around age verification mechanisms. If we are serious about curtailing and preventing the micro-targeting of children for commercial purposes, we have to restrict the ability of companies to target children and harvest their data.

On Committee Stage, the Minister rejected similar amendments to this. The amendments we have tabled, however, are not an additional condition of a new principle. They are within the scope of both EU jurisprudence and the GDPR. Article 6.1(f) states that processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests of the fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child. I would contend that the Minister is perfectly within the law to make it an offence for companies to engage in what they are doing at the moment, namely, the relentless targeting of children for commercial purposes whether it is in respect of junk food, alcohol, or gambling and other things. It is that practice that we need to outlaw.

Deputy Sean Sherlock: Article 8 of the GDPR deals with the issue of consent to the processing of personal data in connection with what we call information society services. That is the headline language that is used. The article itself proposes 16 years as the minimum age at which a child may independently consent to such processing. Younger children's data may be processed "only if, and to the extent, that consent is given or authorised by the holder of parental responsibility over the child".

Our approach to a digital age of consent of 16 years is to facilitate parents to give them the opportunity to parent, not create a situation where the law gives a 13 year old the right to consent to profiling and the use of his or her personal information for all sorts of service, be it exploitative or not. I do not believe we should legislate on the basis that we know that children will lie about the age they give in the age verification process. We have to legislate on the basis of what we believe to be the correct course of action. If we are talking about contract law, a digital age of consent of 16 years would err on the better side in the expression of clear judgment in ensuring parents have the right to parent.

Deputy Donnchadh Ó Laoghaire: In terms of having a false sense of security, it is not just because of what is in the provision but to an extent what we say and is said in the media that we need to be clear that more needs to be done to ensure the safety of children online. The Minis-

ter's opposition to the amendments on micro-targeting and the profiling of under-18s is based primarily on an argument made that there can be no amendments to the principles outlined in EU data protection law. This legislation is not simply a transposition of the GDPR. It is more than that. It is a directive which has direct effect in many aspects. However, this is Irish primary legislation. If the amendment was tabled to other legislation which had nothing to do with the director of regulation, would the same principle apply? There is nothing in the GDPR that prevents the Government and Parliament from making amendments of this kind. The GDPR will come to pass and stand. This legislation is likely to be passed. Ultimately, we have the right and authority to legislate, not beyond EU law but within its constraints. There is nothing in the GDPR which prevents us from providing stand-alone legislation. There is nothing in the amendments which refers to the GDPR. This is the Data Protection Bill 2018. There is nothing in it to prevent us from taking legislative action against micro-targeting. There is the potential for the public interest to override any legitimate desire of commercial organisations to advertise and use this activity. I simply do not see that argument.

Deputy Clare Daly: The horse has bolted when it comes to the Internet. All kids, 13 years and under, use it. Those who are in denial should cop themselves on. The reason most countries have moved to an age lower than 16 years is they are concerned that valuable websites will be denied to young people as it is unclear what services would fall under the term "information society services". It is absolute nonsense to claim consenting to have one's data profiled is a link with some evil social media website. It could also very much cover educational websites and so on.

Members have spoken about striking a balance in the debate. If one looks at this as a see-saw, all of the weight of the argument is on one side. It is very interesting how the debate has changed since earlier times. It is very suspicious and weird and I have never seen the likes of it. On one side, we have a section of the media, a few politicians, some of whom have changed their minds - I am not talking about the Social Democrats - a data analytics entrepreneur, an adviser to Interpol, Europol, the FBI and Paladin Capital Group. The latter is a government security and intelligence focused venture capital firm headed by the former deputy director of the NSA. On the other side, we have every single child protection organisation in the State, namely, the ISPCC, the Irish Society for the Prevention of Cruelty to Children, Children's Rights Alliance, the special rapporteur for children, the Ombudsman for Children, Cyberspace Ireland, *SpunOut.ie*, the president and president-elect of the Psychological Society of Ireland, the director of the National Anti-Bullying Research and Resource Centre, the UNESCO chair for children, youth and civil engagement and a variety of senior clinical psychologists. It is not surprising that individuals with a security and intelligence background would have an interest in getting people to reveal their identities. If we are all in favour of child protection, I will side with the child protection experts and go for a digital age of consent of 13 years.

Deputy Mick Wallace: We accept that most children will get around the age verification step easily. We should not set up a system which will encourage kids to lie. It will simply encourage them to hide their online activity from their parents and not seek help and support. It will undermine the ability of parents to engage with their children on their online activity to teach them critical thinking skills in the digital world. A 2015 report, Net Children Go Mobile, found that 40% of children in Ireland under 11 and 12 years of age had a social networking account, despite the fact that social networking sites had an age restriction of 13 years. We already have age restrictions that do not work and this will only create a false impression of safety online.

If the digital age of consent is set at 16 years, online platforms will be able to argue that their spaces are for older teenagers and adults and simply reduce their protections accordingly. We can create a digital safety programme through education, as suggested by the ISPCC, the Ombudsman for Children and others, through the establishment of an office of digital safety commissioner with statutory powers to regulate and educate about the online space. As the director of the National Youth Council of Ireland, Ms Mary Cunningham, said a few days ago, learning to cross the road is far more useful than hoping for a ban on cars. In the same way, education and a focus on developing critical thinking will be far more useful tools for young people and the adults in their lives than an increased digital age of consent which risks providing a false sense of security.

The justice committee heard from many experts in the area. Its Chairman, Deputy Caoimhghín Ó Caoláin, fully agrees with the digital age of consent being set at 13 years. I do not believe for one second that Deputy Jim O'Callaghan does not either. This is madness.

Deputy Sean Sherlock: The Deputy can now answer Deputy Mick Wallace's point.

An Ceann Comhairle: Let the Deputy speak for himself.

Deputy Jim O'Callaghan: One of the advantages of the amendment dealing with the digital age of consent is that we know, whether we go for 13 or 16 years, we are not going to be in breach of the GDPR because it goes out of its way to give a certain leeway to national states to decide the age at which they want to set it. I am not a Eurosceptic, but it does reveal the extent to which we operate with limited sovereignty when it comes to certain parts of this legislation. I support amendments Nos. 13 and 14 as they are sensible. The only point which would block me supporting them is if they would be in breach of the GDPR if inserted into legislation. We cannot introduce an amendment which would be in breach of the GDPR.

During the course of my earlier contribution I went through the different recitals and articles in the GDPR which were relevant. I regret to say I have not got huge satisfaction from the Minister. He said it would subject it to infringement proceedings. When one looks at Article 6, however, it is the basis of the Minister's contention. He has said processing is lawful if it is necessary for the purposes of the legitimate interests pursued by the controller or third party. That is expressly set down in Article 6(1)(f). It continues to state processing is not legitimate if it is the case that "interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child". I believe we are entitled to introduce protection where the interests of a child are at stake. The Minister has not really given me the full comfort that I require to believe we will definitely be subject to infringement proceedings.

Deputy Stephen S. Donnelly: I want to come back to the digital age of consent of 16 years. I have a great deal of respect for Deputy Daly as a parliamentarian but she has scurrilously discredited one of the people arguing for a digital age of consent of 16 years in her contribution. She said everyone agreed with her. Then, she presented one substantive argument to the effect that people who are 13, 14 or 15 years of age will be locked out of the applications but they have a right to those applications. This is a fundamental misunderstanding of the marketplace. It assumes that if WhatsApp or an educational software platform decides only to provide for those aged 16 years and upwards, then those aged 13, 14 and 15 years will not quickly have access to similar products designed for them. That is simply not the case. Let us suppose we were having an argument about whether we should have an age of eligibility to buy alcohol. The

argument would be that we should not set the age at 18 years but at 13 years because we do not want children to lie about their age. The thinking is that if the age limit is set at 18 years, then no drinks will be offered that are appropriate to those aged 13 or 14 years. That is the analogy and it simply does not stack up.

It is all well and good standing up under privilege, as Deputy Daly has done, and making serious allegations about someone who, for the very best of reasons, is advocating an age of consent of 16 years. It is easy to stand up under Dáil privilege and make the kind of accusations Deputy Daly has made but the only substantive argument she made was that younger children will be locked out. They will not. Therefore, the digital age of consent of 16 years should stand. I believe it is the right thing to do.

An Ceann Comhairle: I want to be clear now. I did not hear Deputy Daly making any personal accusation.

Deputy Stephen S. Donnelly: Then you were not listening carefully enough.

An Ceann Comhairle: Maybe I was not. Deputy Daly, were you saying that?

Deputy Clare Daly: Absolutely not, a Cheann Comhairle. I was reiterating the biography of someone who has made vocal representations. It is not in any way derogatory to quote a person's biography. It is simply testament to the credentials or expertise in this field of the person.

An Ceann Comhairle: We have to be careful here. We do not have the right to take someone's reputation. We have made the point and Deputy Daly has clarified it. I call Deputy Mattie McGrath.

Deputy Mattie McGrath: I admit that I have concerns. I also admit and respect that the committee sat and discussed this for a long time. I am not a member of the committee and I was neither involved in this nor kept abreast of it.

There are issues with regard to public consultation, as Deputy Byrne said. In most public consultations many people do not get involved. They might miss the deadlines because of the way they are advertised and so on. It could be a simple thing relating to a road or something as serious as this. People simply do not see these things. We are all so busy in our lives and we do not see them. People may not be aware of it until something is brought to their attention by a discussion here, by meeting experts in the field or lobbyists or whomsoever.

It would be nice to get a full picture of the people who made contact with either the Department or officials who were dealing with this during the consultation and after the consultation finished. If representatives of the Royal College of Surgeons in Ireland and paediatricians are concerned, then we must accept that as well and see the full list.

I understand Article 8 of the general data protection regulation suggests that 16 years of age is appropriate. The Minister has said that we cannot go against what is provided for in the GDPR. Either we can or we cannot. I am unsure whether we can.

Perhaps if we have a limit of 13 years, parents will be unhappy because the age of consent will be 13 years and they may prefer it to be 16 years. Are we going to be blocking the parents from exercising proper parental control and watching over their children? We know that if the age is 16 years the companies will adapt quickly. They probably have the apps ready for people between 13 and 16 years of age. It is a complex area. I have not heard anything to change my

mind on it.

Deputy Charles Flanagan: I wish to make two points by way of concluding remarks. The first relates to age. I wish to reiterate all the points made relating to the consultation process and the arrival at the age of consent of 13 years.

I am a little concerned at issues being introduced that were not considered earlier in the debate. Deputies have talked about secrecy of the public consultation process. I wish to make clear that many people made a contribution or provided input during the public consultation process. In all cases, their documentation was received and duly given careful consideration. All submissions made to the Department during the course of public consultation are on the website. There should be no issue regarding secrecy or implications that follow therefrom by way of question mark. The submissions are all on the Department website. I am happy to state that by way of confirmation for Deputy McGrath. Once again he wishes to introduce some cloud and fog into the process.

Deputy O'Callaghan commented on amendments Nos. 13 and 14 in particular. A code of conduct can guide interpretation of Article 6(1)(f) but there is no reference in this provision to national law. Indeed, the court has already found that member states are unable to or cannot limit the scope of the provision. Deputy O'Callaghan stated that he was not a Eurosceptic but that he has a difficulty about relinquishing of national sovereignty. I look at it differently. I look at the pooling of sovereignty and the influence we can bring to bear to ensure that what we wish to do in terms of child protection can have EU-wide effect.

An Ceann Comhairle: Thank you, Minister. Time is up.

Deputy Charles Flanagan: I will make early contact with Commissioner Jourová on the disposition of Members. I share the object of Members but I have no wish to do anything that might ultimately give rise to exposing the State to infringement proceedings.

An Ceann Comhairle: Amendment No. 13 is in the names of Deputies Shortall, Daly and Wallace. How stands the amendment, Deputy Daly?

Deputy Clare Daly: It is very confusing, a Cheann Comhairle. I have no wish to be difficult but part of the problem is what the Select Committee on Justice and Equality has started. Deputies Shortall and Ó Laoghaire have gone to debate the Parental Leave (Amendment) Bill. All of us should probably be there as well.

An Ceann Comhairle: Deputy Shortall moved the amendment. She would have been entitled to another two minutes, but she is not here. Therefore, no one else is entitled to speak.

Deputy Clare Daly: That means we cannot speak.

An Ceann Comhairle: You cannot. I am sorry.

Deputy Clare Daly: I really do not know what to do now. I know Deputy Shortall wanted to push this, and we do as well. However, the Minister seems to be saying that if we push it then we are exposing the State to a breach and potential liabilities and so on. We have to take that into consideration as well. Now, we are paralysed and we do not know what to do because those Deputies are not here.

An Ceann Comhairle: Minister, do you wish to give a brief response?

Deputy Charles Flanagan: I have made a comment but I am adding to it as well. I would be happy to bring the actual concerns, as raised by Deputy Daly and Deputy Shortall, directly by way of written early communication with Commissioner Jourová. I appeal for that to be accepted. Of course I will circulate any further correspondence that comes in on that particular issue.

An Ceann Comhairle: Thank you, Minister. We cannot keep doing this. How stands amendment No. 13? Is the amendment being pressed?

Amendment put and declared lost.

Deputy Donnchadh Ó Laoghaire: I move amendment No. 14:

In page 28, after line 34, to insert the following:

"Micro-targeting and profiling of children

30. It shall be an offence under this Act for any company or corporate body to process the personal data of a child as defined by *section 29* for the purposes of direct marketing, profiling or micro-targeting. Such an offence shall be punishable by an administrative fine under *section 140*.".

Amendment put:

The Dáil divided: Tá, 62; Níl, 43; Staon, 0.		
Tá	***Níl***	***Staon***
Boyd Barrett, Richard.	***Bailey, Maria.***	
Brady, John.	***Breen, Pat.***	
Brassil, John.	***Brophy, Colm.***	
Browne, James.	***Broughan, Thomas P.***	
Buckley, Pat.	***Burke, Peter.***	
Burton, Joan.	***Byrne, Catherine.***	
Butler, Mary.	***Cannon, Ciarán.***	
Byrne, Thomas.	***Carey, Joe.***	
Cahill, Jackie.	***Collins, Joan.***	
Calleary, Dara.	***Collins, Michael.***	
Casey, Pat.	***Corcoran Kennedy, Marcella.***	
Cassells, Shane.	***Coveney, Simon.***	
Chambers, Jack.	***D'Arcy, Michael.***	
Chambers, Lisa.	***Daly, Clare.***	
Crowe, Seán.	***Deering, Pat.***	
Curran, John.	***Doyle, Andrew.***	
Doherty, Pearse.	***Durkan, Bernard J.***	
Donnelly, Stephen S.	***English, Damien.***	
Ellis, Dessie.	***Fitzgerald, Frances.***	
Ferris, Martin.	***Fitzpatrick, Peter.***	
Funchion, Kathleen.	***Flanagan, Charles.***	

Gallagher, Pat The Cope.	***Griffin, Brendan.***	
Haughey, Seán.	***Harris, Simon.***	
Healy-Rae, Danny.	***Kyne, Seán.***	
Healy, Seamus.	***Madigan, Josepha.***	
Howlin, Brendan.	***McHugh, Joe.***	
Kelly, Alan.	***McLoughlin, Tony.***	
Kenny, Gino.	***Moran, Kevin Boxer.***	
Lawless, James.	***Murphy, Eoghan.***	
Martin, Catherine.	***Naughten, Denis.***	
Martin, Micheál.	***Neville, Tom.***	
McGrath, Mattie.	***Noonan, Michael.***	
McGrath, Michael.	***O'Connell, Kate.***	
Mitchell, Denise.	***O'Donovan, Patrick.***	
Moynihan, Aindrias.	***O'Dowd, Fergus.***	
Moynihan, Michael.	***O'Sullivan, Maureen.***	
Munster, Imelda.	***Phelan, John Paul.***	
Murphy O'Mahony, Margaret.	***Ring, Michael.***	
Murphy, Catherine.	***Rock, Noel.***	
O'Brien, Darragh.	***Ross, Shane.***	
O'Callaghan, Jim.	***Stanton, David.***	
O'Dea, Willie.	***Wallace, Mick.***	
O'Loughlin, Fiona.	***Zappone, Katherine.***	
O'Reilly, Louise.		
O'Rourke, Frank.		
O'Sullivan, Jan.		
Ó Broin, Eoin.		
Ó Caoláin, Caoimhghín.		
Ó Cuív, Éamon.		
Ó Laoghaire, Donnchadh.		
Ó Snodaigh, Aengus.		
Quinlivan, Maurice.		
Rabbitte, Anne.		
Ryan, Brendan.		
Ryan, Eamon.		
Scanlon, Eamon.		
Sherlock, Sean.		
Shortall, Róisín.		
Smith, Bríd.		
Smyth, Niamh.		
Stanley, Brian.		
Troy, Robert.		

Tellers: Tá, Deputies Donnchadh Ó Laoghaire and Brian Stanley; Níl, Deputies Joe McHugh

and Tony McLoughlin.

Amendment declared carried.

Deputy Jim O'Callaghan: I move amendment No. 15:

In page 29, line 2, to delete "13 years" and substitute "16 years".

Amendment put:

The Dáil divided: Tá, 56; Níl, 51; Staon, 0.		
Tá	***Níl***	***Staon***
Brady, John.	***Bailey, Maria.***	
Brassil, John.	***Boyd Barrett, Richard.***	
Broughan, Thomas P.	***Breen, Pat.***	
Browne, James.	***Brophy, Colm.***	
Buckley, Pat.	***Bruton, Richard.***	
Burton, Joan.	***Burke, Peter.***	
Butler, Mary.	***Byrne, Catherine.***	
Byrne, Thomas.	***Cannon, Ciarán.***	
Cahill, Jackie.	***Carey, Joe.***	
Calleary, Dara.	***Collins, Joan.***	
Casey, Pat.	***Collins, Michael.***	
Cassells, Shane.	***Corcoran Kennedy, Marcella.***	
Chambers, Jack.	***Coveney, Simon.***	
Chambers, Lisa.	***D'Arcy, Michael.***	
Crowe, Seán.	***Daly, Clare.***	
Curran, John.	***Deering, Pat.***	
Doherty, Pearse.	***Doherty, Regina.***	
Donnelly, Stephen S.	***Doyle, Andrew.***	
Ellis, Dessie.	***Durkan, Bernard J.***	
Ferris, Martin.	***English, Damien.***	
Funchion, Kathleen.	***Fitzgerald, Frances.***	
Gallagher, Pat The Cope.	***Fitzpatrick, Peter.***	
Haughey, Seán.	***Flanagan, Charles.***	
Healy-Rae, Danny.	***Griffin, Brendan.***	
Howlin, Brendan.	***Harris, Simon.***	
Kelly, Alan.	***Healy, Seamus.***	
Lawless, James.	***Kenny, Gino.***	
Martin, Micheál.	***Kyne, Seán.***	
McConalogue, Charlie.	***Madigan, Josepha.***	
McGrath, Mattie.	***Martin, Catherine.***	
McGrath, Michael.	***McHugh, Joe.***	
Mitchell, Denise.	***McLoughlin, Tony.***	

Moynihan, Aindrias.	***Moran, Kevin Boxer.***	
Moynihan, Michael.	***Murphy, Catherine.***	
Munster, Imelda.	***Murphy, Eoghan.***	
Murphy O'Mahony, Margaret.	***Naughten, Denis.***	
O'Brien, Darragh.	***Neville, Tom.***	
O'Callaghan, Jim.	***Noonan, Michael.***	
O'Dea, Willie.	***O'Connell, Kate.***	
O'Loughlin, Fiona.	***O'Donovan, Patrick.***	
O'Reilly, Louise.	***O'Dowd, Fergus.***	
O'Rourke, Frank.	***Phelan, John Paul.***	
O'Sullivan, Jan.	***Ring, Michael.***	
O'Sullivan, Maureen.	***Rock, Noel.***	
Ó Broin, Eoin.	***Ross, Shane.***	
Ó Cuív, Éamon.	***Ryan, Eamon.***	
Ó Laoghaire, Donnchadh.	***Shortall, Róisín.***	
Ó Snodaigh, Aengus.	***Smith, Bríd.***	
Quinlivan, Maurice.	***Stanton, David.***	
Rabbitte, Anne.	***Wallace, Mick.***	
Ryan, Brendan.	***Zappone, Katherine.***	
Scanlon, Eamon.		
Sherlock, Sean.		
Smyth, Niamh.		
Stanley, Brian.		
Troy, Robert.		

Tellers: Tá, Deputies Jim O'Callaghan and Brendan Ryan; Níl, Deputies Joe McHugh and Tony McLoughlin.

Amendment declared carried.

Deputy Clare Daly: I move amendment No. 16:

In page 31, line 38, to delete "may" and substitute "shall".

Section 35 deals with suitable and specific measures for processing data. In general, throughout the Bill these measures are used as a substitute for gaining somebody's consent to process the most sensitive data. It is obviously significant because the idea of these suitable and specific measures is that they are technical and organisational safeguards, things such as limitations on access by staff in an organisation to highly sensitive data or a logging-in system so it is clear who has access to data and when, that sort of thing. With this amendment, we are proposing that any regulations made under the section in order to either identify suitable and specific measures that have to be used in certain situations or to specify that some of those measures are mandatory shall first identify different measures for different categories of personal data, different categories of controllers and so on and, second, specify that at least one of the measures set out in the list in subsection 35(1) is mandatory. We think it is important that regulations in this regard are obligated to be fairly clear and detailed. That is

5 o'clock

because those measures are a requirement in so many different processing situations throughout the Bill and because they are so crucial to safeguarding people's rights and their data, the rules around them should therefore be pretty precise. In other words, those rules should take into account what kinds of data are being processed, by whom and what kinds of processing actions are being taken on them. We also think it is important that at least one, but ideally more, of the measures listed in section 35 have to be made mandatory if a Minister is going to the trouble of drawing up regulations and the measures listed in subsection 35(1) are fairly basic. It should not be a major cross to bear to make at least one of them mandatory.

I will give a very brief example. The Minister said on Committee Stage that schools hold data on children's allergies and other health issues so obliging them to implement limitations on access would be too onerous. Flipping that around, it implies the Minister is okay with any visitor to the school getting access to highly sensitive information about a young child's health. We do not really think in that context access limitations are too onerous at all. It would be great to think that regulations were mandatory in this particular context. To give another example, I recently heard of one school where staff were told the GDPR means the school has to hang on to permissions slips for school tours until the children are 21. It is utter madness. There is a huge misunderstanding out there. Targeted training is another measure listed in subsection 35(1). It should be made mandatory in certain contexts because we are opening the road to utter chaos otherwise.

Deputy Charles Flanagan: I am unable to accept the amendment which, as we said earlier, arises out of something of a misreading of the purpose of subsection 35(4). As it stands, subsection (4) permits regulations to identify different toolbox measures for different categories of personal data or different categories of controllers. However, it is probably not appropriate to have such a differentiation in all cases. Deputy Daly set out an example. It might be appropriate to apply the same toolbox safeguard measures to different categories of data or on occasion to different categories of controllers. It might, for example, be appropriate to impose the same encryption requirement on different categories of controllers but if the amendment is passed it would prevent that and mean it could not be done. I am not happy with the amendment and I will not accept it.

Amendment put and declared lost.

Deputy Charles Flanagan: I move amendment No. 17:

In page 32, to delete lines 8 to 27 and substitute the following:

"(5) Subject to *subsection (6)*, regulations may be made under *subsection (2)*—

(a) by the Minister following consultation with such other Minister of the Government as he or she considers appropriate, or

(b) by any other Minister of the Government following consultation with the Minister and such other Minister of the Government as he or she considers appropriate.

(6) The Minister or any other Minister of the Government shall consult with the Commission before making regulations under *subsection (2)*.

(7) The Commission may, on being consulted under *subsection (6)*, make observa-

tions in writing on any matter which is of significant concern to it in relation to the proposed regulations and, if the Minister or any other Minister of the Government proposes to proceed to make the regulations notwithstanding that concern, that Minister shall, before making the regulations, give a written explanation as to why he or she is so proceeding to—

(a) the Committee established jointly by Dáil Éireann and Seanad Éireann known as the Committee on Justice and Equality or any Committee established to replace that Committee, and

(b) any other Committee (within the meaning of *section 19(1)*) which that Minister considers appropriate having regard to the subject matter of the regulations.".

Amendment agreed to.

An Ceann Comhairle: Amendments Nos. 18, 21 and 22 are related and will be discussed together.

Deputy Mick Wallace: I move amendment No. 18:

In page 33, lines 18 to 23, to delete all words from and including "for—" in line 18 down to and including line 23 and substitute the following:

"for the performance of a function of a controller conferred by or under an enactment

or by the Constitution.".

This amendment addresses section 37(1)(b) which seems to give far too much scope to third party data processing in respect of non-statutory schemes, particularly given that this section of the Bill describes a situation where the consent of the data subject will be bypassed. We should not, for example, give marketing companies working on non-statutory schemes such exemptions from the requirement to obtain consent. It is not too difficult simply to require such third parties working on non-statutory projects to obtain consent to process personal data. On Committee Stage the Minister defended this part of the Bill by saying that section 37(1)(b) was necessary for non-statutory schemes such as the free fuel scheme, free travel scheme and the back to school clothing allowance. Surely these schemes are already provided for in the GDPR under Article 6.1.(f) and the idea there of "legitimate interests". Nobody is going to dispute that the processing of data for the free fuel scheme is a legitimate interest as per the GDPR.

Amendment No. 21 seeks to limit the purposes for which personal data that is collected can be processed by insisting that the purposes be specified at the outset which is listed in Article 23 of the GDPR as a specific provision that any legislative measure referred to in Article 23 shall contain. This section refers to personal data processed in the public interest which according to Article 6 of the GDPR allows the data controller to bypass the consent of the data subject. There will be times when such bypassing of consent will be necessary and that is why the GDPR provides for such occasions. We have already expressed some concern about section 37(1)(b) and said on Committee Stage that we were very open to Sinn Féin's proposal to oppose the section as it seeks to carve out exemptions to the GDPR that exceed what the GDPR allows. Processing of data for purposes other than the purpose for which that data is collected is prohibited except in very limited circumstances such as preventing a threat to national security. Insisting that the purposes for which data is collected be specified at the outset in regulations

made under section 37(4) is a sensible provision and would protect against processing for other or unspecified purposes in the public interest. I acknowledge that section 37(5)(c) provides for a Minister to impose other conditions on processing which he or she sees as appropriate while such conditions would not be mandatory.

Amendment No. 22 is an attempt to introduce an extra layer of protection which is necessary given the wideranging powers section 37 gives to Ministers. We have concerns about the whole section. The lines we seek to insert are taken from section 48 of the Bill which itself borrows heavily for its wording from the GDPR.

Amendments Nos. 21 and 22 seek to limit ministerial powers in terms of processing data in the so-called public interest. As I said on Second Stage the public services card project and more important, the single customer view behind it is the largest data sharing project in the history of the State and has massive problems. It shows clearly the liberties successive Governments in various Departments have already taken in sharing data in the so-called public interest.

Deputy Clare Daly: In respect of amendment No. 18, on Committee Stage when the Minister listed the free fuel and travel schemes and the school meals programmes, operated by the Department of Employment Affairs and Social Protection on a non-statutory basis, he said that this processing complies with the GDPR because Recital 41 states: "Where this Regulation refers to a legal basis or a legislative measure, this does not necessarily require a legislative act adopted by a parliament" each time. If this processing is compliant with the GDPR why do we need section 37(1)(b)? The GDPR already has direct application and if the Department's administration of these non-statutory schemes is already compliant we do not need anything in the Bill to make them compliant. Therefore, we are a bit suspicious about why this clause is there. Is the Minister trying to provide cover for an issue that might not necessarily be compliant, as in the instance given by Deputy Wallace where the public services card is required to obtain a passport which is non-statutory? That might be called into question because the processing is of questionable legality. Is the Minister trying to make it legal with this clause? We would be concerned about that.

Under the old Data Protection Acts there was a specific exemption for the non-statutory schemes cited by the Minister but it was much more narrowly drawn than this one. There was also an exemption in the old Data Protection Acts to allow processing of personal data for the performance of any other function of a public nature performed in the public interest by a person. This is broadly similar to what is permitted under the GDPR. We think it a bit odd that this Bill wants to diminish data protection rights relative to our law and European law rather than bring them up to the standard we are obliged to do.

Deputy Wallace dealt with amendment No. 21 about purpose limitation, one of the fundamental principles relating to processing of personal data laid out in Article 5. I do not think that for the avoidance of doubt the Minister putting in "purpose" presents a huge difficulty. It is far more specific than the word "circumstance". That is all we want to do there.

Section 22, as Deputy Wallace said, is lifted from section 48. Regulations giving statutory and non-statutory bodies *carte blanche* to ignore the GDPR should at the very least meet basic standards.

Deputy Charles Flanagan: It is important to retain section 37 for legal certainty and for transparency and I cannot therefore accept the amendments. In the field of social protection, for

example, certain important and valuable schemes operated by the Department of Employment Affairs and Social Protection operate on a non-statutory basis, such as the free fuel scheme, free travel scheme, back to school clothing and footwear allowance and the school meal programme. All of these schemes will continue to require the processing of personal data, and that processing is compliant with GDPR. Recital 41 states that where the GDPR refers to a legal basis "this does not necessarily require a legislative act adopted by parliament". I am sure Members will agree that these schemes, and other similar non-statutory measures, such as schemes to assist victims of flooding and of the recent fodder shortage, can be administered pretty quickly without the need to have a statutory basis. These are beneficial, and it would not be in anybody's best interests if they were jeopardised by the introduction of what might be regarded as legal uncertainty in respect of the data processing that is essential for their operation. Subsection (4) allows for the making of regulations to specify that processing of personal data is necessary for the performance of a task carried out in the public interest by a controller or in the exercise of official authority which may be vested in the controller. As in the case of previous amendments, amendments Nos. 21 and 22 appear to arise from a misreading, on the basis that the regulations referred to in subsections (4) and (5) will not create a lawful basis for processing. The legal basis is Article 6 of the GDPR. The amendments are intended to clarify that certain processing is necessary for the performance of a task. I cannot accept amendments 21 and 22.

I reiterate that section 37, as it stands, is important and essential for reasons of legal certainty and that I cannot accept amendments to it.

Amendment put and declared lost.

Deputy Charles Flanagan: I move amendment No. 19:

In page 33, to delete lines 37 to 39, and in page 34, to delete lines 1 to 19 and substitute the following:

"(4) Subject to *subsection (5)*, the processing of personal data which is necessary for the performance of a task carried out in the public interest by a controller or which is necessary in the exercise of official authority vested in a controller may be specified in regulations made—

(a) by the Minister following consultation with such other Minister of the Government as he or she considers appropriate, or

(b) by any other Minister of the Government following consultation with the Minister and such other Minister of the Government as he or she considers appropriate.

(5) The Minister or any other Minister of the Government shall consult with the Commission before making regulations under *subsection (4)*.

(6) The Commission may, on being consulted under *subsection (5)*, make observations in writing on any matter which is of significant concern to it in relation to the proposed regulations and, if the Minister or any other Minister of the Government proposes to proceed to make the regulations notwithstanding that concern, that Minister shall, before making the regulations, give a written explanation as to why he or she is so proceeding to—

(a) the Committee established jointly by Dáil Éireann and Seanad Éireann known as the Committee on Justice and Equality or any Committee established to replace that Committee, and

(b) any other Committee (within the meaning of *section 19(1)*) which that Minister considers appropriate having regard to the subject matter of the regulations.".

Amendment agreed to.

Amendment No. 20 not moved.

Deputy Clare Daly: I move amendment No. 21:

In page 34, line 23, to delete "and" and substitute the following:

"(c) the purposes for which the personal data may be processed, and".

Amendment put and declared lost.

Deputy Mick Wallace: I move amendment No. 22:

In page 34, between lines 26 and 27, to insert the following:

"(6) Regulations made under *subsection (4)* shall—

(a) respect the essence of the right to data protection, and

(b) enable processing of personal data only in so far as is necessary and proportionate to the legitimate aim pursued.".

Amendment put and declared lost.

An Ceann Comhairle: Amendments Nos 23 to 41, inclusive, 51 to 58, inclusive, 68 to 73, inclusive and 148 are related and will be discussed together. Amendments Nos. 52 to 55, inclusive, are physical alternatives to amendment No. 51; amendments Nos. 69 and 70 are physical alternatives to amendment No. 68 and amendments Nos. 72 and 73 are physical alternatives to amendment No. 71.

Deputy Thomas Byrne: I move amendment No. 23:

In page 35, line 9, to delete "A specified person" and substitute the following:

"Having regard to the importance of the right of freedom and expression and information in a democratic society, a specified person may,".

I do not propose to delay the House on this matter as there are other matters of substantially more importance to be dealt with. On the amendments the Minister made on Committee Stage in inserting sections 38 and 39 into the Bill, I have raised concerns with him and his officials. Rather than repeat those concerns which generally stem from what I believe may be a narrow definition of "electoral activities", I would like the Minister to set out the position, as he understands it, including whether he accepts my contention that the definition is too narrow. This is about allowing politicians and public representatives to do their work which is in the public interest and essential to democracy.

On politicians and the need for data protection, there have not been major scandals or outrages about the abuse of data by politicians, other than a few incidents involving some very unwise people in sending text messages from phones which should not have been used. That is not what I am seeking to address in my amendments; rather, they seek to allow the work of democracy to proceed as best it can. I am happy to allow the Minister to explain why he thinks I am wrong and that the definition of "electoral activities" does include the normal work politicians do outside the electoral cycle.

An Ceann Comhairle: Before we proceed, I would like to make a rather unusual intervention. It has been brought to my attention that we have a distinguished visitor in the Visitors Gallery. While it is against the rules of the House to refer to persons in the Visitors Gallery and I am here to enforce them, I can also break them on occasion. James Connolly, a retired brigadier general, was born on 1 November 1923. He was commissioned by President Douglas Hyde in 1945. He was a pilot and, at one stage, head of the apprentice school at Baldonnel. He did UN tours in the early 1960s and the Middle East. His grandfather was James Connolly. His father, Roddy Connolly, son of James Connolly, was at various times a Member of the Dáil and the Seanad. His aunt, Nora Connolly-O'Brien, who, with her mother, wife of James Connolly, visited him on the night before his execution, was an Independent Member of Seanad Éireann as a Taoiseach's nominee in the late 1950s and mid-1960s. It is a great privilege to have him in the Visitors Gallery.

Deputy Charles Flanagan: I welcome anyone who was born on 1 November, my birth date.

An Ceann Comhairle: It is an auspicious occasion.

Deputy Charles Flanagan: This is a large group of Opposition and Government amendments which deal with sections 38, 39, 47, 57 and 58, all of which are linked with the operation of our democratic system of government. I am unable to accept amendments Nos. 25, 51, 68 and 71 which have been tabled by Deputies Clare Daly, Mick Wallace and Donnchadh Ó Laoghaire and which propose the deletion of sections 38(2), 47, 57 and 58, respectively, as I believe these sections contain appropriate and proportionate measures to facilitate the smooth operation of our democratic system and to allow elected representatives in the State to maintain contact with and serve the electorate. This is a fundamental duty in our membership of the House. As amendments Nos. 57 and 58, in the name of Deputy Donnchadh Ó Laoghaire, appear to be alternatives, I am also unable to accept either of them.

Turning to the amendments tabled by Deputy Thomas Byrne, while I am very favourably disposed towards their objective, the Office of the Attorney General has advised that they may not be GDPR-compliant and that, furthermore, they may be open to legal challenge, which is a concern. The key changes proposed by the Deputy are replacement of all references to "electoral activities" with "political activities"; insertion of a non-exhaustive definition of "political activities"; the introduction of an additional condition in relation to representations made on behalf of data subjects who, by reason of physical or mental incapacity, are unable to do so themselves; the introduction of a further, potentially limiting, condition for elected representatives in responding to requests and representations in section 39(4); and replacement of section 38(3) with looser security conditions in a new subsection (6).

On the first change proposed, section 6A(3)(*c*) of the Data Protection Act 1988 which is carried over in section 58 of the Bill restricts the right to object to processing carried out in the

course of electoral activities. Recital 56 of the GDPR also refers to processing personal data in the course of electoral activities. The risk is that replacing the reference to "electoral activities" which is in the current law and the GDPR with a reference to "political activities" would result in uncertainty and might give rise to legal challenges based on an apparent non-compliance with the GDPR.

On the second change proposed, inclusion of a non-exhaustive definition of "political activities" would cut across Article 9.2(*d*) of the GDPR which is directly applicable and does not require transposition into national law. It permits, among other things, the processing of personal data, including special categories of personal data, during the course of its legitimate activities by a political party where the processing relates to members, former members or those who have regular contact with it. This covers processing connected with membership, fundraising and all other activities in which we engage from time to time. The introduction of a reference to protection of "the vital interests of the data subject" in amendment No. 35 is problematic because that term appears in Article 6.1(d) of the general data protection regulation, GDPR, and it has been given a very narrow and restrictive interpretation. If adopted in this context, it would impose a heavier burden on the person making a request or representation on behalf of a data subject without the capacity to make a request or representation on their own behalf.

Amendment No. 40 would appear to introduce an unnecessary consistency test whereas the current wording provides a legal basis for a response enabling an elected representative to respond to a request or representation. Amendment No. 40 would impose a condition that any such response must be "in such manner as is consistent with his or her role and functions as an elected representative". It is important to note that responsibility for compliance with this test would rest with the person disclosing the data to the elected representative, not with the elected representative.

The proposal in amendment No. 41 to replace the specified safeguard in section 38(2) with a general reference to "reasonable and proportionate measures" would not meet the "suitable and specific measures" threshold in section 35. The current text of section 38(2) incorporates the safeguard set out in section 35(1)(b) of the Bill.

I draw Members' attention to Government amendment No. 148, which contains amendments to section 13A of the Electoral Act 1992 in a new section 173. It inserts a new subsection (3C), which provides that the electoral register may be used by a specified person referred to in section 38 for the purpose of communicating with data subjects under that section, or by an elected representative referred to in section 39 for the purposes of that section.

I do not wish to introduce any element of confusion because it is very important that we are clear here. I am confident that the combined impact of sections 38, 39 and 173, which is the new section that we will come to later on, will preserve the important role of elected public representatives in performing their representative functions and day-to-day tasks in serving the electorate. I have been in this House a long time by dint of my work as a public representative and through my constituency work, serving my electorate. I have examined the situation closely. The objective of Deputy Thomas Byrne is clear in his amendment. I am in agreement with him on this but I do not want to do anything that might result in uncertainty. I do not want to do anything that might ultimately end in a conflict or a difficulty as far as our obligations are concerned.

Deputy Donnchadh Ó Laoghaire: There were two versions of the amendment - amend-

ments Nos. 57 and 58. I made this point on Committee Stage so I will not over-labour it but I believe the whole section is far too broad. Arguments have been made, in respect of numerous parts of the Bill, that the effort to provide excessive detail means that the Bill as drafted is unnecessary because the relevant sections of the GDPR have a direct effect. Article 9 provides adequately for all the political purposes that are described. It does not appear to me that any political representation on behalf of constituents or anything like that is not covered by Article 9 of the GDPR. Provided that consent is freely given and is fully informed then I believe that is covered.

My amendments amend section 47 also, which I raised on Committee Stage. The section creates a loophole allowing companies from other jurisdictions that operate in the State on electoral activities outside of Ireland to gather data and use it in electoral contests elsewhere. I recognise that electoral activities here are already covered but it would potentially create a situation where companies such as Cambridge Analytica could operate here provided they were not interfering in electoral activity in the State. I may come back in on one of the other amendments.

Deputy Mick Wallace: I will speak on amendment No. 25. Sections 38 and 39 are new additions to the Bill and refer to the processing of personal data and specific categories of personal data by political parties, elected representatives and candidates for political office. The Department and the various political parties in government or in opposition seem determined to accommodate what they see as the peculiarities and seeming uniqueness of the Irish electoral system. This is in spite of the fact that what is proposed in terms of the processing of political opinion in the Bill will still be illegal under the GDPR.

Section 38, for the most part, is fairly harmless. It defines electoral activities for the first time in the legislative process but this definition is not very useful for the other relevant, extremely important and problematic sections to which the definition of section 38 refers, namely, sections 47, 57 and 58. We propose to delete section 38(2). Communication of the type described in section 38 is clearly committed under the GDPR as a "legitimate interest". I am not sure why we need to declare such communication to be a task in the public interest in such specific terms given that processing in the public interest in the GDPR gives us scope to bypass the consent of the data subject, for example. I understand the basic necessity for political parties to communicate with the electorate, and this kind of communication is, obviously, for the most part in the public interest. I wonder why we need such an explicit statement of this fact in the Bill.

Deputy Thomas Byrne: The Minister is in agreement with me about my objectives, which he said he shares, and I am in agreement with the Minister in that I certainly do not wish to put the State at any risk of infringement proceedings. I do, however, at times feel that this threat - that the proposals infringe the Constitution - is often put against Private Members' Bills. We often hear this. I do, however, accept that it is a risk.

My concern is around the definition of electoral activities. Is the Minister confident that "electoral activities" covers it and that we do not need my amendment, which covers "political activities"? It could also have been representational activities. The Minister has said that this is not needed and that "electoral activities" covers Members' work and communications as public representatives in the public interest.

Deputy Clare Daly: Unfortunately, this is a monster group of amendments that covers a lot of different aspects of GDPR rights and sections that could open us up to fines and legal pro-

ceedings, so I must take some time on this. The potential of exposing Members to that was the reason for siding with the Minister with regard to our previous amendment to an earlier section. They are very important aspects.

I will speak on amendment No. 25. The new section inserted by the Government on Committee Stage designates direct marketing by politicians, as long as it is in writing, as being carried out as a task in the public interest. It is highly questionable that a politician perpetuating his or her existence and inflicting it on anybody else could be legitimately defined as "in the public interest". It is completely unnecessary. Politicians and political candidates can already rely on the legitimate interest ground in the GDPR. Artificially designating written communication, which could include text messages from politicians, as being "in the public interest" when they could rely on the legitimate interest ground could cause problems because it takes away some of the obligation we have to balance the rights of citizens and the rights of politicians. This is why we have tabled amendment No. 25, which proposes to delete the odd public interest designation. We believe it is unnecessary. Politicians can already communicate and it is already lawful. We must, however, take into account the fact that in the 2011 election, the then Data Protection Commissioner, Mr. Billy Hawkes, received many complaints about politicians' unsolicited text messages. Unlike the old data protection legislation, section 38 of this Bill would allow for that. We are weakening citizens' position in that regard.

Deputy Thomas Byrne's amendments would make the situation worse. He is extending the definition of "electoral activities" and referring to communications with party memberships, but since the latter are allowed for under the GDPR on a range of grounds, the amendment is unnecessary. The Deputy is proposing that fundraising and political surveys could be deemed to be in the public interest. That would make it lawful for a political party to send me an email every day for the rest of my life looking for money. I would have no legal way of making it stop.

Deputy Thomas Byrne: We are not going to do that. Do not worry.

Deputy Clare Daly: Worse, the Deputy's amendment seeks to extend the permission to cover party members. I could join Fianna Fáil tomorrow and use my membership as a cover to access other people's personal data and send them unsolicited emails, text messages, surveys and questionnaires every day. If someone felt his or her privacy had been violated, he or she could do nothing about it.

Deputy Thomas Byrne: That is not what is envisaged.

Deputy Clare Daly: It is madness. It may be an unintended consequence. I will defer to the Deputy's assertion that it is not intended-----

Deputy Thomas Byrne: It is not intended.

Deputy Clare Daly: -----but it is what would arise. Turning to our amendment No. 51, section 47 is important and troublesome. Under it, the Government proposes to rely on recital 56 to justify allowing political parties anywhere to process the political opinions of anyone for the purposes of electoral activities. There is no territorial limit. If a German Cambridge Analytica wanted to process the political opinions of a few million Germans to sway the next German election, it would just have to send the data to Ireland. With such a vague definition of "electoral activities", there is no time limit on when political parties can process the data. People who want to get their hands on data about political opinions just have to put themselves forward as candidates for election. Lo and behold, they would then get around the general prohibition in

the GDPR on that kind of data processing without explicit consent. That is why we are opposing the section. There is no non-creepy reason for allowing anyone to do this and profile people without their consent. One can profile people all one wants if one gets their consent.

All of Ireland's main data protection experts are vehemently against this section. Before Committee Stage, they wrote an open letter to *The Irish Times* calling for the removal of the section's blanket exemptions on the processing of personal data revealing political opinions. These people pursued litigation previously and they know what they are talking about, so we would be silly to ignore their viewpoint. What is being proposed in this section is permission to create databases, profiles or whatever one wishes to call them for people who have nothing to do with a political party.

I will respond to points made by Deputy O'Callaghan on Committee Stage. Polls, focus groups, canvass tallies and so forth would still be allowed if this section were deleted. If people plan on using such information in the course of one of those activities, all that is required is for consent to be gained to note someone's political view, name and address. That is not a major ask, given that we are discussing the collection of personal data that can be used to match information to identify people.

Our amendment No. 68 is important. This section removes the right of citizens to object to their data being processed in order to post them letters and flyers from politicians. It tries to claim that mailings from politicians are not direct marketing. Articles 17 and 21(2) of the GDPR make it clear that the citizen has an absolute right to object to the use of his or her personal data to send him or her direct mail, text messages, etc. This section, however, allows politicians to send out unsolicited mail and stops people from objecting to that. In a balancing test, the desirability of citizens being informed about what their politicians are doing against the rights of citizens to object if they feel that their privacy is being invaded should come down on the side of the citizen. Citizens should have the right to object. Politicians get that all of the time. For example, people have told me that they do not want me to send them leaflets. That is fine, but this section removes the right to object. That is wrong.

Amendment No. 71 addresses section 58, which proposes to remove the right of citizens to object to the processing of their data for any purpose as long as it is carried out by political parties, candidates or the referendum commission. While various exemptions under the GDPR permit processing in the public interest, recital 69 makes it clear that the right to object in those circumstances must remain. Even if we accept that the processing of personal data by political parties for electoral purposes is in the public interest, which is arguable, we cannot strip people of their right to object to it while staying compliant with the GDPR. This amendment must be carried.

An Ceann Comhairle: The prospect that the Deputy holds out of her joining Fianna Fáil is certainly fascinating.

Deputy Thomas Byrne: She should not worry. We will not accept her.

Deputy Jim O'Callaghan: We took in Deputy Donnelly.

Deputy Thomas Byrne: We would not be the first.

Deputy Donnchadh Ó Laoghaire: Did Deputy O'Callaghan just read that into the record?

Deputy Charles Flanagan: I do not agree with much of what Deputy Clare Daly stated, including her prospects or otherwise of joining any party, much less Fianna Fáil.

I will address a couple of points. Deputy Daly made an assertion at the outset while referring to unsolicited text messages. My understanding is that unsolicited text messages are prohibited by law in any event on the basis of e-privacy regulations. Irrespective of anything in the Bill, the prospect of receiving unsolicited text messages during the course of an election-----

Deputy Clare Daly: Is the Minister saying that a text message is not communication in writing?

Deputy Charles Flanagan: It would in effect be prohibited. Regarding section 47 and influences from outside the State or otherwise, the section is clear in that its provisions are confined to electoral activities within the State for elections within the State by a political party registered within the State. It does not cover, nor should it, electoral activity in another state.

I stand over the important changes that we have made, in particular to section 38, and I am anxious to be of assistance to Deputy Thomas Byrne. In that regard, electoral activity must be clearly understood in a broad sense to be more than just activity within the confines of the three weeks, 28 days or whatever. In support of this point, I will point out that we do not have fixed-term parliaments. As such, all of the activities of elected representatives and candidates are undertaken with an eye on the next election. Suffice it for me to draw on our earlier debate when Deputy O'Callaghan gave way to Deputy Byrne on the matter of the digital age of consent. Regardless of when an election takes place, electoral activity continues. I say this to be of assistance to Deputy Byrne and to assure him that I am keen to go as far as I can on the objective of his amendments within the strictures of the GDPR and without introducing new elements of uncertainty in the matter of political activities. I take the Deputy's point about political activities and I like the phrase "political activities", but if we are to introduce new definitions or phrases without an appropriate level of definition, we will get into uncertainty and difficulty. "Electoral activities" is known in law to be the work that we do on a continual basis. I am sure that Deputies Daly and Wallace also do that work, although they might not like it to be termed as such.

6 o'clock

Amendment, by leave, withdrawn.

Amendment No. 24 not moved. **Deputy Clare Daly:** I move amendment No. 25:

In page 35, to delete lines 12 to 14.

Section 38 of the Bill is potentially in conflict with the GDPR because it states "in writing". It is a grey area. This vague terminology could be in conflict with the e-privacy regulations of the GDPR because it would include text messages.

Amendment put and declared lost.

Deputy Thomas Byrne: I will not move amendments Nos. 26 to 41, inclusive, on the basis of the Minister's assurances.

Amendments Nos. 26 to 41, inclusive, not moved.

An Ceann Comhairle: Amendments Nos. 42 to 45 are related and may be discussed together.

Deputy Clare Daly: I move amendment No. 42:

In page 36, line 20, to delete "and special categories of personal data".

I will try to be brief. We have resubmitted these amendments on Report Stage because they are quite important. According to recital 50, processing for purposes incompatible with the one for which the data was originally collected may be allowed if the person consents and the processing is based on European Union or member state law which constitutes a necessary and proportionate measure in a democratic society to safeguard important objectives of general public interest. Section 40 of the Bill allows for the processing of sensitive categories of data, such as one's political opinion, sexual orientation, race and so on, and general personal data for reasons other than that for which they were collected in order to prevent a threat to national security, to prevent, investigate or prosecute crimes or for the purpose of getting legal advice and so on.

Amendments Nos. 42 and 45 propose that further processing of very sensitive data would be permitted for all those crime stopping and public security reasons except the prevention of crime. The reasoning for that is that the GDPR does not apply to competent authorities such as the Garda Síochána when processing data for the purpose of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties. It applies to everybody except competent authorities such as the Garda.

Section 38 proposes to give public bodies or companies the right to collect or compile databases in which people's identities are linked to things such as their political opinions, trade union membership, religion and so on for the purposes of preventing crime. It is very hard to imagine a situation where information held by a private company or public body about a person's religious affiliation, sexual orientation, political opinion, trade union membership or so on would ever be so absolutely essential for preventing crime as to outweigh the dangers of the impact on people's freedom of expression and association. It would not be worth it because the prevention of crime is a very nebulous concept. The amendment would allow the passing on of special category data by private companies to the Garda for the investigation and prosecution of criminal offences or the prevention of threats to national security but the prevention of crime would be open to too many interpretations. It is a catch-all and a step too far.

Amendment No. 44 proposes that further processing of personal data would be lawful for all the various crime and security reasons but rather than it being lawful for the purposes of preventing crime, the tighter wording of "avoiding prejudicing the prevention of crime", taken from the equivalent UK legislation, would be used. Amendment No. 43 provides that further processing would be allowed only if it is necessary and proportionate for various crime and terror fighting purposes, having regard to the fundamental rights and legitimate interests of the data subject. That introduces a balancing requirement whereby such further processing would only be lawful if the fundamental rights and legitimate interests of the data subject did not outweigh the reasons to reprocess his or her personal data.

Taken as a group, these amendments do not prevent the reuse of personal data by private or public organisations in general for crime prevention but, rather, only special category data. Data such as names, phone numbers, addresses, email addresses and IP addresses could still be used for crime prevention reasons as the amendments only address data such as one's sexual orientation, trade union membership, political views and so on.

Deputy Mick Wallace: These amendments attempt to reshuffle section 40 and involve the

insertion of a new section 41. We are trying to deal with personal data and special categories of personal data separately. The two categories are currently lumped together in the Bill. Article 23 of the GDPR is the relevant provision in this regard. It does not make an explicit distinction between the processing of personal and specific categories of data but several sections of the GDPR state that special categories of data should be treated with special care. We have, therefore, attempted to separate personal data from special categories of personal data through amendments Nos. 42 to 45. I accept that Article 23 of the GDPR refers to the prevention, investigation, detection or prosecution of criminal offences, for example, which is provided for by section 40(b) of the Bill. However, the problem these amendments are trying to address relates to the scope the word "preventing" introduces in regard to criminal offences, in particular in the context of special categories of personal data such as religious beliefs, political opinion, ethnicity and sexual orientation. The GDPR and section 40 of the Bill do not apply to the Garda and the processing of data referred to in this section does not, therefore, apply to it. Section 40 would essentially permit profiling based on race, political ideology or religious beliefs should the processing of special categories of data be included. As I stated on Committee Stage, a body other than the Garda would, therefore, be able to profile a person based on his or her ethnicity, religion or political opinions in the name of preventing a criminal offence in the broadest sense. The phrasing in our amendment, "avoiding prejudicing the prevention, investigation or prosecution of" a criminal offence is based on wording used in the British Data Protection Bill and would prevent the kind of profiling to which I have referred.

Deputy Charles Flanagan: I regret that I have been unable to advance matters with Deputies Clare Daly and Wallace since our debate on this issue on Committee Stage when I took the opportunity to explain and put into context the importance of the section. I gave several examples and referred to important statutory enactments such as the Criminal Justice (Money Laundering and Terrorist Financing) Act, under which a range of designated persons, such as auditors, property service providers and financial institutions, who know, suspect or have reasonable grounds to suspect, on the basis of information available to them, that another person has been or is engaged in an offence are required to report that knowledge or suspicion or those reasonable grounds to the Garda and the Revenue Commissioners. Under sections 2 and 3 of the Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012, it is an offence to withhold any information on offences referred to in that Act. As I stated on Committee Stage, the public interest must be considered in ensuring that we combat threats to public security and crime and do not do anything that might interfere with, jeopardise or compromise a criminal investigation or the prevention of a threat to public security. This section provides an effective safeguard against excessive use on the basis that further processing is permitted only to the extent that it is both "necessary and proportionate". It is not a case of either-or.

I cannot accept the proposals in amendments Nos. 42 and 45 to remove the reference to special categories of personal data in section 40 and to add a new section, or amendment No. 44, which to my mind would weaken the section to such an extent as to result in difficulties.

Neither can I accept insertion of the words "having regard to the fundamental rights and legitimate interests of the data subject" as an additional threshold in amendment No. 43. We debated this to some extent on Committee Stage. We took the view that there may be unnecessary, uncertain or additional burdens, for example, on a youth worker reporting suspected harm to a child, or on a bank official reporting his or her suspicions that certain transactions might be linked to money laundering or terrorist financing. There are circumstances where the burden

imposed by the additional threshold in amendment No. 43 would result in actions not being taken that might otherwise lead to the successful detection, investigation and prosecution of a crime.

It is much the same as on Committee Stage. I am not in a position to advance matters. I do not want to do anything that might weaken the proposal at hand and I am unable to accept amendments Nos. 42 to 45, inclusive, for those reasons.

Amendment put and declared lost.

Deputy Clare Daly: I move amendment No. 43:

In page 36, line 22, after "that" to insert ", having regard to the fundamental rights and legitimate interests of the data subject,".

Amendment put and declared lost.

Deputy Clare Daly: I move amendment No. 44:

In page 36, line 24, to delete "of preventing, detecting, investigating or prosecuting" and substitute "of avoiding prejudicing the prevention, investigation or prosecution of".

Amendment put and declared lost.

Deputy Clare Daly: I move amendment No. 45:

In page 36, between lines 25 and 26, to insert the following:

"Processing of special categories of personal data for purpose other than purpose for which data collected

41. Without prejudice to the processing of personal data for a purpose other than the purpose for which the data has been collected which is lawful under the Data Protection Regulation, the processing of special categories of personal data for a purpose other than the purpose for which the data has been collected shall be lawful to the extent that such processing is, having regard to the fundamental rights and legitimate interests of the data subject, necessary and proportionate for the purposes—

(a) of preventing a substantial threat to national security, defence, or public security,

(b) of avoiding prejudicing the detection or prosecution of criminal offences,

(c) set out in *paragraphs (a)* or *(b)* of *section 46*.".

Amendment put and declared lost.

An Ceann Comhairle: Amendments Nos. 46 to 49, inclusive, are related. Amendment No. 48 is a physical alternative to amendment No. 47. Amendments Nos. 46 to 49, inclusive, may be discussed together.

Deputy Donnchadh Ó Laoghaire: I move amendment No. 46:

In page 37, to delete lines 22 to 24 and substitute the following:

"43. (1) For the purposes of Article 86, personal data may be disclosed where a request for access to a record is granted under and in accordance with the Act of 2014 pursuant to an FOI request, a request for access to environmental information is granted under and in accordance with the Regulations of 2007 pursuant to a request for environmental information or a request to release documents for re-use is granted under and in accordance with the Regulations of 2005 pursuant to a request.".

The amendments were submitted on Committee Stage. Amendments Nos. 46, 48 and 49 are my amendments. The intention is that people would have the same access to all the relevant documentation and personal data under freedom of information as is available under the environmental regulations. My reading of the Minister's amendment No. 47 is that it covers essentially what was intended by amendments Nos. 46, 48 and 49. Perhaps the Minister could elaborate on that. If the effect is the same, I will withdraw my amendments.

Deputy Charles Flanagan: During Committee Stage discussions, I undertook to examine proposals to extend the scope of section 43 to include the Re-Use of Public Sector Information Regulations 2005 and the Access to Information on the Environment Regulations 2007. I did examine the matter and I now propose in amendment No. 47 to extend the scope of section 47 to include the Access to Information on the Environment Regulations 2007. It is a coincidence that we are dealing with amendment No. 47 and section 47. I propose to extend the application of section 47 by a new amendment No. 47.

The Re-Use of Public Sector Information Regulations 2005 to 2015 do not permit the disclosure of personal data except in accordance with data protection legislation and the Freedom of Information Act 2014. Any release of personal data under the regulations would be in aggregated and pseudonymised form. For that reason, my amendment does not encompass reference to those regulations because I should not do so. I thank Deputy Ó Laoghaire for raising this important issue and I hope he accepts that the Government amendment addresses the issue and that amendments Nos. 46, 48 and 49 are not required in those circumstances.

Amendment, by leave, withdrawn.

Deputy Charles Flanagan: I move amendment No. 47:

In page 37, to delete lines 25 to 28 and substitute the following:

"(2) For the purposes of Article 86, personal data contained in environmental information may be disclosed where the information is made available under and in accordance with the Access to Information on the Environment Regulations pursuant to a request within the meaning of those Regulations.

(3) In this section—

"Access to Information on the Environment Regulations" means the European Communities (Access to Information on the Environment) Regulations 2007 (S.I. No. 133 of 2007);

"Act of 2014" means the Freedom of Information Act 2014;

"environmental information" has the same meaning as it has in the Access to Information on the Environment Regulations;

"FOI request" has the same meaning as it has in the Act of 2014;

"record" has the same meaning as it has in the Act of 2014.".

Amendment agreed to.

Amendments Nos. 48 to 50, inclusive, not moved.

Deputy Clare Daly: I move amendment No. 51:

In page 38, to delete lines 17 to 28.

Amendment put:

The Dáil divided: Tá, 27; Níl, 65; Staon, 0.		
Tá	***Níl***	***Staon***
Adams, Gerry.	***Bailey, Maria.***	
Brady, John.	***Brassil, John.***	
Broughan, Thomas P.	***Breathnach, Declan.***	
Buckley, Pat.	***Breen, Pat.***	
Crowe, Seán.	***Brophy, Colm.***	
Daly, Clare.	***Browne, James.***	
Doherty, Pearse.	***Bruton, Richard.***	
Ellis, Dessie.	***Byrne, Catherine.***	
Ferris, Martin.	***Cahill, Jackie.***	
Healy, Seamus.	***Calleary, Dara.***	
Howlin, Brendan.	***Cannon, Ciarán.***	
Kenny, Martin.	***Carey, Joe.***	
Mitchell, Denise.	***Casey, Pat.***	
Ó Broin, Eoin.	***Chambers, Jack.***	
Ó Caoláin, Caoimhghín.	***Collins, Michael.***	
Ó Laoghaire, Donnchadh.	***Corcoran Kennedy, Marcella.***	
Ó Snodaigh, Aengus.	***Coveney, Simon.***	
O'Sullivan, Jan.	***Curran, John.***	
O'Sullivan, Maureen.	***D'Arcy, Michael.***	
Quinlivan, Maurice.	***Daly, Jim.***	
Ryan, Brendan.	***Donohoe, Paschal.***	
Ryan, Eamon.	***Durkan, Bernard J.***	
Sherlock, Sean.	***English, Damien.***	
Shortall, Róisín.	***Fitzgerald, Frances.***	
Stanley, Brian.	***Fitzpatrick, Peter.***	
Tóibín, Peadar.	***Flanagan, Charles.***	
Wallace, Mick.	***Gallagher, Pat The Cope.***	
	Griffin, Brendan.	
	Harris, Simon.	

	Haughey, Seán.	
	Healy-Rae, Danny.	
	Healy-Rae, Michael.	
	Kehoe, Paul.	
	Kyne, Seán.	
	Lowry, Michael.	
	Madigan, Josepha.	
	McConalogue, Charlie.	
	McGrath, Michael.	
	McHugh, Joe.	
	McLoughlin, Tony.	
	Mitchell O'Connor, Mary.	
	Moran, Kevin Boxer.	
	Moynihan, Aindrias.	
	Moynihan, Michael.	
	Murphy O'Mahony, Margaret.	
	Naughten, Denis.	
	Neville, Tom.	
	Noonan, Michael.	
	Ó Cuív, Éamon.	
	O'Callaghan, Jim.	
	O'Dea, Willie.	
	O'Donovan, Patrick.	
	O'Dowd, Fergus.	
	O'Keeffe, Kevin.	
	O'Loughlin, Fiona.	
	O'Rourke, Frank.	
	Phelan, John Paul.	
	Ring, Michael.	
	Rock, Noel.	
	Ross, Shane.	
	Scanlon, Eamon.	
	Smyth, Niamh.	
	Stanton, David.	
	Troy, Robert.	
	Zappone, Katherine.	

Tellers: Tá, Deputies Clare Daly and Donnchadh Ó Laoghaire; Níl, Deputies Joe McHugh and Tony McLoughlin.

Amendment declared lost.

Amendments Nos. 52 to 56, inclusive, not moved.

Deputy Donnchadh Ó Laoghaire: I move amendment No. 57:

In page 38, between lines 28 and 29, to insert the following:

"(2) This section does not permit the sharing or processing of personal data revealing political opinion with or by any private company, as defined under section 2(1) of the Companies Act 2014 without the consent of the data subject even when that private company has been contracted by the actors or entities specified under paragraphs (a), (b) or (c).".

Amendment put and declared lost.

Deputy Donnchadh Ó Laoghaire: I move amendment No. 58:

In page 38, between lines 28 and 29, to insert the following:

"(2) This section does not permit the sharing or processing of personal data revealing political opinion with or by any private company, as defined under section 2(1) of the Companies Act 2014 without the consent of the data subject even when that private company has been contracted by—

(i) a political party, or

(ii) a candidate for election to, or a holder of, elective political office in the State.".

Amendment put and declared lost.

An Leas-Cheann Comhairle: Amendments Nos. 59 and 60 are related and may be discussed together.

Deputy Mick Wallace: I move amendment No. 59:

In page 39, line 3, after "subjects," to insert "and subject to subsection (2),".

We proposed a number of amendments to section 49 of the Bill on Committee Stage. We are returning with some of the same amendments on Report Stage and we have left others behind. We have taken on board some of the concerns listed by the Minister on Committee Stage. It is significant that these concerns are shared by a number of other member states. We appreciate that there are many factors at play in this section, which essentially provides exemptions from the GDPR requirement for explicit consent for the processing of special or sensitive categories of data. Obviously, that is fine as long as we adhere to the possible exemptions provided for in the GDPR. This amendment proposes that processing might take place without the consent of the data subject if the data controller cannot reasonably be expected to get this consent, for whatever reason. In other words, obtaining consent should be a reasonable step. As the Minister has said he has sought advice from the Office of the Attorney General about the need for this section, we will not force the issue. The processing of special categories of data is a serious issue under the GDPR. That is what we are trying to highlight in this section. We appreciate the concerns of the Department and the Minister about the problems that arise with regard to contracts because of the definition of "consent" in Article 4.

Deputy Charles Flanagan: We considered these amendments on Committee Stage. I have been in contact with the Office of the Attorney General, which has agreed that this section is needed to address a specific problem arising from the strict definition of "consent" in the

GDPR. The Deputy is right when he says this issue has arisen during the preparation of legislation in a number of other member states. The Deputy has acknowledged the difficulty that exists. I undertook to pursue matters further and I have done so. On foot of the advice I have received, I am not in a position to accept these amendments.

Deputy Clare Daly: I find the Minister's position a bit strange because these amendments are based on a similar provision in the UK Act. They seek to insert an additional safeguard for people when private insurance companies and banks are using their data without their consent. Such use is allowed only when someone has not explicitly said "No" and when the bank or insurance company would face an insurmountable task in getting consent. I think that is reasonable. I do not see how it could be allowed in the UK legislation if our Attorney General is saying it cannot be done.

Deputy Charles Flanagan: It is not so much a question of the consent, but of the nature of the consent.

Amendment put and declared lost.

Deputy Clare Daly: I move amendment No. 60:

In page 39, between lines 9 and 10, to insert the following:

"(2) The processing of data regarding health under this section can be carried out without the consent of the data subject only if, in addition to suitable and specific measures being taken to safeguard the fundamental rights and freedoms of data subjects—

(a) the controller cannot reasonably be expected to obtain the consent of the data subject, and

(b) the controller is not aware of the data subject withholding consent.".

Amendment put and declared lost.

Amendment No. 61 not moved.

Deputy Clare Daly: I move amendment No. 62:

In page 40, between lines 9 and 10, to insert the following:

"(9) Regulations may be made under this section only if—

(a) a draft of the proposed regulation has been laid before the Houses of the Oireachtas, and

(b) a resolution approving the draft has been passed by each House.".

Amendment put and declared lost.

An Leas-Cheann Comhairle: Amendments Nos. 63 and 76 are related and may be discussed together.

Deputy Charles Flanagan: I move amendment No. 63:

In page 42, line 5, to delete "persons authorised" and substitute "persons who are or

were authorised".

These are minor drafting amendments to sections 54 and 59. They extend the reference to "persons authorised to carry on a profession or other activity" to "persons who are or were authorised". They are minor amendments but nevertheless essential.

Amendment agreed to.

Deputy Charles Flanagan: I move amendment No. 64:

In page 42, to delete lines 22 to 39, and in page 43, to delete lines 1 and 2 and substitute the following:

"(4) Subject to *subsection (5)*, regulations may be made under *subsection (3)*—

(a) by the Minister following consultation with such other Minister of the Government as he or she considers appropriate, or

(b) by any other Minister of the Government following consultation with the Minister and such other Minister of the Government as he or she considers appropriate.

(5) The Minister or any other Minister of the Government shall consult with the Commission before making regulations under *subsection (3)*.

(6) The Commission may, on being consulted under *subsection (5)*, make observations in writing on any matter which is of significant concern to it in relation to the proposed regulations and, if the Minister or any other Minister of the Government proposes to proceed to make the regulations notwithstanding that concern, that Minister shall, before making the regulations, give a written explanation as to why he or she is so proceeding to—

(a) the Committee established jointly by Dáil Éireann and Seanad Éireann known as the Committee on Justice and Equality or any Committee established to replace that Committee, and

(b) any other Committee (within the meaning of *section 19(1)*) which that Minister considers appropriate having regard to the subject matter of the regulations.".

Amendment agreed to.

An Leas-Cheann Comhairle: Amendments Nos. 65 and 141 are related and may be discussed together.

Deputy Donnchadh Ó Laoghaire: I move amendment No. 65:

In page 43, between lines 17 and 18, to insert the following:

"Processing of special categories of personal data for identity verification purposes

55. Processing of special categories of personal data for identity verification purposes will be lawful provided no copy of identification or information contained within is stored or retained for any reason.".

This is an amendment to section 55. It is intended to prevent the holding of surplus data, particularly where that would be copies of forms of identification. Given that there is so much ministerial discretion contained within the section and the Bill, this is a strong measure that ensures the fundamental rights of data subjects are protected. It specifically allows for the processing of special categories of personal data for identity verification purposes, as is consistent with the rest of the section. This will be lawful provided no copy of identification or information contained within is stored or retained for any reason.

Deputy Charles Flanagan: One of the difficulties is that these amendments were not considered or raised in earlier discussions. In light of the nature of the debate and the number of amendments, I would not be prepared to accept them at this stage having regard to the fact that we did not have an opportunity to examine them in the detail such amendments deserve.

The proposal in amendment No. 65 would require intense scrutiny, not least because of the possibility of far-reaching consequences. Biometric data is a special category of personal data referred to in Article 9(1) of the GDPR and the generally applicable data retention rules will apply to any processing of such data.

While there may well be merit in amendment No. 141, the proposal to permit the making of regulations would require the development of policies and principles but they have not been included in the amendment. I am not prepared to take on something the consequences of which I have not been in a position to examine. I say that not as any form of excuse but as a justified reason on this Stage and I ask the House to accept that.

Deputy Clare Daly: I thought these were very good amendments and we would certainly support them. Amendment No. 65 will prevent identity databases from being created by, for example, the Government. Such databases could be exploited for a range of purposes. Amendment No. 141 is an effort to prevent the Government from continuing to maintain its gigantic and illegal biometric database, created through forcing people to get a public services card for a range of reasons such as getting a passport or, until recently, a driver's licence, reasons that have no basis whatsoever in law. They are very worthy provisions and, whether we discussed them on Committee Stage or not, it is important to insert them at this stage.

Deputy Donnchadh Ó Laoghaire: I had failed to notice that amendment No. 141 was grouped with amendment No. 65. The Minister referred to the requirements and the exceptions in that they are not contained in the Bill. The GDPR as European law will be Irish law. They are well enumerated in the GDPR. It outlines biometric data as personal data resulting from specific technical processes relating to the physical, physiological or behavioural characteristics of a natural person which allows or confirms the unique identification of that natural person, such as facial images or dactyloscopic data. The GDPR consent requirements define biometric data as special categories of personal data and prohibit its processing, thereby protecting people from having their data shared with third parties without their consent. The exception to that consent is that processing is prohibited unless necessary for carrying out obligations of the controller or the data subject in the field of employment, social security and social protection.

This is very relevant to the issue of the development of the public services card and the questions about the use of biometric data in that regard. The Government has found itself in difficulty, especially in respect of the Road Safety Authority recently and the requirements that were provided there, as well as the Department of Employment Affairs and Social Protection. We have not had adequate public debate on the use of biometric data or the possibility of the

public services card being used as a sort of proxy identity card with biometric data. Whatever arguments are to be made in support of that have not been made honestly or directly. In that context and in the context of governments here and around the world increasingly using biometric data to build profiles of people and the potential for that data to be compromised, I think these are reasonable safeguards to put into the legislation.

Deputy Charles Flanagan: I get no joy from telling Deputies what I cannot do. I would rather say what I can do. We are on Report Stage of what is lengthy and complex legislation. Deputies may be aware that the programme for Government includes legislation entitled the data retention Bill, which is not yet ready. I will look at Deputy Ó Laoghaire's amendments in that context. I know it is not ideal. I may have certain sympathies with the objectives of the amendments but in the circumstances I am unable to accept them. Maybe if I said to the Deputy we will look at it in the context of forthcoming legislation which is not too far away in terms of timeframes and scheduling, I could say that to the House by way of what I think is beneficial.

Amendment put and declared lost.

An Leas-Cheann Comhairle: Amendments Nos. 66 and 78 are related and may be discussed together.

Deputy Charles Flanagan: I move amendment No. 66:

In page 43, to delete lines 20 to 28 and substitute the following:

"Right of access to results and scripts of examination and results of appeal

55. (1) Subject to *subsection (3)*, a request by a data subject under Article 15 in relation to the result of an examination at which he or she was a candidate, or in relation to a script completed by him or her in the course of such an examination shall, for the purposes of that Article, be taken to have been made on the later of—

(a) the date of the first publication of the results of the examination, or

(b) the date of the request.

(2) A request by a data subject under Article 15 in relation to the result of an appeal by the data subject against the result of an examination at which he or she was a candidate shall, for the purposes of that Article, be taken to have been made on the later of—

(a) the date of the first publication of the results of the appeal, or

(b) the date of the request.

(3) Where—

(a) a request by a data subject referred to in *subsection (1)* relates to a script completed by him or her in the course of an examination in the Leaving Certificate Examinations conducted by the State Examinations Commission, and

(b) the data subject, whether before or after the making of that request, appeals the result of the examination referred to in *paragraph (a)*,

that request shall be taken to have been made on the date of the first publication of the results of the appeal referred to in *paragraph (b)*.

(4) In this section—

"appeal" means any formal process to enable a candidate to request a recheck of an examination result which is specified by a person who operates the examination;

"examination" means any process for determining the knowledge, intelligence, skill or ability of a person by reference to his or her performance in any test, work or other activity;

"script" means any work produced by a candidate as part of an examination including any examination answer-book (whether in written or digital form), journal, portfolio, audio and visual recording, practical piece or artefact and, for the purposes of this definition, shall be deemed to include—

(a) an audio or visual recording, produced in the course of an examination, of the performance of the candidate in the examination, and

(b) any marks or comments added to the script, or made in relation to the script, by an examiner in the course of his or her marking of the script.".

On Committee Stage I undertook to examine amendments tabled by my colleagues, Deputies Brophy and Burke, which sought to insert provisions into the Bill that will address the far-reaching implications of the European Court of Justice ruling in December in the Nowak case that examination scripts are personal data for the purposes of data protection law. Amendment No. 66 inserts a new, more detailed section 55 in the Bill, while amendment No. 79 will permit the making of regulations, if required, to restrict access rights of individuals to safeguard the integrity and security of examination systems. I note in passing that the Court of Justice ruling in the Nowak case, which was referred to the Luxembourg court by our Supreme Court, is an example of the dynamic and expansive approach being taken by the court in the field of data protection. I propose these amendments on that basis.

Amendment agreed to.

Deputy Clare Daly: I move amendment No. 67:

In page 44, to delete lines 5 and 6 and substitute the following:

"him or her to—

(I) make representations to the controller in relation to the decision,

(II) request human intervention in the decision-making process,

(III) request to appeal the decision.

(2) In the case of requests made under subsection (1)(b)(ii)(II) or (III) the controller shall—

(a) comply with the request, and

(b) notify the data subject in writing of—

(i) the steps taken to comply with the request, and

(ii) in the case of an appeal under subsection (1)(b)(ii)(III), the outcome of the appeal.".

The GDPR puts several protections in place for people in circumstances where they might be subjected to automated decision-making. Article 22 states that decision-making based on automated processing is prohibited except if a decision made in this way is necessary for entering into a contract between a person and a controller or if it is based on the person's explicit consent. If these bases are used, then the controller has to implement safeguards, including the right to obtain human intervention and the right to appeal. Article 22 also states decisions can be made on the basis of automated processing if they are authorised by Union or member state law which also lays down suitable measure to safeguard the data subject's rights, freedoms and legitimate interests.

It is clear that the type of safeguards the GDPR had in mind when public authorities are using automated processing are matters like the right to obtain a human intervention and the right to make an appeal. The Bill, however, does not include those rights. It simply states people can make a representation. We do not believe that is good enough. The Article 29 Working Party, the God of guidance on the GDPR, stated on automated processing per Article 22 and recital 71, minimum safeguards must provide an explanation of the decision reached to the data subject, a way for the data subject to obtain human intervention, express their point of view and contest the decision.

In the Bill people have a right to make representations if they are not happy. That is not really much use. It is no guarantee that they will get a human intervention if they want it. There is no obligation, even on a controller, for example, the Department of Employment Affairs and Social Protection processing welfare claims, to respond or deal with representations it gets. As the Bill is currently constituted, it can just ignore them.

That is way too serious. We know for example that in the United States where automated benefit systems operate, it has resulted in millions of benefit applicants being denied over a period of years. Those people at least had the right to an appeal and a human intervention. Another example was the Garda roll-out of the automatic number plate recognition system. When introduced, it was misreading number plates and showing everybody as having no car insurance. Fortunately, at the time it was so broad, the system was stopped and corrected. However, one can easily imagine another case where not everybody was caught up in the loop and somebody was tied up in having to make an appeal and require human intervention. It is not guaranteed now. It is quite an important amendment. It is not onerous, it will actually defend citizens' rights and make us much more compliant.

Deputy Charles Flanagan: The essential features of the amendment are already contained in section 56. I am concerned by accepting this amendment that we run the risk of damaging laws put in place to combat fraud and tax evasion. I cannot allow for anything that might conflict these measures.

Section 56 makes it clear that these steps must include an arrangement whereby a data subject has the opportunity to make representations on any intended decision. This means that a data subject must have information on any proposal to make such a decision and have the op-

portunity to bring any concerns to the attention of the controller.

The GDPR mentions fraud and tax evasion as areas justifying automated process. I am satisfied that the safeguards are adequate and GDPR compliant. I do not want any measures which may not be GDPR compliant. I cannot, therefore, accept the amendment.

Deputy Jim O'Callaghan: This is an interesting amendment put forward by Deputies Clare Daly and Wallace. Since it was discussed on Committee Stage, I have had an opportunity to look in more detail at Article 22 on the issue of micro-profiling. It deals with decisions based solely on automated processing including profiling.

It is worth pointing out that Article 22(3) gives specific recognition to the fact that a data subject is entitled to have the right to obtain human intervention on the part of the controller. I note what the Minister said. Part of the problem that arises in respect of legislation, however, is that part of it gives further effect to the GDPR and other parts of the legislation give effect to Directive (EU) 2016/680. There is an attempt in section 56 to indicate the rights individuals have under Article 22. I note it begins by stating it is subject to Article 22(4). Any person looking at what will hopefully become the Data Protection Act by this time next week will want to know the full extent of his or her rights under section 56. Under the legislation, he or she would then have to go to Article 22 of the GDPR to find out that he or she has a right to obtain human intervention on the part of the controller in order to assess whether an automated decision can be checked again.

7 o'clock

Unless I hear a convincing argument from the Minister in response, my inclination is to support the amendment.

Deputy Charles Flanagan: An opinion under Article 29 will act as a guide on the matter of interpretation of automated processing, including the operation of the section. That is another opportunity for the issues raised by Deputy Clare Daly to be considered. On the one hand, we have sufficient safeguards but, on the other, I would add an opinion under Article 29 which will ultimately assist in the interpretation of automated processing. That will inform the operation of the section.

Amendment put:

The Dáil divided: Tá, 53; Níl, 33; Staon, 0.		
Tá	***Níl***	***Staon***
Adams, Gerry.	***Bailey, Maria.***	
Brady, John.	***Breen, Pat.***	
Brassil, John.	***Brophy, Colm.***	
Breathnach, Declan.	***Bruton, Richard.***	
Broughan, Thomas P.	***Cannon, Ciarán.***	
Browne, James.	***Carey, Joe.***	
Buckley, Pat.	***Corcoran Kennedy, Marcella.***	
Butler, Mary.	***Coveney, Simon.***	
Byrne, Thomas.	***D'Arcy, Michael.***	
Cahill, Jackie.	***Daly, Jim.***	
Calleary, Dara.	***Doyle, Andrew.***	

Casey, Pat.	***Durkan, Bernard J.***	
Chambers, Jack.	***English, Damien.***	
Collins, Michael.	***Fitzgerald, Frances.***	
Crowe, Seán.	***Fitzpatrick, Peter.***	
Curran, John.	***Flanagan, Charles.***	
Daly, Clare.	***Griffin, Brendan.***	
Ellis, Dessie.	***Harris, Simon.***	
Ferris, Martin.	***Kehoe, Paul.***	
Haughey, Seán.	***Kyne, Seán.***	
Healy-Rae, Danny.	***Lowry, Michael.***	
Healy-Rae, Michael.	***Madigan, Josepha.***	
Healy, Seamus.	***McHugh, Joe.***	
Howlin, Brendan.	***McLoughlin, Tony.***	
Kenny, Martin.	***Mitchell O'Connor, Mary.***	
McConalogue, Charlie.	***Moran, Kevin Boxer.***	
McGrath, Mattie.	***Naughten, Denis.***	
McGrath, Michael.	***Neville, Tom.***	
Moynihan, Aindrias.	***Noonan, Michael.***	
Moynihan, Michael.	***O'Donovan, Patrick.***	
Murphy O'Mahony, Margaret.	***O'Dowd, Fergus.***	
O'Callaghan, Jim.	***Ring, Michael.***	
O'Keeffe, Kevin.	***Stanton, David.***	
O'Loughlin, Fiona.		
O'Rourke, Frank.		
O'Sullivan, Jan.		
O'Sullivan, Maureen.		
Ó Broin, Eoin.		
Ó Caoláin, Caoimhghín.		
Ó Cuív, Éamon.		
Ó Laoghaire, Donnchadh.		
Ó Snodaigh, Aengus.		
Pringle, Thomas.		
Quinlivan, Maurice.		
Ryan, Eamon.		
Scanlon, Eamon.		
Sherlock, Sean.		
Shortall, Róisín.		
Smyth, Niamh.		
Stanley, Brian.		
Tóibín, Peadar.		
Troy, Robert.		
Wallace, Mick.		

Tellers: Tá, Deputies Clare Daly and Mick Wallace; Níl, Deputies Joe McHugh and Tony McLoughlin.

Amendment declared carried.

Deputy Clare Daly: I move amendment No. 68:

In page 44, to delete lines 7 to 15.

Amendment put and declared lost.

Amendments Nos. 69 and 70 not moved.

Deputy Clare Daly: I move amendment No. 71:

In page 44, to delete lines 16 to 24.

Amendment put:

The Dáil divided: Tá, 25; Níl, 62; Staon, 0.		
Tá	***Níl***	***Staon***
Adams, Gerry.	***Bailey, Maria.***	
Brady, John.	***Brassil, John.***	
Broughan, Thomas P.	***Breathnach, Declan.***	
Buckley, Pat.	***Breen, Pat.***	
Crowe, Seán.	***Brophy, Colm.***	
Daly, Clare.	***Browne, James.***	
Ellis, Dessie.	***Bruton, Richard.***	
Ferris, Martin.	***Butler, Mary.***	
Healy, Seamus.	***Byrne, Thomas.***	
Howlin, Brendan.	***Cahill, Jackie.***	
Kenny, Martin.	***Calleary, Dara.***	
O'Sullivan, Jan.	***Cannon, Ciarán.***	
O'Sullivan, Maureen.	***Carey, Joe.***	
Ó Broin, Eoin.	***Casey, Pat.***	
Ó Caoláin, Caoimhghín.	***Chambers, Jack.***	
Ó Laoghaire, Donnchadh.	***Collins, Michael.***	
Ó Snodaigh, Aengus.	***Corcoran Kennedy, Marcella.***	
Pringle, Thomas.	***Coveney, Simon.***	
Quinlivan, Maurice.	***Curran, John.***	
Ryan, Eamon.	***D'Arcy, Michael.***	
Sherlock, Sean.	***Daly, Jim.***	
Shortall, Róisín.	***Doyle, Andrew.***	
Stanley, Brian.	***Durkan, Bernard J.***	
Tóibín, Peadar.	***English, Damien.***	
Wallace, Mick.	***Fitzgerald, Frances.***	

	Fitzpatrick, Peter.	
	Flanagan, Charles.	
	Griffin, Brendan.	
	Harris, Simon.	
	Haughey, Seán.	
	Healy-Rae, Danny.	
	Healy-Rae, Michael.	
	Kehoe, Paul.	
	Kyne, Seán.	
	Lowry, Michael.	
	Madigan, Josepha.	
	McConalogue, Charlie.	
	McGrath, Mattie.	
	McGrath, Michael.	
	McHugh, Joe.	
	McLoughlin, Tony.	
	Mitchell O'Connor, Mary.	
	Moran, Kevin Boxer.	
	Moynihan, Aindrias.	
	Moynihan, Michael.	
	Murphy O'Mahony, Margaret.	
	Naughten, Denis.	
	Neville, Tom.	
	Noonan, Michael.	
	O'Brien, Darragh.	
	O'Callaghan, Jim.	
	O'Donovan, Patrick.	
	O'Dowd, Fergus.	
	O'Keeffe, Kevin.	
	O'Loughlin, Fiona.	
	O'Rourke, Frank.	
	Rabbitte, Anne.	
	Ring, Michael.	
	Scanlon, Eamon.	
	Smyth, Niamh.	
	Stanton, David.	
	Troy, Robert.	

Tellers: Tá, Deputies Clare Daly and Donnchadh Ó Laoghaire; Níl, Deputies Joe McHugh and Tony McLoughlin.

Amendment declared lost.

Amendments Nos. 72 and 73 not moved.

An Leas-Cheann Comhairle: Amendment No. 74 is in the names of Deputies Clare Daly and Mick Wallace. As amendments Nos. 75 and 77 are related, they may all be discussed together.

Deputy Clare Daly: I move amendment No. 74:

In page 45, line 34, to delete "Subject" and substitute the following:

"Having regard to the balance of the rights and freedoms of data subjects and the rights and freedoms of others, and subject".

Section 59 proposes that the Minister should have wide discretion in limiting the rights of persons given to them by Articles 12 to 22, inclusive, in respect of certain subjects united under the vague banner of "general public interest". The section also proposes to give the Minister wide discretion to limit the rights and freedoms of persons if he or she thinks it is necessary to do so for the protection of a data subject or where he or she thinks the exercise of a right is likely to cause serious harm to the physical or mental health of a data subject. That seems to be fair enough, but there is no provision in the section to oblige the Minister to balance the rights and freedoms of data subjects and others in circumstances where he or she is proposing to restrict a right, for example, access to information. It cannot be the case that the Minister is the final arbiter in deciding whose rights trump whose without having to perform a balancing action. That is where we are coming from in amendment No. 74. It would oblige the Minister to have regard to the balance of rights and would not be a great imposition. It is important that the Minister should have to do this.

Amendment No. 74 ties in with amendment No. 75. Under section 59, the Minister will have the power to limit data subjects' rights in the case of data obtained and kept in the course of the carrying out of social work by a public body, a voluntary organisation or another body. On the face of it, this also seems to be vaguely okay, but if we scratch a little deeper, it becomes obvious that this restriction of rights probably will be used, for example, to refuse information to adopted children on their natural parents. We have a history of this happening in this country. Given that one of the rights listed between Articles 12 and 22, inclusive, is a right to access information a data controller holds on a person, it seems obvious that this provision could be used to limit the right to access information of adopted persons in a broad and non-transparent way. For example, there could be a refusal to grant a person information on the grounds that it might damage his or her mental health. That is critically important.

Amendment No. 77 seeks to delete ensuring the effective operation of the immigration system as one of the general public interest grounds on which the rights of persons can be suspended. The reason we have tabled this amendment is to put it on the Minister's radar that we will be keeping an eye out for regulations made under the section that will seek to restrict the right of persons to access information or to have corrected erroneous information held on them by bodies such as the INIS.

There is an enormous controversy in the United Kingdom about a similar provision in its Data Protection Bill and a legal case against it is being prepared. In the United Kingdom it is proposed to restrict the rights of persons under Articles 14 to 16, inclusive, among others. Those taking the case point out that the provision is discriminatory and will mean that those involved in immigration disputes will find it impossible to obtain the data immigration authorities have used against them, thus making it impossible to build a case or lodge an appeal against a

decision made against them. The suspension of these rights will also mean that it will be impossible for immigrants to correct or challenge erroneous data held on file about them. It will also prevent them from finding out how their data were obtained and shared, thus allowing unlawful data to be shared, go unchallenged and remain a secret.

We do not yet know which of the rights under Articles 12 to 22, inclusive, the Minister will seek to restrict under this section in the case of immigrants. It will be laid out in regulations down the line. As a Parliament, we will be asked to approve those regulations, which is fair enough. We are merely flagging this serious issue. We want to mark it here and now, particularly as it is the subject of litigation across the water.

Deputy Charles Flanagan: I remind the Deputy of the amendments that were passed last night which have some significance in the context of the safeguards about which she has spoken. Amendment No. 74 proposes to insert some text at the beginning of subsection (5). It does not appear to be necessary because of subsection (12) as inserted by amendment No. 80, to which we agreed last night. It already provides that any regulation made under section 59 to which the Deputy referred must respect the essence of the right to data protection and restrict the exercise of data subject rights only in so far as it is both necessary and proportionate.

Amendment No. 75 seeks to delete subsection (5) in its entirety. I have a problem with this because the particular provision is carried over from section 5(8) of the 1988 Act. It allows limited restrictions on data subject rights for social work purposes where, for example, a risk to the health or welfare of children is being assessed by a social worker. Regulations under the section will allow the necessary inquiries to be made by the social worker and access to the data collected in the case could be restricted by means of regulations but only to the extent that and for as long as the release of such information would be likely to cause serious harm to the physical health or mental health of the data subject.

Amendment No. 77 seeks to delete section 59(7)(h). I have a difficulty with this, too. As a result of the amendments made last night, the data protection commission must be consulted on all regulations to be made under the section. Any significant concern not taken on board by the relevant Minister must be communicated directly to the justice committee and any other relevant committee of the Houses. In addition, the draft regulations, because of the positive resolution or positive affirmation that is necessary, must be submitted to both Houses for positive resolutions. The safeguards will provide an opportunity in both Houses to discuss the merits of any such proposal at that time and in such a format as might be proposed within the regulations. Because of this, I have a difficulty with accepting the amendments.

Deputy Clare Daly: I will restate the point on amendment No. 74. We see no reason we would not balance the rights of one person, for example, a mother who put her baby up for adoption, against the rights of the baby who was adopted in making a decision on whether the child should be given information on the mother. It would not always result in a decision in the child's favour. The requirement is that the two sets of rights, where they potentially clash, be balanced, with one person wanting to move on and the other wanting to know from where he or she came. Both viewpoints would have to be taken on board. It is a balancing provision. We thought the Minister might accept that amendment. We take on board his points about the other amendments in the sense that we can deal with them in regulations.

Deputy Charles Flanagan: On the point made by the Deputy about the regulations and, for example, her first point about an adopted child and the information sought, the matter will

be debated in the House at the time in specific terms, rather than in less specific terms now. My advice and view on it are that we wait for the regulations, the contents of which we will be obliged to debate fully. At the time we will be dealing with draft proposals, rather than hypothetical examples as suggested by the Deputy. I would be concerned about a disadvantage being conferred on a party in the example proposed by her, but it is very much hypothetical. What we should do is wait until there is a proposal before us which must be debated fully.

Amendment, by leave, withdrawn.

Amendment No. 75 not moved.

Deputy Charles Flanagan: I move amendment No. 76:

In page 46, line 16, to delete "persons authorised" and substitute "persons who are or were authorised".

Amendment agreed to.

Amendment No. 77 not moved.

Deputy Charles Flanagan: I move amendment No. 78:

In page 47, between lines 19 and 20, to insert the following:

"(n) safeguarding the integrity and security of examinations systems;".

Amendment agreed to.

Deputy Clare Daly: I move amendment No. 79:

In page 47, between lines 21 and 22, to insert the following:

"(8) (a) In circumstances where it is proposed to restrict the rights and obligations referred to in *subsection (1)* for important objectives of general public interest other than those listed in *paragraphs (a)* to *(n)* of *subsection (7)*, the Minister shall cause to be laid before both Houses of the Oireachtas a written statement of those further objectives.

(b) Regulations may be made restricting the rights and obligations referred to in *subsection (1)* only if a resolution approving the written statement laid before the Houses under *paragraph (a)* has been passed by each House.".

Amendment put and declared lost.

Deputy Charles Flanagan: I move amendment No. 80:

In page 47, to delete lines 27 to 40, and in page 48, to delete lines 1 to 10 and substitute the following:

"(9) Subject to *subsection (10)*, regulations may be made under *subsection (5)* or *(6)*—

(a) by the Minister following consultation with such other Minister of the Government as he or she considers appropriate, or

(b) by any other Minister of the Government following consultation with the Minister and such other Minister of the Government as he or she considers appropriate.

(10) The Minister or any other Minister of the Government shall consult with the Commission before making regulations under *subsection (5)* or *(6)*.

(11) The Commission may, on being consulted under *subsection (10)*, make observations in writing on any matter which is of significant concern to it in relation to the proposed regulations and, if the Minister or any other Minister of the Government proposes to proceed to make the regulations notwithstanding that concern, that Minister shall, before making the regulations, give a written explanation as to why he or she is so proceeding to—

(a) the Committee established jointly by Dáil Éireann and Seanad Éireann known as the Committee on Justice and Equality or any Committee established to replace that Committee, and

(b) any other Committee (within the meaning of *section 19(1)*) which that Minister considers appropriate having regard to the subject matter of the regulations.

(12) Regulations made under this section shall—

(a) respect the essence of the right to data protection and protect the interests of the data subject, and

(b) restrict the exercise of data subjects' rights only in so far as is necessary and proportionate to the aim sought to be achieved.".

Amendment agreed to.

Deputy Clare Daly: I move amendment No. 81:

In page 48, between lines 10 and 11, to insert the following:

"(11) Regulations made under this section shall—

(a) respect the essence of the right to data protection and protect the interests of the data subject, and

(b) restrict the exercise of data subjects' rights only in so far as is necessary and proportionate to the aim sought to be achieved.".

Amendment put and declared lost.

Deputy Donnchadh Ó Laoghaire: I move amendment No. 82:

In page 48, between lines 10 and 11, to insert the following:

"(11) (a) Such regulations shall be referred before their enactment to the Data Protection Commissioner for their opinion under the terms of section 100.

(b) The impact assessment shall have the purpose of ascertaining whether the proposed processing of special categories is—

(i) necessary,

(ii) proportionate,

(iii) in compliance with *subsection (4)*,

(iv) in compliance with the GDPR.

(c) The impact assessment shall be returned to the Minister within three months of the Minister's referral, and it shall make recommendations as to whether the proposed processing of special categories is in compliance with the criteria laid out in *paragraph (b)* and shall recommend any changes necessary to the regulation to ensure compliance, or may recommend that the Minister not proceed with the regulation.

(d) In the event that the Minister does not follow the recommendation of the Data Protection Commission, the Government shall—

(i) publish in *Iris Oifigiúil* a reasoned written explanation of the decision of the Government not to follow the recommendation of the Commission,

(ii) cause to be laid before the Houses of the Oireachtas a statement containing a reasoned written explanation of the decision of the Government not to follow the recommendation of the Commission.".

Amendment put and declared lost.

Deputy Charles Flanagan: I move amendment No. 83:

In page 59, to delete lines 18 to 20 and substitute the following:

"(a) that occurs in the course of an activity falling outside the scope of the law of the European Union,

(b) by an institution, body, office or agency of the European Union, or

(c) to which *section 8(1)(b)* applies.".

Amendment agreed to.

Deputy Charles Flanagan: I move amendment No. 84:

In page 62, to delete lines 36 and 37, and in page 63, to delete lines 1 to 18 and substitute the following:

"(3) Subject to *subsection (4)*, regulations may be made under *subsection (2)*—

(a) by the Minister following consultation with such other Minister of the Government as he or she considers appropriate, or

(b) by any other Minister of the Government following consultation with the Minister and such other Minister of the Government as he or she considers appropriate.

(4) The Minister or any other Minister of the Government shall consult with the Commission before making regulations under *subsection (2)*.

(5) The Commission may, on being consulted under *subsection (4)*, make observations in writing on any matter which is of significant concern to it in relation to the proposed regulations and if the Minister or any other Minister of the Government proposes to proceed to make the regulations notwithstanding that concern, that Minister shall, before making the regulations, give a written explanation as to why he or she is so proceeding to—

(a) the Committee established jointly by Dáil Éireann and Seanad Éireann known as the Committee on Justice and Equality or any Committee established to replace that Committee, and

(b) any other Committee (within the meaning of *section 19(1)*) which that Minister considers appropriate having regard to the subject matter of the regulations.".

Amendment agreed to.

Deputy Charles Flanagan: I move amendment No. 85:

In page 63, to delete lines 37 to 39, and in page 64, to delete line 1.

Amendment agreed to.

An Leas-Cheann Comhairle: Amendments Nos. 86 to 92, inclusive, are related and may be discussed together.

Deputy Charles Flanagan: I move amendment No. 86:

In page 76, to delete lines 12 and 13 and substitute the following:

"(c) ensure that the data protection officer—

(i) reports directly, in relation to his or her functions under *subsection (5)*, to the highest level of management of the controller,

(ii) does not receive any instructions regarding the exercise of such functions, and

(iii) is involved in an appropriate and timely manner in all matters relating to the protection of personal data, and".

During the discussion on Committee Stage I agreed to examine the content of what are now amendments Nos. 87, 88, 90 and 91, tabled by Deputies Clare Daly and Mick Wallace. Arising from that examination, I have tabled Government amendments Nos. 86 and 89 by way of response to concerns raised on Committee Stage. I thank the Deputies for raising these issues.

I regret that I am unable to accept amendment No. 92 tabled by Deputy Donnchadh Ó Laoghaire, even though I have to admit I have some sympathy for its objective. It deals with the risk a data protection officer may encounter non-co-operation, duress, harassment or victimisation in the workplace and may as a result be unable to perform his or her duties. I had the opportunity to consider this issue during earlier discussions in the Seanad and I am still of the view that a more effective remedy is available to data protection officers under the Protected

Disclosures Act 2014. The House will be aware that a disclosure of relevant information is protected under that Act. If, in the reasonable belief of a worker, it tends to show a relevant wrongdoing and it came to his or her attention in connection with his or her employment, "relevant wrongdoing", as defined in section 5(3) of the Act, includes that a person has failed, is failing or is likely to fail to comply with a legal obligation. This includes the data controller's obligation towards the data protection officer.

Section 7 of the Protected Disclosures Act 2014 provides for protected disclosures to an external person prescribed in an order made by the Minister for Public Expenditure and Reform in Statutory Instrument 339/2014, in which the Data Protection Commissioner has been prescribed as a recipient of disclosures in respect of all matters concerning compliance with data protection law. This provides an effective remedy where a data protection officer, DPO, is experiencing difficulty in performing his or her functions. A further advantage, and an important aspect, is that any DPO making such a protected disclosure will enjoy the extensive protections against dismissal, victimisation and detriment provided under Part 3 of the 2014 Act.

Another shortcoming in Deputy Ó Laoghaire's amendment No. 92 is that it would, if accepted, apply only to DPOs appointed by law enforcement authorities operating under Part 5 and would not protect the larger number of DPOs operating under the GDPR. All DPOs, whether operating under the GDPR or Part 5 of this Bill, will have protection under section 7 of the Protected Disclosures Act 2014 as elaborated by SI 339 of 2014. I have considered this carefully since we last debated it and, while I appreciate the motivation for this proposal and have some sympathy with the import of the amendment, I cannot accept it because we have a more effective remedy under the Protected Disclosures Act 2014. I do not want a situation to arise where in terms of practice there is not only uncertainty but also confusion between two Acts, one of which is specifically designed to meet the protected disclosure, and not have new amendments here in this legislation that have particular relevance to the 2014 Act.

Deputy Mick Wallace: We appreciate the Government's coming back with amendment No. 86 which is a version of a variety of amendments we tabled on Committee Stage and which we resubmitted in case the Government did not do so. We are happy to support it and will withdraw our amendments Nos. 87 and 90.

These amendments deal with DPOs who work for competent authorities as this section is in Part 5, the criminal justice part. We are curious as to why the Government has rejected our suggestions in amendments Nos. 88 to 91, inclusive. These are, briefly, that a DPO shall not be penalised for the performance of his or her tasks, that one of the DPO's functions is to act as a point of contact for people in regard to what is happening to their information and their rights under this Part, and that a data subject may contact a DPO to ask questions about what is happening to their data and what kind of rights they have under this Part. While we will not push amendment No. 89, we think amendments Nos. 88 and 91 are important.

DPOs, particularly in competent authorities such as An Garda Síochána which has a less than stellar reputation for dealing with people who point out wrongdoing, should have the same protections as their colleagues in other public bodies. Article 38 of the GDPR which applies to everyone except competent authorities like the Garda states that a DPO "shall not be dismissed or penalised by the controller or the processor for performing his tasks". Why would we not protect them similarly under Part 5, especially since the Government has accepted the general principle of giving DPOs in Part 5 most of the Article 38 protections? Equally what reason could there be for a DPO not to have as part of his or her job answering questions from people

suspected of crime or victims of crime about what is happening to their data and what kind of rights they have under this Part?

Deputy Donnchadh Ó Laoghaire: I support Deputy Wallace's and Deputy Clare Daly's amendments because while they deal with different aspects of the Bill, their intention is the same. It is not difficult to anticipate the circumstances in which it would be in the interests of a data controller to hinder, harass or in any way infringe the work of a DPO. That might be in the interests of individuals or senior management within any organisation and could restrict the DPO's ability to do his or her job properly.

I take on board what the Minister has said. It was somewhat more detailed than his contribution on this amendment on Committee Stage. While I recognise that the data protection commission is a prescribed organisation under the legislation I am concerned that the procedure would be protracted and slow. My amendment to subsection (2) of the section that it is intended to insert allows the commission to take corrective action. There should be a direct line between DPOs and the data protection commission beyond the Protected Disclosures Act 2014. If somebody was concerned and contacted them directly outside the scope of the Protected Disclosures Act 2014, there would be scope for advice and support and so on. A complaint made under a section of this Act would allow the commission to take corrective action quickly and directly against the people in those organisations which were potentially hindering, undermining or harassing the person who was trying to do his or her job.

Deputy Jim O'Callaghan: This group of amendments seeks to provide protection for the DPO. The objective of the amendments is to ensure that he or she is able to carry out his or her functions independently and without inappropriate interference by senior management or the person who has appointed them. Not only will a DPO have the benefit and advantage of the protected disclosures legislation but he or she will also have the advantage of protection under employment law. If a DPO is dismissed for performing his or her functions, he or she is entitled to seek the protection of the court for wrongful or unfair dismissal or for constructive dismissal if his or her senior manager is preventing him or her from carrying out his or her functions as required.

I support amendment No. 86 but it does give an extraordinary level of protection to a DPO stating that he or she shall "not receive any instructions regarding the exercise of such functions". The objective is to try to ensure that a DPO is not inappropriately interfered with. We have also to recognise the possibility that DPOs who are incompetent, who do not perform their functions in an appropriate manner or who do not carry them out in accordance with what their job requires will be appointed. Are they to be completely immune from any instructions from their supervisors to say they must carry out their functions in a competent and particular way?

Deputy Clare Daly's and Deputy Wallace's amendment No. 88 would give a DPO extraordinary protection. He or she could never be dismissed for performing his or her tasks. A situation might arise where a DPO is performing his tasks with extraordinary incompetence. Is he not to be dismissed because he is failing to perform his job competently? Providing that an officer shall not be dismissed would be an extraordinary power to insert and would make a DPO immovable.

On Deputy Ó Laoghaire's amendment No. 92, the objective of which is to try to ensure that the data protection officer is protected from inappropriate interference, duress, harassment or victimisation, all employees have protection under employment law from an employer who is

imposing duress, harassment or victimisation upon them. I note the objective of the amendment and I support it, but I believe it would be unnecessary to include such a specific provision here when there are protections in place.

Deputy Charles Flanagan: I note the points made by Deputy O'Callaghan. I am of the view that my amendments Nos. 86 and 89, by and large, deal with the issues raised by Deputies Wallace and Clare Daly on Committee Stage and would obviate the need to proceed any further with amendments Nos. 87, 88, 90 and 91. I have gone as far as I can on this matter. The issues raised on Committee Stage were not insignificant issues and in this regard I am happy to propose amendments Nos. 86 and 89.

Amendment agreed to.

Amendments Nos. 87 and 88 not moved.

Deputy Charles Flanagan: I move amendment No. 89:

In page 76, after line 38, to insert the following:

"(d) acting as the contact point for data subjects with regard to all issues related to the processing of their personal data and to the exercise of their rights under this Part;".

Amendment agreed to.

Amendments Nos. 90 and 91 not moved.

Deputy Donnchadh Ó Laoghaire: I move amendment No. 92:

In page 77, between lines 3 and 4, to insert the following:

"Protection of Data Protection Officers

88. (1) The Data Protection Commission shall provide a protection, whereby Data Protection Officers may seek the assistance of the Data Protection Commissioner, due to the fact that the Data Protection Office is not in a position to carry out their role fully, due to inappropriate interference from the Data Controller, or duress, harassment or victimisation.

(2) Where the Commission receives a complaint under *subsection (1)*, it shall, in addition, make a decision—

(a) as to whether a corrective power should be exercised in respect of the controller or processor concerned, and

(b) where it decides to so exercise a corrective power, the corrective power that is to be exercised.

(3) The Commission, where it makes a decision referred to in *subsection (2)(b)*, shall exercise the corrective power concerned.".

Amendment put and declared lost.

An Leas-Cheann Comhairle: Amendments Nos. 93 to 95, inclusive, are related and may be discussed together.

Deputy Charles Flanagan: I move amendment No. 93:

In page 78, lines 9 to 11, to delete all words from and including "data;" in line 9 down to and including line 11 and substitute "data.".

This is a drafting amendment which deletes subparagraph (iv) of section 89(2)(f) as it repeats text included in the introductory text of paragraph (f). On amendment No. 94, section 90 gives effect to Article 14 of the directive. A data subject's rights in regard to automated data processing, including profiling, in the context of law enforcement are set out in Article 11 of the directive and in section 88 of this Bill. As such, I am not inclined to accept amendment No. 94. On Committee Stage references in section 90, now section 91, to section 92, now section 93, were deleted. Arising from a review of the section, amendment No. 95 restores the reference to section 93 in section 91(10)(i), such that this, too, is a drafting amendment.

Deputy Clare Daly: Amendment No. 93 is not a tidying-up amendment. It seeks to delete an amendment we had accepted on Committee Stage, which was a pretty innocuous amendment in that it only obliged a controller to give a person such further information as he or she might need to exercise his or rights under Part 5. It adds one additional point to the list in section 89(2) in terms of information which data subjects have a right to get from data controllers. Most of the items of information included in subsection (2), such as information on a controller's contact details, the right to lodge a complaint and the purpose for which the data is being processed and so on, are replicated in the GDPR and the directive but the point, "such further information as is necessary to enable the data subject to exercise his or her rights", is not included in this Bill. The amendment tabled and accepted on Committee Stage sought to ensure that it is included and the Government is now taking it out. Given we are speaking about Part 5 and people caught up in the criminal justice system, people who more often than not are poor or are vulnerable and do not know much about their rights let alone how to exercise them, I do not believe it would be a burden on the Garda Síochána or the Director of Public Prosecutions, DPP, to give these people a leaflet about their rights and information about to whom they can make a complaint if they believe their rights have been infringed. We are at a loss as to why it should be taken out of the Bill.

On amendment No. 94, Article 13(2)(f) of the GDPR gives people a right to be given information about the existence of automated decision-making, including profiling and, at least in those cases, a right to meaningful information about the logic involved, as well as the significance and envisaged consequences of such processing for the data subject. This right is not replicated in the directive or in this Bill. We believe it should be included and that it could be potentially valuable. The criminal justice directive transposed in Part 5 prohibits automated processing, including profiling that results in discrimination, but to enforce the right not to be profiled, a person would have to be told about it when he or she exercises the right of access to information he or she is being given under section 90, but this section, as drafted, does not oblige the controllers to inform people that they have been profiled or subjected to automated processing. Again, because this is Part 5, what we are talking about is potential profiling of innocent citizens in a discriminatory way by the Garda Síochána and so on. We believe it is very important that people get the information they need. If somebody asks for information about what the Garda has been doing with his or her data, he or she should be given all of the information so that he or she can judge whether the profiling is discriminatory. Amendment No. 94 would achieve this. We have no problem with amendment No. 95 which is essentially a tidying-up amendment.

Deputy Charles Flanagan: I do not accept Deputy Clare Daly's point that Government amendment No. 93 may bring about changes to amendments that were accepted on Committee Stage. There is a duplication of text in section 89(2)(f)(iv), which reads, "such further information as necessary to enable the data subject to exercise his or her rights under this Part". This text is included in the beginning of section 89(2)(f). Amendment No. 93 is a tidying-up amendment. I would not like Deputy Daly to think there is any sleight of hand in terms of what we are doing by way of amendment No. 93. It is merely a tidying-up of the text. I cannot accept amendment No. 94 for reasons stated.

8 o'clock

Deputy Clare Daly: I have to accept the Minister's bona fides on this matter. If the reference to such further information as necessary to enable the data subject to exercise his or her rights under this Part remains in the Bill, I will take the Minister's word on it.

Amendment agreed to.

Amendment No. 94 not moved. **Deputy Charles Flanagan:** I move amendment No. 95:

In page 82, line 12, to delete "the data subject" and substitute "subject to *section 93*, the data subject".

Amendment agreed to.

Acting Chairman (Deputy Frank O'Rourke): Amendments Nos. 96 to 99, inclusive and 136, 139, 143 and 144 are related and may be discussed together.

Deputy Charles Flanagan: I move amendment No. 96:

In page 84, line 20, to delete "in".

Amendments Nos. 96 to 99, inclusive and Nos. 136, 139, 143 and 144 are all Government amendments with regard to sections 92, 101, 102, 132, 156, 162, 164 and 165. I put it to Deputies that these are minor drafting changes across a number of sections and merely include corrections to cross references that were probably less than correct earlier.

Amendment agreed to.

Deputy Charles Flanagan: I move amendment No. 97:

In page 92, line 39, to delete "to".

Amendment agreed to.

Deputy Charles Flanagan: I move amendment No. 98:

In page 93, line 12, to delete "*subsection (1)(a)*" and substitute "*subsection (2)(a)*".

Amendment agreed to.

Deputy Charles Flanagan: I move amendment No. 99:

In page 93, line 17, after "infringe" to insert "the".

Amendment agreed to.

Acting Chairman (Deputy Frank O'Rourke): Amendments Nos. 100, 114 to 117, inclusive, 122 and 123 are related and may be discussed together.

Deputy Clare Daly: I move amendment No. 100:

In page 96, between lines 1 and 2, to insert the following:

"Rights under Article 80(1)

107. (1) In addition to the rights conferred on a data subject under Article 80(1) to mandate a not-for-profit body, organisation or association to which Article 80(1) applies to lodge a complaint on his or her behalf with the Commission and, under *section 116(7)* to take a data protection action on behalf of the data subject, a not-for-profit body, organisation or association to which Article 80(1) applies may, independently of a data subject's mandate, and if it considers that the rights of a data subject under a relevant enactment have been infringed as the result of the processing of personal data in a manner that fails to comply with a relevant enactment, take the following actions on behalf of a data subject—

(a) lodge a complaint with the Commission under *section 107*,

(b) exercise the rights referred to in *section 116* and *section 149*.

(2) Where the Commission or a court, in performing its functions under this Act, has reasonable doubts as to whether a particular body, organisation or association is one to which Article 80(1) applies, it may request the provision by the body, organisation or association concerned of such additional information as is necessary in order to confirm that it is such a body, organisation or association.".

I have my office on to tell me that the Minister was not right on his last amendment so I do not know which is right. My head is melting. I hope we have not conceded in the wrong on amendment No. 93.

Acting Chairman (Deputy Frank O'Rourke): We are on amendment No. 100 now.

Deputy Clare Daly: If we have been conned, we will see the Minister in court.

Acting Chairman (Deputy Frank O'Rourke): It is all in good faith.

Deputy Charles Flanagan: I assure Deputy Daly that-----

Deputy Clare Daly: Somebody is going to end up in trouble at the end of this, I am not sure who.

Acting Chairman (Deputy Frank O'Rourke): Let us stick to amendment No. 100.

Deputy Clare Daly: This group of amendments deals with-----

Deputy Charles Flanagan: Deputy Wallace is a witness anyway. No confidence tricks could be part of-----

Deputy Clare Daly: Deputy Wallace is the one who recommended that we should accept the Minister's bona fides.

Deputy Charles Flanagan: Maybe the question mark is over Deputy Wallace.

Deputy Clare Daly: It could be.

Deputy Mick Wallace: Maybe I am just too close to the Minister.

Deputy Clare Daly: That could be it.

Acting Chairman (Deputy Frank O'Rourke): We work in good faith.

Deputy Clare Daly: This group of amendments deals with the section of the Bill that gives effect to Article 80 of the general data protection regulation, GDPR, on the representation of data subjects. There is a huge problem when it comes to people's privacy rights under data protection legislation in that individuals do not have the expertise, knowledge, time or money to enforce their legal rights. We are aware that the Irish legal system is incredibly expensive and it is difficult for lawyers to navigate, never mind people who are unfamiliar with it. Many people will never have the right to enforce their rights through the courts because the costs are beyond them.

Article 80 of the GDPR has a mandatory provision that member states must allow individuals to nominate a not-for-profit body to act on their behalf to make complaints to a data protection authority, appeal against the decisions, or take action against a controller such as an Internet service provider where it has abused personal data.

Two optional parts of Article 80 are that member states may allow individuals to nominate not-for-profit groups to act on their behalf to seek damages and they may allow not-for-profit groups to bring actions on their own initiative without the need for an individual to nominate them. When Dr. T. J. McIntyre appeared before the Oireachtas Joint Committee on Justice and Equality during the pre-legislative scrutiny of the Bill he said, "It is very important that Ireland would take up the two aspects of flexibility in the GDPR", which we have not. As it stands, this Bill does not allow mandated non-profit bodies to seek damages and it does not allow non-profit bodies to take actions independently, be it by bringing a complaint to the Data Protection Commissioner or by going to court on behalf of people's data rights. Clearly the GDPR contains the provision on non-profit bodies taking independent actions because the people who negotiate it know that in many cases in this area of law data subjects would not even know enough about their rights to know if they had been breached.

It is notable that the massive safe harbour data sharing agreement was struck down as being unlawful on the basis of one person who knew his rights and asserted those rights as a data privacy campaigner. It was not the case that a bunch of people started asserting their rights. This is why the safe harbour arrangement went down. Most people did not know that what was happening to them was illegal. It took one dogged campaigner who knew enough and who was consistent enough after being fobbed off by the Irish Data Protection Commissioner who dismissed his complaint as frivolous to take a challenge. The whole edifice of dodgy sharing of data with the United States of America fell down off the back of that complaint. This is why we need to take up the optional provision around non-profit bodies taking cases independently.

In its most recent opinion on the dangers posed by market targeting, micro-targeting and manipulation during political campaigns, the European Data Protection Supervisor strongly recommended, on the basis of the dangers posed to democracy by such manipulation, that member states take up the optional provisions to allow non-profit bodies to take cases independently.

This is what we are at. We need that provision and the provision for damages to have effective privacy rights and access to justice.

In brief, amendments Nos. 100, 114 and 116 are about giving effect to the two optional provisions under the GDPR in an everyday context. That is all circumstances except in criminal justice. Amendment No. 100 provides for the right for complaints to be lodged with the data protection commission and for cases to be taken independently by non-profit bodies. Amendment No. 114 allows for non-profit bodies to go to court independently. Amendment No. 115 allows for non-profit bodies taking cases, if they are mandated to do so by a data subject, to seek damages. Amendment No. 116 says that if a non-profit body takes a case independently of a person's mandate, then it is not allowed to seek damages. This is a provision of the GDPR and it is why we have it included it here.

The Government's amendment No. 122 seeks to remove the amendment that we succeeded with on Committee Stage, and I am absolutely sure of this, that allows non-profit bodies taking action on behalf of data subjects under Part 5 to seek damages on the data subject's behalf. We will resist the rowing back on this amendment from Committee Stage.

Our amendment No. 117 seeks to insert a Part 5 provision whereby non-profit bodies can independently lodge claims where they feel that data rights have been breached. Amendment No. 123 is consequential on that since it provides that they cannot seek damages, as in the case of amendment No. 116 where non-profit bodies taking a case independently are not allowed to seek damages under the GDPR. That is the way we see it. We strenuously object to amendment No. 122 and we very strongly recommend the other amendments in the group.

Deputy Charles Flanagan: The purpose of amendments Nos. 100, 114 and 117, as tabled by Deputies Clare Daly and Wallace, is to allow not-for-profit bodies, organisations and associations to exercise data subject rights on behalf of individuals before the Data Protection Commissioner and the courts but without the permission or agreement of those individuals. That would amount to an extraordinary change in our law.

I acknowledge that Article 80(2) of the GDPR recognises that a member state may permit a not-for-profit body, association or organisation to take action on behalf of a data subject without the data subject's mandate in its national law. That is not part of our national law or legal system, and compliance with the GDPR does not require such a provision. I cannot accept amendments Nos. 100, 114 and 117 for that reason, or the related amendments Nos. 116 and 123.

Section 116(8) provides that a court hearing a data protection action taken by a non-profit organisation or association on behalf of a data subject may not award compensation for any damage suffered. This restriction in the taking of compensation claims by a not-for-profit body, association or organisation seeks to discourage speculative compensation claims, especially where the data subject may be relieved of any risk that the costs of the action may be awarded against him or her. There are sound public policy reasons for discouraging the growth of an excessive compensation culture in data protection claims. As the Deputies will be aware, there is already concern about the level of compensation claims in Ireland, which is contributing to increasing insurance premium costs and affecting business across the board, especially SMEs. Amendment No. 115 tabled by Deputies Clare Daly and Wallace seeks to reverse this position by allowing not-for-profit bodies, associations and organisations that may act on behalf of data subjects to seek and claim compensation and the courts to award compensation. I am not in a position to accept the amendment.

Government amendment No. 122 seeks to replace section 127(7). The subsection was amended by the select committee to allow not-for-profit bodies, organisations and associations to seek compensation on behalf of data subjects for infringements of the law enforcement directives and allow the courts to award compensation. For the reasons I have outlined, I am seeking in the amendment to reinstate the earlier text of the subsection. The amended subsection is a broad departure and one that requires careful consideration that we have not given to it. I am not prepared to accept the broadly based nature of what is, in effect, a wide-ranging public policy change.

Deputy Clare Daly: We view this as an important part of the Bill. As such, the amendment is one of the most important we have remaining. It concerns an effective remedy, as well as access to a right people have. I will not repeat all of my points. Article 80 has mandatory aspects, but there are two optional parts. Since it is necessary to factor them in, we will press the amendment. There must be an effective deterrent or penalty. That right is only being given to poor people, as it were, or those who cannot access the law and must go to a not-for-profit organisation in order to get justice. If a person has enough money, he or she can go to a lawyer to seek an application. It is important that not-for-profit organisations be able to seek damages. Let us face it - that is the deterrent for someone who is breaching the data rights of others.

Acting Chairman (Deputy Frank O'Rourke): I apologise to Deputy Ó Laoghaire who indicated that he wished to speak to the amendments.

Deputy Donnchadh Ó Laoghaire: There is no need to apologise, as I only indicated once. I will speak in support of the amendments which constitute a significant proposal. As mentioned in the context of other legislation, there is an inequality of arms in the legal system. I am not just referring to the making of complaints to the Data Protection Commissioner but also to taking cases to court which can be difficult. If one does not have the money to do so, that remedy is beyond one's reach.

Although it would not address all of the issues raised in the amendments, the Multi-Party Actions Bill 2017 would, to some extent, offer an avenue for persons who had been wronged in any of a variety of ways, including data breaches, to work together in taking a case. I remind the Minister that a money message is required to enable that legislation to proceed to Committee Stage. I hope he will be in a position to provide that message in order that multi-party actions can be taken, as they would not only address data breaches collectively but also a wider variety of issues.

Deputy Jim O'Callaghan: It is important that, if there is a data breach, a person affected have an entitlement to seek a judicial remedy. This is provided for in section 116. However, amendment No. 100 tabled by Deputies Clare Daly and Wallace is not only novel but would also completely alter the way litigation is conducted. Currently, if someone is the victim of a data breach, he or she goes through the process with the commission. If that person wishes to bring a case to court, it is wrong to say he or she cannot do so. Most solicitors will take actions on a no foal, no fee basis. These actions will get to court. However, what makes amendment No. 100 so novel, which is an understatement, is that it would enable a not-for-profit body to take an application to court on behalf of a person whose data had been breached, even if that person had not mandated the action. It would be an extraordinary change to the way litigation is conducted. Someone who did not want to go to court or did not say he or she wanted to do so would have a case taken for him or her, independently of his or her mandate, to the courts.

Speaking as a lawyer, this would probably be one of the most popular legislative measures ever introduced. There might be statues built to Deputies Clare Daly and Wallace outside Blackhall Place in the years to come if the amendment was to get through. However, it would be an inappropriate amendment. For example, industrious and enterprising lawyers could decide to set up a not-for-profit organisation. It would be established legitimately and have legitimate interests and take actions on behalf of persons whose data had been breached. They would not mandate the actions or ask the not-for-profit body to go to court. The body would go to court; the case would be lengthy and complex and, while there might not be an award of damages, an injunction or declaration could be granted. The successful party would then be entitled to apply for and receive costs. Were I an industrious and entrepreneurial lawyer, I would set up a not-for-profit body that would take such cases, at the end of which I would receive a large amount in costs. That is not the reason Deputies Clare Daly and Wallace tabled the amendment and Article 80(2) of the regulation expressly provides for this, but it would be inappropriate for our system. Many people have gone before the courts as a result of data breaches. They received a good service and their cases were taken on a no foal, no fee basis. If someone wants a judicial remedy, he or she needs to be interested in going before the court. It would be inappropriate for someone's cause of action to be brought before the court by a body that did not have his or her mandate.

On the other amendments in the group, amendment No. 114 reads, "independently of the data subject's mandate". For the reasons I have outlined, that would not be appropriate. Amendments Nos. 115 to 117, inclusive, are in the same vogue, but I agree that it would be wrong to set aside the decision made by the committee when we agreed to insert in the section an entitlement to award compensation. If someone takes a case to court, the way we reflect damages in the legal system is by an award of general damages. It is a pyrrhic victory if someone who finds out that his or her data have been breached goes to court and succeeds only to receive no award of damages. Unless I hear something persuasive from the Minister, I will not support amendment No. 122.

Acting Chairman (Deputy Frank O'Rourke): If the Minister wishes to respond, he has two minutes in which to do so. Deputy Clare Daly will then make a final contribution.

Deputy Charles Flanagan: I will make a point about the payment of compensation. It is only in the event of the not-for-profit organisation bringing the action that compensation would not be forthcoming. In other cases relating to other aspects of the legislation, an individual can claim and be awarded compensation. I do not accept the amendments because of the fundamental change that would be made to our civil legal code. For such a wide-ranging and broadly based change to be introduced in an amendment to legislation would not be in the best interests of how we do our work and I do not accept it.

Deputy Clare Daly: The amendments are not in any way novel but rather are an optional protocol to the directive and the legislation. We are not proposing anything new or dramatic as Deputy O'Callaghan suggested. I do not see why legal professionals would reinvent themselves as a not-for-profit organisation to take cases in which we specifically preclude them from being able to seek compensation or damage. Rather, they would keep the barrister's hat on, do the job and get paid for it because that is provided for. The amendment provides an alternative for people who cannot engage legal representation. As I am often contacted by people who wish to access the courts system but cannot afford to do so, I would be very pleased to get the list of solicitors who would take such actions for nothing. I have never encountered any such solicitors so we would be very grateful if Deputy O'Callaghan would pass on those names.

The amendments do not in any way create a free-for-all for not-for-profit organisations. In cases involving clear public interest, however, they may take up a case in the common good without initiating it. Such cases might have a broad impact on the public. The not-for-profit organisation would be excluded from getting damages in that regard, which is very important. These are optional protocols which experts in this area in the State have suggested should be added to the Bill and that is what we are trying to do.

Amendment put and declared lost.

Acting Chairman (Deputy Frank O'Rourke): Amendments Nos. 101 to 113, inclusive, 118 to 121, inclusive, and 124 to 128, inclusive, are related and may be discussed together. Amendment No. 102 is a physical alternative to 101 and amendment No. 125 is a physical alternative to 124.

Deputy Donnchadh Ó Laoghaire: I move amendment No. 101:

In page 96, to delete lines 24 to 27 and substitute the following:

"108. (1) For the purposes of *section 107(2)(a)*, on receipt of a complaint the Commission shall investigate the complaint, and issue a formal decision on the conclusion of the investigation, save where *subsections (2)* to *(4)* apply, unless the Commission considers the complaint to be frivolous or vexatious.".

This amendment was discussed on Committee Stage and the Minister stated he might give it further consideration. It is intended to ensure that there is an adequate filtering or triage of cases but the threshold is set very low in order that the vast majority can be taken. It also strengthens the data protection commission as any complaints above that threshold would have to be formally investigated and could not be dismissed. That would bring more transparency and make the Bill and the commission more efficient.

Deputy Mick Wallace: The amendments are designed to obligate the commission to investigate a complaint. Deputy Ó Laoghaire has tabled an amendment similar to that tabled by Deputy Clare Daly and me. The reworkings of the sections are a consequence of this and provide some additional protocols for the Data Protection Commissioner to follow in regard to a complaint. Section 107(1) contains what many consider to be a very strange provision which appears to allow the commission to receive a complaint and to ignore it not because the complaint is frivolous or vexatious but without offering any reason for so doing. During the debate on the Bill in the Seanad, the Minister stated that he did not consider that there would be such fallout from the section and mentioned that the commission would be required on a general basis to give reasons for its decisions. He also pointed out that reasons would have to be provided to the complainant so as to facilitate an appeal. We still think, however, that section 108(1) in particular empowers the commission to ignore a complaint, stating that it shall "take such action in respect of it as the Commission, having regard to the nature and circumstances of the complaint, considers appropriate". That action could be to ignore the complaint without providing a reason for doing so.

Deputy Clare Daly: This is a significant set of several amendments, each of which aims to oblige the data protection commission to investigate all complaints it receives from ordinary Joes in the same manner as the Bill provides for it to investigate issues of its own volition or where it is the lead supervisory authority in a broader European investigation. As has been stated, the Bill places no obligation on the data protection commission to investigate the complaints

it receives. All of our previous relevant data protection legislation provided that the data protection commission "shall" investigate the complaints it receives but there is no such explicit obligation in this Bill. Rather, the data protection commission can examine the complaint and take such action as it sees fit, which could include throwing the complaint in the bin. There is nothing to prevent it doing so.

When Max Schrems went to the Irish Data Protection Commissioner many years ago, his compliant was deemed frivolous and vexatious. That complaint was later upheld by the European Court of Justice and led to the striking down of the safe harbour principles for data sharing between the EU and the US. It turned out to be a very big deal but it was dismissed by the Data Protection Commissioner. We have tabled these amendments out of concern at what would happen if we allow the data protection commission to do no more than examine, given the outcome of the Schrems case which it was required to investigate.

It is not about the big marquee cases but, rather, trying to assist ordinary people to protect their rights. As was stated in regard to earlier groupings, the vast majority of citizens do not have access to courts in this country. We must have a data protection commission that investigates complaints to keep those complaints out of the courts and prevent the courts being bogged down, as Deputy O'Callaghan stated. We need a data protection commission that helps people to navigate this complicated area and get justice if their rights have been breached. Many Members tabled amendments with a similar aim on Committee Stage. Sinn Féin resubmitted its amendment but Fianna Fáil did not. There was cross-committee agreement, however, that the data protection commission should be obliged to investigate and that that was an important principle. Members differed on how that should be done.

I wish to outline why we have tabled this amendment in this format. Our issue with swapping the word "examine" for "investigate" relates to how the Bill is structured. Complaint handling under section 108, which provides for an individual to submit a complaint, is quite different from complaint handling under the sections providing for situations in which the data protection commission undertakes an inquiry. The Bill states that the data protection commission will initiate an inquiry of its own volition or where it is the lead supervisory authority in a complaint sent to it by another supervisory authority in the EU. "Inquiry" has a particular meaning in the Bill. Rather than the data protection commission having two similar but not identical procedures, one for complaints from the little people and one for issues it decides to look at of its own volition, the same inquiry procedure should apply across the board.

We maintain the position that the data protection commission has a wide discretion in how it conducts an inquiry, what kind of corrective action it takes on foot of a complaint, what kinds of enforcement order it might issue and so on. We do not propose to fetter its discretion. In essence, these large number of amendments are trying to create a single procedure for complaint handling by the data protection commission. It is a complicated Bill. We think these amendments would simplify it such that people looking at it and trying to figure out what will happen when they complain would not get a headache from so doing. They would be able to get rid of the artificial distinction between complaints from ordinary people and complaints referred by another DPC. It would avert the absolutely cast-iron guaranteed inevitability of people who complain to the DPC feeling their complaint has not been investigated properly - either rightly or wrongly.

It is unfortunate that we did not get to debate the idea of a single, unified procedure for complaint handling properly on Committee Stage instead of getting bogged down in a debate about

the phrase "frivolous and vexatious". We are conscious on Report Stage of such an important Bill that if we push these amendments we could possibly run the risk that it could lead to minor drafting issues that could have unintended consequences in other parts of the Bill, which is not our intention. We are conscious of that but we want to strongly register those points on the record and ask the Government at the very least to ask the commission to produce guidance for the general public that makes it clear that it can and will investigate the complaints of the little people. I ask that any such guidance would clarify the various enforcement and corrective powers that the Bill makes clear the DPC has when it comes to what it investigates itself or for other DPCs and that they are also available to us when it comes to our complaints. In order for people to assert their rights they must first understand what they are. Perhaps I will wait and see what the Minister says in his reply but we very much make that appeal in good faith and in the interests of delivering a good and accurate Bill.

Deputy Charles Flanagan: Chapters 2 and 3 of Part 6 contain key sections dealing with enforcement of the GDPR and the directive, respectively. Sections 108 and 121 are key sections dealing with the handling of complaints by the commission. As I said earlier and on Committee Stage I fear there may be some misunderstandings about how they will operate. So, at the outset, I will briefly run through the complaints system as set out in the Bill.

Section 108(1) requires the DPC to examine every complaint it receives and to take such action as it considers appropriate, having regard to the nature and circumstances of the complaint. Where, as referred to in subsection (2) of that section, an amicable resolution is not reached in those cases in which the commission considers that there is a reasonable likelihood of the parties reaching such a resolution within a reasonable period, the commission must proceed to take an action specified in subsection (5) in a domestic case, or under section 112 in a cross-border case.

Section 108(4) makes it clear that the commission is under an obligation and that it "shall proceed" to take action. It does not have discretion to simply ignore or disregard a complaint. This means that the reference to "such action" in subsection (1) is a reference to action that the commission must take, not to whether or not to take action.

As regards notification of the data subject, subsection (6) requires the commission, as soon as practicable after taking an action referred to in subsection (5), to give the data subject a notice in writing setting out the action it has taken in response to his or her complaint. As regards paragraph (e) of subsection (5), where the commission conducts an inquiry under that provision in respect of the complaint, it may use any of its extensive powers under Chapter 4.

Under section 111, where an inquiry has been carried out in respect of a complaint and the commission is the competent authority, at that stage the commission must decide whether an infringement has occurred or is occurring. Where it concludes that an infringement has occurred or is occurring, section 111(2) obliges the commission to make a decision on whether a corrective power should be exercised and, if so, the power that is to be exercised.

The corrective powers are set out in Article 58(2) of the GDPR, and they include the possible imposition of hefty administrative fines. Following the making of a decision under section 111, section 115(1)(a) requires the commission to notify the controller or processor concerned in writing of the decision; the reasons for it, and the corrective power it has decided to exercise.

Section 115(1)(b) requires it to provide the same information to the data subject who lodged

the complaint. A broadly similar procedure in section 121 applies to the handling of complaints under the directive. That is a summary of the complaints procedure.

I will not respond to each amendment in this large grouping, but I will focus on the key amendments. As regards Deputy Ó Laoghaire's amendment No. 101, which would replace section 108(1), I have a serious problem with the introduction of a discretion on the part of the commission not to investigate a complaint that may be "frivolous or vexatious." First, it would not be GDPR-compliant. Article 57(4) allows a data protection authority to refuse to act on a complaint only where requests "are manifestly unfounded or excessive." Any wider refusal to act on a complaint will in my view be in breach of the GDPR.

Second, as I said on a previous occasion, while the term "frivolous or vexatious" has a specific meaning here when used by Irish courts, that is, that the claim is unsustainable in law and is bound to fail or has no basis, I would not think it is widely understood across Europe. It is a term that is understood by us here in our law under our common law system and system of litigation. It may perhaps be understood in the UK but its future in Europe is under question. However, that is a debate for another day. This is a term that is not widely used nor indeed is it widely understood. On the contrary, to a data subject or a data protection authority in another member state, use of the word "frivolous" suggests that the matter is not regarded as sufficiently serious for investigation, while "vexatious" has a completely different meaning, namely, that the complaint is seen as a deliberate intention to cause annoyance. The scope for such misunderstandings will be much greater under the one-stop-shop mechanism because the data protection commission will be acting as the lead supervisory authority in many cross-border cases.

Unfortunately, the term "frivolous and vexatious" is used in section 10(1)(b) of the 1988 Act and it has created confusion and misunderstandings in recent years, especially in cross-border cases. Deputy Daly mentioned the Schrems case. In that case Judge Hogan commented that the wording of that provision "is somewhat unfortunate". He went further than that and said it might indeed be "unhelpful". Its use was widely misinterpreted and misunderstood in the aftermath of that case in which Mr. Schrems successfully contested the adequacy of the safe harbour mechanism. The risk of misinterpretation and misunderstanding will be very much greater because of the expected increase in the number of one-stop-shop cases handled by the DPC, which have originated in other member states. I will not accept the alternative models put forward in the amendments to the complaints-handling mechanisms in Chapters 2 and 3 of Part 6.

As regards amendments Nos. 102 to 105, inclusive, I cannot accept the proposals therein to delete the options set out in section 108(5). The same applies to amendments Nos. 118 to 120, inclusive, which would involve similar deletions in section 121.

Consequently, amendments Nos. 106 and 121, which propose to insert new sections in Chapters 2 and 3 are not acceptable. Amendments Nos. 107 to 113, inclusive, and 125 to 128, inclusive, are consequential or related and because I cannot accept the earlier ones I will not accept those. In her concluding remarks Deputy Daly suggested that I might ask the commission for guidance and I will do that. I am happy to take the matter further in that regard.

My amendment No. 124 merely amends an incorrect cross-reference in subsection (1) of section 132. Thank you for your forbearance, Acting Chairman.

Deputy Clare Daly: Perhaps it is the lateness of the hour but did the Minister say he is going to look to the commission for guidance for himself? What he was asked was to look to the

commission to produce guidance for the general public in terms of how they might access and exercise their rights in that regard. I am assuming that is what the Minister meant and on that basis, we would be happy to withdraw our amendments.

Acting Chairman (Deputy Frank O'Rourke): Does the Minister wish to make any further contribution?

Deputy Charles Flanagan: Just to be clear, I said that we would seek the guidance of the commission as suggested by Deputy Daly and it is within that frame that we will do so.

Deputy Clare Daly: It is the lateness of the hour.

Deputy Jim O'Callaghan: I just want to go back to something I said earlier on. Obviously the provision that exists in section 127 gives the right for the award of damages under the heading "Judicial remedy for infringement of relevant provision". However, section 116 deals with a similar topic, namely, "Judicial remedy for infringement of relevant enactment". Since we know from amendment No. 122 that there is the entitlement to award damages in respect of section 127, for consistency that provision should also exist in section 116. For that reason, there is merit in amendment No. 115. I just wanted to say that for the record.

Amendment put and declared lost.

Deputy Mick Wallace: I move amendment No. 102:

In page 96, to delete lines 25 to 27 and substitute the following:

"and, unless *subsections (2)* and *(3)* apply, take the following actions—

(a) cause such inquiry as it thinks fit to be conducted in respect of the complaint, and

(b) following such inquiry, take such action in respect of it as the Commission, having regard to the nature and circumstances of the complaint, considers appropriate.".

Amendment put and declared lost.

Deputy Mick Wallace: I move amendment No. 103:

In page 96, line 39, to delete "complaint, to take an action specified in *subsection (5)*" and substitute the following:

"complaint, and following the conduct of an inquiry into the complaint under *subsection (1)(a)*, to comply with *section 110*".

Amendment put and declared lost.

Amendments Nos. 104 to 113, inclusive, not moved.

Deputy Mick Wallace: I move amendment No. 114:

In page 102, between lines 24 and 25, to insert the following:

"(8) A data protection action may be brought on behalf of a data subject, independently of the data subject's mandate, by a not-for-profit body, organisation or association to which Article 80(1) applies.".

Amendment put and declared lost.

Deputy Clare Daly: I move amendment No. 115:

In page 102, to delete lines 25 and 26 and substitute the following:

"(8) The court hearing a data protection action brought by a not-for-profit body, organisation or association under *subsection (7)* shall have the power to grant to the data subject on whose behalf the action is being brought one or more of the following reliefs:

(a) relief by way of injunction or declaration; or

(b) compensation for damage suffered by the plaintiff as a result of the infringement of the relevant enactment.".

Deputy Charles Flanagan: I can accept amendment No. 115 in the names of Deputies Daly and Wallace.

Amendment agreed to.

Deputy Clare Daly: I move amendment No. 116:

In page 102, between lines 26 and 27, to insert the following:

"(9) The court hearing a data protection action to which *subsection (8)* applies shall not award compensation for material or non-material damage suffered.".

Amendment put and declared lost.

Deputy Mick Wallace: I move amendment No. 117:

In page 104, between lines 2 and 3, to insert the following:

"(2) A body, organisation or association to which *subsection (2)* applies may, independently of a data subject's mandate, and if it considers that the rights of a data subject under a relevant enactment have been infringed as the result of the processing of personal data in a manner that fails to comply with a relevant enactment, take the following actions on behalf of a data subject:

(a) lodge a complaint with the Commission;

(b) exercise the rights referred to in *section 127* and *section 149*.".

Amendment put and declared lost.

Amendments Nos. 118 to 121, inclusive, not moved.

Deputy Charles Flanagan: I move amendment No. 122:

In page 108, to delete lines 9 to 16 and substitute the following:

"(7) The court hearing a data protection action that has been brought, in accordance with *section 119*, on behalf of a data subject by a body, organisation or association to which *subsection (2)* of that section applies, shall not award compensation for material or non-material damage suffered.".

Deputy Clare Daly: If this amendment is going to be declared carried we will call a vote.

Deputy Charles Flanagan: In that case, I withdraw my amendment. I am accepting that it will be defeated.

Amendment, by leave, withdrawn.

Amendment No. 123 not moved.

Deputy Charles Flanagan: I move amendment No. 124:

In page 114, line 5, to delete "*subsection (5)*, *subsection (6)*" and substitute "*subsection (2)*, *subsection (3)*".

Amendment agreed to.

Amendments Nos. 125 to 129, inclusive, not moved.

Acting Chairman (Deputy Frank O'Rourke): Amendments Nos. 130 to 134, inclusive, are related and may be discussed together.

Deputy Charles Flanagan: I move amendment No. 130:

In page 127, lines 16 and 17, to delete "by whom the data are kept".

This group of amendments are to section 144 of the Bill and are largely of a drafting and technical nature. They arise from a review of the section following receipt of comments from the Office of the Director of Public Prosecutions.

Amendment agreed to.

Deputy Charles Flanagan: I move amendment No. 131:

In page 127, line 18, to delete "or any information constituting personal data".

Amendment agreed to.

Deputy Charles Flanagan: I move amendment No. 132:

In page 127, line 25, to delete "obtaining or".

Amendment agreed to.

Deputy Charles Flanagan: I move amendment No. 133:

In page 127, line 27, to delete "obtained" and substitute "that were disclosed to the person".

Amendment agreed to.

Deputy Charles Flanagan: I move amendment No. 134:

In page 127, lines 33 and 34, to delete ", or intended to be obtained, in contravention of subsection (1)" and substitute "without the prior authority of the controller or processor".

Amendment agreed to.

Deputy Charles Flanagan: I move amendment No. 135:

In page 133, line 32, to delete "or *142(1)*" and substitute ", *142(1)* or *paragraph 5* of *Schedule 2*".

This drafting amendment refers to "paragraph 5 of Schedule 2", which, in turn, refers to "the Circuit Court". This reference was inadvertently omitted from section 154 of the Bill.

Amendment agreed to.

Deputy Charles Flanagan: I move amendment No. 136:

In page 134, line 9, after "made" to insert "under".

Amendment agreed to.

Acting Chairman (Deputy Frank O'Rourke): Amendments Nos. 137 and 138 are related and may be discussed together.

Deputy Charles Flanagan: I move amendment No. 137:

In page 135, between lines 24 and 25, to insert the following:

"(7) Subject to *subsection (8)*, a Committee referred to in *subsection (1)*, *(2)* or *(3)* may make rules—

(a) authorising the disclosure, for the purpose of facilitating the fair and accurate reporting of the proceedings, to a *bona fide* member of the Press or broadcast media and at the member's request, of information contained in a record of proceedings before a court for which the Committee is the rule-making authority, and

(b) prescribing any conditions subject to which such disclosure is to be made.

(8) Rules made under *subsection (7)*—

(a) shall not apply to proceedings required by law to be held otherwise than in public, and

(b) shall apply subject to any order made or direction given by a court in the proceedings concerned.".

These amendments relate to the processing of personal data in circumstances in which the controller is a court acting in a judicial capacity. It provides for the making of court rules by the rules committees of the superior courts, of the Circuit Court where applicable and of the District Court in respect of personal data contained in court records. Amendment No. 137 extends the scope of such court rules to include matters relating to the disclosure of such data for the purpose of facilitating fair and accurate reporting of court proceedings. Amendment No. 138 extends the scope of section 159 of the Bill to include any "list or schedule of court proceedings or hearings in court proceedings".

Amendment agreed to.

Deputy Charles Flanagan: I move amendment No. 138:

In page 135, to delete lines 29 to 31 and substitute the following:

"159. The processing of personal data shall be lawful where that processing—

(a) consists of the publication of—

(i) a judgment or decision of a court, or

(ii) a list or schedule of court proceedings or hearings in court proceedings, or

(b) is necessary for the purposes of such publication.".

Amendment agreed to.

Deputy Charles Flanagan: I move amendment No. 139:

In page 137, line 22, to delete "Article 46(1)" and substitute "Article 46(2)".

Amendment agreed to.

Deputy Donnchadh Ó Laoghaire: I move amendment No. 140:

In page 137, between lines 31 and 32, to insert the following:

"Communication of personal data breach to data subject

164. Should a data subject request information in relation to a personal breach which affects them, they have the right to be provided with all the pertinent information in respect of that breach without restriction.".

This amendment, which is relatively self-explanatory, is essentially being proposed for the avoidance of doubt. It provides that a data subject who requests "information in relation to a personal breach which affects them" will have "the right to be provided with all the pertinent information in respect of that breach without restriction". I suggest that it is necessary for the avoidance of doubt.

Deputy Charles Flanagan: As I mentioned on Committee Stage in the Seanad when we were discussing a similar provision, I am unable to accept this amendment, which would insert a new section into the Bill. The proposed new section would interfere with the operation of Article 34 of the GDPR, which deals with the communication of data breaches to data subjects. As I indicated in the Seanad, it would also cut across section 86 of the Bill, which already imposes an obligation on a controller to inform a data subject where there is a high risk to the data subject's rights and freedoms arising from a data breach. In such a case, the controller must notify the data subjects in clear language of the nature of the breach and its likely consequences, and must describe the measures being taken, or proposed to be taken, to mitigate any possible adverse effects.

The amendment before the House refers to a data breach "which affects" a data subject. The ultimate meaning of those words is really unclear. Under the GDPR and the directive, the thresholds for informing the data protection commission of a data breach, and for informing the data subjects whose data protection rights have been breached, are defined in terms of the risk for the data subject arising from the breach. Under the GDPR and section 86 of this Bill, if a data breach involves a high level of risk for a data subject he or she must be given all relevant

information and must have an opportunity to request further information as the need may arise. I am not going to accept amendment No. 140 because I believe it will have the effect of introducing a level of uncertainty.

Amendment, by leave, withdrawn.

Deputy Donnchadh Ó Laoghaire: I move amendment No. 141:

In page 137, between lines 31 and 32, to insert the following:

"Prohibition on the storage of biometric data

164. The Minister shall make regulations prohibiting the storage of biometric data, including facial images or dactyloscopic data, for forms of nationally issued identification including passports and public services cards without the consent of the data subject.".

Amendment put and declared lost.

Amendment No. 142 not moved.

Deputy Charles Flanagan: I move amendment No. 143:

In page 137, line 35, to delete "Part" and substitute "Act".

Amendment agreed to.

Deputy Charles Flanagan: I move amendment No. 144:

In page 138, line 4, to delete "Part" and substitute "Act".

Amendment agreed to.

Acting Chairman (Deputy Frank O'Rourke): Amendments Nos. 145 to 147, inclusive, and amendments Nos. 149 to 167, inclusive, are related and may be discussed together.

Deputy Charles Flanagan: I move amendment No. 145:

In page 139, line 35, after "the" to insert "Control of".

As I said when I was introducing this Bill on Second Stage, the discontinuation of the Data Protection Act 1988 following the entry into force of the GDPR and of this legislation will necessitate the amendment of a significant number of Acts of the Oireachtas. Many of these changes were made during the debate at the select committee. The Minister of State, Deputy Breen, indicated at the committee that further amendments would need to be made on Report Stage. These further changes are set out in amendments Nos. 145 to 147, inclusive, and amendments Nos. 149 to 166, inclusive. These changes have been notified to my Department by the Departments concerned and have been drafted by the Office of the Parliamentary Counsel. In each case, the amendments are intended to ensure compliance with the GDPR and with this legislation. I do not intend to speak on each of the amendments in this group individually because they are self-explanatory. I ask that they be accepted along the lines of the similar amendments we made on Committee Stage.

9 o'clock

Amendment agreed to.

Deputy Charles Flanagan: I move amendment No. 146:

In page 140, line 32, to delete "*subsection (2)*" and substitute "*subsections (1)(b)*, *(2)* and *(3)*".

Amendment agreed to.

Deputy Charles Flanagan: I move amendment No. 147:

In page 140, between lines 32 and 33, to insert the following:

"Amendment of Bankruptcy Act 1988

172. The Bankruptcy Act 1988 is amended by the insertion of the following section:

"Restriction of right of access to personal data in certain circumstances

140D. (1) Article 15 (Right of access) of the Data Protection Regulation is restricted to the extent necessary and proportionate to safeguard the effective performance by the Official Assignee of his or her functions under section 61, where the performance of those functions gives rise to the processing of personal data to which the Data Protection Regulation applies.

(2) In this section, 'Data Protection Regulation' means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).".".

Amendment agreed to.

Deputy Charles Flanagan: I move amendment No. 148:

In page 141, between lines 13 and 14, to insert the following:

"Amendment of section 13A of Electoral Act 1992

173. Section 13A of the Electoral Act 1992 is amended by the insertion of the following subsection after subsection (3B):

"(3C) In addition to any other electoral purpose for which the information contained in the register prepared under section 13, including a draft register or the supplement to the register prepared under section 15 or an electors list published under section 16, being information which is excluded from the edited register, may be used, that information may be used—

(a) by a specified person (within the meaning of section 38 of the Data Protection Act 2018), for the purpose of communicating with a data subject in accordance with section 38 of that Act, or

(b) by an elected representative (within the meaning of section 39 of the Data Protection Act 2018) for the purposes of section 39 of that Act.".".

Amendment agreed to.

Deputy Charles Flanagan: I move amendment No. 149:

In page 142, between lines 10 and 11, to insert the following:

"Amendment of section 24 of the Statistics Act 1993

175. Section 24 of the Statistics Act 1993 is amended—

(a) by the substitution of the following subsection for subsection (2):

"(2) Without prejudice to the Data Protection Regulation and the Data Protection Act 2018, persons and undertakings may provide information and records, or copies thereof, which they may possess to the Director General or officers of statistics on invitation under the provisions of this Act.",

and

(b) by the insertion of the following subsection:

"(3) In this section, "Data Protection Regulation" means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).".".

Amendment agreed to.

Deputy Charles Flanagan: I move amendment No. 150:

In page 142, between lines 10 and 11, to insert the following:

"Amendment of section 57B of Irish Aviation Authority Act 1993

175. Section 57B(1) of the Irish Aviation Authority Act 1993 is amended by the substitution of the following paragraph for paragraph (d):

"(d) inspect, copy or extract information from any material (including information in any form) or thing found or produced to the authorised person.".".

Amendment agreed to.

Deputy Charles Flanagan: I move amendment No. 151:

In page 142, between lines 24 and 25, to insert the following:

"Amendment of section 142 of Consumer Credit Act 1995

176. Section 142 of the Consumer Credit Act 1995 is amended—

(a) in subsection (2), by the substitution of the following paragraph for paragraph (b):

"(b) which relates to information that constitutes personal data to which the Data Protection Regulation applies.",

(b) in subsection (4), by the substitution of the following paragraph for paragraph (b):

"(b) which relates to information that constitutes personal data to which the Data Protection Regulation applies.",

and

(c) by the insertion of the following subsection after subsection (4):

"(5) In this section, "Data Protection Regulation" means Regulation (EU)2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).".".

Amendment agreed to.

Deputy Charles Flanagan: I move amendment No. 152:

In page 144, between lines 23 and 24, to insert the following:

"Amendment of section 9M of the Electricity Regulation Act 1999

179. Section 9M of the Electricity Regulation Act 1999 is amended—

(a) in subsection (4), by the substitution of "the Data Protection Regulation or the Data Protection Act 2018" for "the Data Protection Acts 1988 and 2003", and

(b) by the insertion of the following subsection after subsection (10):

"(11) In this section, "Data Protection Regulation" means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).".".

Amendment agreed to.

Deputy Charles Flanagan: I move amendment No. 153:

In page 144, between lines 23 and 24, to insert the following:

"Amendment of British-Irish Agreement Act 1999

180. Section 51 of the British-Irish Agreement Act 1999 is amended□—

(a) in subsection (1) by□—

(i) the substitution of the following definition for the definition of "Act of 1988":

" 'Act of 1988' means the Data Protection Act 1988, as amended by the *Data Protection Act 2018*;",

and

(ii) the substitution of the following definition for the definition of "established":

" 'established', in relation to a data controller or a data processor, shall be construed in accordance with section 1(3B)(b) of the Act of 1988;",

and

(b) by the deletion of subsection (6).".

Amendment agreed to.

Deputy Charles Flanagan: I move amendment No. 154:

In page 144, to delete lines 25 to 27 and substitute the following:

"179. Section 7D of the Comhairle Act 2000 is amended—

(a) in subsection (3), by the substitution of "Subject to the Data Protection Regulation and the *Data Protection Act 2018*" for "Subject to the Data Protection Acts 1988 and 2003", and

(b) by the substitution of the following subsection for subsection (8):

"(8) In this section—

"application", "assessment" and "service statement" have the meanings assigned to them respectively by Part 2 of the Disability Act 2005;

"Data Protection Regulation" means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).".".

Amendment agreed to.

Deputy Charles Flanagan: I move amendment No. 155:

In page 145, between lines 30 and 31, to insert the following:

"Amendment of section 14 of Dormant Accounts Act 2001

184. Section 14(5) of the Dormant Accounts Act 2001 is amended by the substitution of the following paragraph for paragraph (b):

"(b) Nothing in paragraph (a) shall be construed as restricting the right of a person to inspect the register, in relation to an account, where the person—

(i) proves to the satisfaction of an institution that he or she

is, or may be, the account holder,

(ii) proves to the satisfaction of an institution that he or she is authorised by the account holder to so inspect, or

(iii) may act on behalf of the account holder in relation to that account pursuant to regulations made under section 9.”.”.

Amendment agreed to.

Deputy Charles Flanagan: I move amendment No. 156:

In page 146, between lines 33 and 34, to insert the following:

“**Amendment of section 12 of Unclaimed Life Assurance Policies Act 2003**

187. Section 12(5) of the Unclaimed Life Assurance Policies Act 2003 is amended by the substitution of the following paragraph for paragraph (b):

“(b) Nothing in paragraph (a) shall be construed as restricting the right of a person to inspect the register in relation to a policy where the person—

(i) proves to the satisfaction of an insurance undertaking that he or she is, or may be, the policy holder,

(ii) proves to the satisfaction of an insurance undertaking that he or she is authorised by the policy holder to so inspect, or

(iii) may act on behalf of the policy holder in relation to that policy pursuant to regulations made under section 7.”.”.

Amendment agreed to.

Deputy Charles Flanagan: I move amendment No. 157:

In page 149, between lines 15 and 16, to insert the following:

“**Amendment of Disability Act 2005**

192. The Disability Act 2005 is amended—

(a) in section 12, by the deletion of subsection (3),

(b) in section 13, by the deletion of subsection (4),

(c) in section 41—

(i) by the deletion of the definition of “the Acts”,

(ii) by the substitution of the following definition for the definition of processing:

" 'processing' means processing within the meaning of the Data Protection Regulation;",

and

(iii) by the insertion of the following definition:

" 'Data Protection Regulation' means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 20161 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation);",

(d) in section 42 —

(i) by the substitution, in subsection (1)(b), of "the Data Protection Regulation", for "the Acts",

(ii) by the deletion, in subsection (2)(a), of "save in accordance with the provisions of section 12A of the Data Protection Act 1988 (as inserted by the Data Protection (Amendment) Act 2003)",

(iii) by the substitution of the following subsection for subsection (4):

"(4) A person who contravenes subsection (2) or (3) shall be guilty of an offence and shall be liable —

(a) on summary conviction, to a Class A fine, or

(b) on conviction on indictment, to a fine not exceeding €100,000.",

and

(iv) by the insertion of the following subsections:

"(5) Where a person is convicted of an offence under subsection (4), the court may order any personal data that appears to the court to be connected with the commission of the offence to be destroyed or erased.

(6) The court shall not make an order under subsection (5) where it considers that a person other than the person convicted of the offence concerned may be the owner of, or otherwise interested in, the data concerned, unless such steps as are reasonably practicable have been taken for notifying that person and giving him or her an opportunity to show cause why the order should not be made.",

(e) by the deletion of section 43, and

(f) in section 45, by the deletion of subsection (1).".

Amendment agreed to.

Deputy Charles Flanagan: I move amendment No. 158:

In page 151, between lines 7 and 8, to insert the following:

"**Amendment of Criminal Justice (Mutual Assistance) Act 2008**

197. The Criminal Justice (Mutual Assistance) Act 2008 is amended—

(a) in section 76(1), by the insertion of the following definition:

" 'controller' means a controller within the meaning of *Part 5* of the *Data Protection Act 2018*;",

(b) in section 79C(7), by the insertion of "or, as the case may be, controller" after "data controller" in each place it occurs,

(c) in section 94, by—

(i) the substitution of the following subsections for subsections (5) and (6):

"(5) Article 7, in its application in relation to the use of personal data contained in evidence or information obtained under the Treaty by a person in the State, is without prejudice to the application of—

(a) subject to *section 8* of the *Act of 2018*, section 7 (duty of care owed by data controllers and data processors) of the Act of 1988 in respect of the use of such data (within the meaning of the Act of 1988), and

(b) *Part 5* of the *Act of 2018*, in respect of the use of such data (within the meaning of that Part).

(6) (a) Subject to *section 8* of the *Act of 2018*, the Data Protection Acts 1988 and 2003 apply in relation to personal data referred to in *subsection (5)(a)*, in respects other than those related to their use.

(b) *Part 5* of the *Act of 2018* applies in relation to personal data referred to in *subsection (5)(b)*, in respects other than those related to their use.",

and

(ii) the insertion of the following subsection:

"(8) In this section—

'Act of 1988' means the Data Protection Act 1988;

'*Act of 2018*' means the *Data Protection Act 2018*.",

and

(d) in section 107, by—

(i) the substitution of the following subsections for subsections (2) and (3):

"(2) Subsection (1) is without prejudice to the application of—

(a) subject to *section 8* of the *Act of 2018*, section 7 (duty of care owed by data controllers and data processors) of the Act of 1988 in respect of the use of such data (within the meaning of the Act of 1988), and

(b) *Part 5* of the *Act of 2018*, in respect of the use of such data (within the meaning of that Part).

(3) (a) Subject to *section 8* of the *Act of 2018*, the Data Protection Acts 1988 and 2003 apply in relation to personal data referred to in *subsection (2)(a)*, in respects other than those related to their use.

(b) *Part 5* of the *Act of 2018* applies in relation to personal data referred to in *subsection (5)(b)*, in respects other than those related to their use.",

and

(ii) by the insertion of the following subsection after subsection (4):

(5) In this section—

'Act of 1988' means the Data Protection Act 1988;

'*Act of 2018*' means the *Data Protection Act 2018*.".".

Amendment agreed to.

Deputy Charles Flanagan: I move amendment No. 159:

In page 152, between lines 23 and 24, to insert the following:

"**Amendment of Criminal Justice (Money Laundering and Terrorist Financing) Act 2010**

201. The Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 is amended—

(a) in section 2(1), by the insertion of the following definitions:

" 'Data Protection Regulation' means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 20161 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation);

'personal data' means personal data within the meaning of—

(i) the Data Protection Act 1988,

(ii) the Data Protection Regulation, or

(iii) *Part 5* of the *Data Protection Act 2018*;",

(b) in section 52(2), by the deletion of "(within the meaning of the Data Protection Acts 1988 and 2003)", and

(c) in section 88(2), by the deletion of "(within the meaning of the Data Protection Acts 1988 and 2003)".".

Amendment agreed to.

Deputy Charles Flanagan: I move amendment No. 160:

In page 152, between lines 37 and 38, to insert the following:

"**Amendment of section 17A of Ministers and Secretaries (Amendment) Act 2011**

202. Section 17A of the Ministers and Secretaries (Amendment) Act 2011 is amended—

(a) in subsection (2), by the substitution of "Data Protection Regulation" for "Data Protection Acts 1988 and 2003", and

(b) by the insertion of the following subsection after subsection (3):

"(4) In this section, "Data Protection Regulation" means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 20161 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).".".

Amendment agreed to.

Deputy Charles Flanagan: I move amendment No. 161:

In page 155, between lines 20 and 21, to insert the following:

"**Amendment of Europol Act 2012**

206. Section 1 of the Europol Act 2012 is amended by—

(a) the substitution of the following definition for the definition of "data":

" 'data' means automated data and manual data;",

(b) the substitution of the following definition for the definition of "personal data":

" 'personal data' has the meaning it has in *Part 5* of the *Data Protection Act 2018*;",

(c) by the substitution of the following definition for the definition of "processing":

" 'processing', in relation to personal data, has the meaning it has in *Part 5* of the *Data Protection Act 2018*;",

and

(d) the insertion of the following definitions:

" 'automated data' means information that—

(a) is being processed by means of equipment operating automatically in response to instructions given for that purpose, or

(b) is recorded with the intention that it should be processed by means of such equipment;

'manual data' means information that is recorded as part of a relevant filing system, or with the intention that it should form part of a relevant filing system;

'relevant filing system' means any set of information relating to individuals to the extent that, although the information is not processed by means of equipment operating automatically in response to instructions given for that purpose, the set is structured, either by reference to individuals or by reference to criteria relating to individuals, in such a way that specific information relating to a particular individual is readily accessible;".".

Amendment agreed to.

Deputy Charles Flanagan: I move amendment No. 162:

In page 155, between lines 20 and 21, to insert the following:

"Amendment of Personal Insolvency Act 2012

207. The Personal Insolvency Act 2012 is amended—

(a) in section 2(1), by—

(i) the insertion of the following definition:

" 'Data Protection Regulation' means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 20161 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation);",

and

(ii) the substitution of the following definition for the definition of "personal data":

" 'personal data' means personal data within the meaning of—

(a) the Data Protection Regulation, or

(b) *Part 5* of the *Data Protection Act 2018*;",

(b) by the deletion of section 21A, and

(c) by the substitution of the following section for section 186:

"Restriction of right of access to personal data in certain circumstances

186. Article 15 (Right of access) of the Data Protection Regulation, in so far as it relates to personal data (within the meaning of that Regulation) processed by the following persons or bodies, is restricted to the extent necessary and proportionate to enable the person or body to effectively perform his, her or its functions under this Act, in so far as those functions relate to the supervision of personal insolvency practitioners in accordance with section 176A or to carrying out an investigation under this Part:

(a) the Insolvency Service;

(b) an inspector appointed under section 176;

(c) an authorised officer appointed under section 176B;

(d) the Complaints Committee.".".

Amendment agreed to.

Deputy Charles Flanagan: I move amendment No. 163:

In page 155, between lines 20 and 21, to insert the following:

"**Amendment of section 2 of Animal Health and Welfare Act 2013**

208. Section 2(1) of the Animal Health and Welfare Act 2013 is amended, in the definition of "record", by the deletion of "(within the meaning of the Data Protection Acts 1988 and 2003)".".

Amendment agreed to.

Deputy Charles Flanagan: I move amendment No. 164:

In page 156, between lines 7 and 8, to insert the following:

"**Insertion of section 957A to Companies Act 2014**

207. The Companies Act 2014 is amended by the insertion of the following section after section 957:

"Restriction of application of certain articles of Data Protection Regulation

957A. (1) Articles 14 (Information to be provided where personal data have

not been obtained from the data subject) and 15 (Right of access by the data subject) of the Data Protection Regulation are restricted, to the extent necessary and proportionate to safeguard the effective performance by the Director of his or her functions referred to in paragraph (b) and (e) of section 949(1), where the performance of those functions give rise to the processing of personal data to which the Data Protection Regulation applies.

(2) In this section, "Data Protection Regulation" means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).".".

Amendment agreed to.

Deputy Charles Flanagan: I move amendment No. 165:

In page 157, between lines 26 and 27, to insert the following:

"**Amendment of section 41 of Customs Act 2015**

209. Section 41 of the Customs Act 2015 is amended by the deletion of subsections (4), (5) and (10).".

Amendment agreed to.

Deputy Charles Flanagan: I move amendment No. 166:

In page 159, after line 29, to insert the following:

"Amendment of National Shared Services Office Act 2017

213. The National Shared Services Office Act 2017 is amended—

(a) in section 2, by the insertion of the following definition:

" 'Data Protection Regulation' means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).",

(b) in section 9(2)(a)(iv), by the substitution of "processing (within the meaning of the Data Protection Regulation) personal data (also within the meaning of that Regulation)" for "processing (within the meaning of the Data Protection Act 1988) personal data (also within the meaning of that Act)", and

(c) in section 35—

(i) in subsection (1)—

(I) by the substitution of "Notwithstanding anything contained in any enactment, but subject to the Data Protection Regulation and the *Data Protection Act 2018*" for "Notwithstanding anything contained in the

Data Protection Acts 1988 and 2003", and

(II) by the substitution of "controller" for "data controller" in each place it occurs,

(ii) in subsection (3), by the substitution of "controller" for "data controller", and

(iii) in subsection (4)—

(I) by the substitution of the following definition for the definition of "data controller":

" 'controller' has the same meaning as it has in the Data Protection Regulation;",

and

(II) by the deletion of the definition of "data subject".".

Amendment agreed to.

Deputy Charles Flanagan: I move amendment No. 167:

In page 162, to delete lines 23 to 25.

Amendment agreed to.

Bill, as amended, received for final consideration.

Data Protection Bill 2018 [Seanad]: Fifth Stage

Question proposed: "That the Bill do now pass."

Deputy Clare Daly: Everybody has worked really well on this and we have put in some major changes. We really appreciate the input from the Department in advance of this to enable us to work collectively on the legislation. However, we are very concerned about section 47. We really felt there was not enough time to discuss all of the amendments in the one group and we did not have time to tease matters out properly because our speaking slots were limited. It is on that basis that we are registering our opposition and concern. The digital age of consent being set at 16 is also something we very much regret.

Minister for Justice and Equality (Deputy Charles Flanagan): I acknowledge the co-operation of the House in respect of this important and complex legislation, which arises following four years of negotiation. The legislation will take effect across Europe from next week, on 25 May. We did have good opportunity to discuss it in some detail, acknowledging the principal objectives of the legislation to give further effect in national law to the articles of the GDPR, to transpose the law enforcement directive into national law, the setting up of the data protection commission with up to three commissioners which will replace the Data Protection Commissioner, and of course to equip the data protection commission with the necessary powers and resources. I acknowledge the contributions of Members on all sides. I was pleased to have the opportunity of accepting some of the amendments and acknowledging the will and

wishes of the majority of the House as far as others are concerned. The resources allocated to the data protection commission have been increased to €11.7 million for this year, up from €1.9 million in 2014. This is to prepare for the expanded role and the increased workload that will come with the implementation of the directive and the GDPR. The additional funding has facilitated the recruitment of additional staff, including legal and technical experts and experts of an investigative nature. Staff resources have trebled, from 30 in 2013 to almost 100 now. I am very pleased that we will be in a position to meet the accepted deadline. There are a number of amendments that will take us back to the Seanad next week.

I thank everybody involved. In particular, I thank my officials, Mr. Seamus Carroll and Ms Noreen Walsh, for their diligence over a lengthy period on Second Stage and Committee Stage of this House, and in the Seanad, where we had a great level of detail on the legislation.

Deputy Jim O'Callaghan: It is an important occasion with this Bill now being passed by Dáil Éireann. I join the Minister in acknowledging the work done by Mr. Carroll and Ms Walsh in the Department. It was a significant task to put together this legislation, which was for the part purpose of bringing into effect the GDPR - the parts of it that we wanted to put into the legislation - and also for the purpose of transposing the other accompanying directives.

The process relating to the Bill has been fairly tortuous in terms of the work we have had to do on Second Stage, Committee Stage and Report Stage. That simply reflects the fact that it is going to have a very significant impact and consequences for people in Ireland. The whole premise of the Bill is well-intentioned. It is there to ensure that there is protection for the personal data of individuals. However, it is not the case that the legislation will place burdens only on large corporations and how they deal with the smaller person. In fact, it is also going to place significant obligations on the smaller person and business. I have no doubt there will be difficulties with the legislation after it comes into force and after the GDPR becomes effective on Friday of next week. Hopefully, it will not as torturous as the process relating to the legislation has been.

The progress of the Bill also reflects the fact that we can do nothing in this House once regulations are agreed. Once the regulation was signed up to on 27 April 2016, there was very little we could do. This regulation is coming into effect on Friday week and nothing that this House or, indeed, the Seanad do will affect the provisions of the GDPR. I hope it is a success. I commend all the individuals who contributed here today and on Committee Stage. Let us hope that the legislation will be effective in terms of achieving the primary purpose, which is the protection of individuals' personal data.

Deputy Donnchadh Ó Laoghaire: Before I speak to the Bill, I wish to raise a point of clarification. Can I take it that the Dáil will not sit until 10.30 a.m. tomorrow or will it be the case that statements on Palestine and the debate on the Judicial Appointments Commission Bill will start at 9 a.m.?

Deputy Clare Daly: The Business Committee set the extra time.

Acting Chairman (Deputy Frank O'Rourke): The proposal was only to come into effect if this Bill was not completed tonight.

Deputy Donnchadh Ó Laoghaire: So the Dáil will start at 10.30 a.m. tomorrow. Is that correct?

Acting Chairman (Deputy Frank O'Rourke): Yes.

Deputy Donnchadh Ó Laoghaire: I thought it would be useful to get that clarification. I saw a tweet during the week from a parody account which stated "I would rather die than be GDPR compliant". We must reflect on the fact that there are many people in many organisations and businesses who are sick of GDPR and data protection. That is true of none more than the Minister's own officials. I am sure they are pleased to be nearly shut of this business before it goes to the Seanad. It is detailed, technical and time-consuming legislation. In fairness, there was a desire to engage, although there were differences of opinion between the Government and the Opposition. However, there was a desire and openness to engage.

There are still shortfalls in the Bill. I have significant concerns about section 47, as identified by Deputies Wallace and Clare Daly, as well as several others. The Bill, however, has been improved significantly since Second Stage in the Seanad. The introduction of the necessary and proportionate measure is an important safeguard and standard test set by the courts. I welcome the significant step taken in requiring prescriptive approval by the Oireachtas of regulations relating to special categories of data. I also welcome the amendment made tonight, creating an offence for the micro-targeting of data of children for commercial purposes. These are significant steps. There are still shortcomings in the legislation. They may become more apparent over the years to come. The process, lengthy and tortuous as it was, has produced progress and improved the Bill.

Deputy Mick Wallace: I compliment the officials as well. It should be pointed out that there was much co-operation from the start from all sides. It is probably how legislation should be done. No one gets everything they want. As Deputy Clare Daly has pointed out, section 47 is a big disappointment for us. We also feel the digital age of consent changing from 13 to 16 will be seriously regretted sooner rather than later.

Question put and agreed to.

Acting Chairman (Deputy Frank O'Rourke): A message shall be sent to the Seanad acquainting it accordingly.

Message from Select Committee

Acting Chairman (Deputy Frank O'Rourke): The Select Committee on Justice and Equality has concluded its consideration of the Parental Leave (Amendment) Bill 2017 and has made amendments thereto.

Affordable Housing: Motion [Private Members]

Deputy Darragh O'Brien: I move:

That Dáil Éireann:

notes that:

— the Affordable Housing Scheme was stood down by the Fine Gael-Labour Government in 2011;

— the Confidence and Supply Arrangement for a Fine Gael-led Minority Government contains a commitment to 'significantly increase and expedite the delivery of social housing units, remove barriers to private housing supply and initiate an affordable housing scheme';

— Dublin's residential property prices have increased 90.6 per cent from their February 2012 low, whilst residential property prices in the rest of Ireland are 66.7 per cent higher than their low point in May 2013;

— the Residential Tenancies Board third quarter of 2017 Rent Index showed the national standardised average rent for new tenancies was €1,056 per month, up from €770 in 2012, an increase of 37 per cent;

— in Dublin, this index showed the average rent stood at €1,518, up from €972 in 2012, an increase of 56 per cent;

— Daft.ie has recorded a national rent increase of 82 per cent since 2012 to €1,227, up from €677 in 2011;

— Dublin's rents in the fourth quarter of 2017 were €1,772 on average, compared to €1,060 in the fourth quarter of 2011, an increase of 67 per cent;

— the total individual average earnings have increased from €36,079 to €36,919, an increase of €840 or 2.32 per cent from 2012-2016, and this would lead to an average take home wage of €29,844, based on the latest statistics by the Central Statistics Office; and

— the average gross annual household income for the State in 2015-2016 was €57,184.40, which was 7.1 per cent higher than the €53,392.04 figure recorded in 2009-2010;

condemns:

— the failure to build affordable homes since 2011;

— the delays in undertaking an affordable rental pilot scheme since it was announced in 2015;

— the lack of specific targets, dates and locations for affordable homes under the Affordable Purchase Scheme announced in January 2018; and

— the fact that the capital housing budget is still 24 per cent behind 2008 levels and is projected to remain at €1.16 billion per annum under the new National Development Plan 2018-2027; and

calls on the Government to:

— earmark an additional capital investment for a State-led Affordable Housing Scheme in 2019, to directly build in key areas across the country with an initial State investment complementing off-balance sheet funding mechanisms such as credit union finance;

— ensure the Housing Needs Assessment programme is expedited and fully integrates local affordability data to build an accurate local image of affordability require-

ments;

— equip the National Regeneration and Development Agency with a specific affordable housing remit;

— establish an Affordable Housing Scheme with local income criteria, subject to repayments being no more than 35 per cent of the household's net income after tax and social insurance (PRSI);

— review and upgrade local authority staffing capacity;

— set out clear targets in each county for affordable homes;

— expedite the establishment of a cost rental model across the country with clear localised income criteria and location targets;

— utilise State and local-authority owned lands in the development of social and affordable units; and

— establish a new Housing Delivery Agency to oversee the delivery of said targets issuing monthly progress reports.

I am sharing time with Deputies Casey, Cassells, Michael Moynihan and Curran.

Acting Chairman (Deputy Frank O'Rourke): Is that agreed? Agreed.

Deputy Darragh O'Brien: The housing crisis can be seen in every corner of this country, across the rental, social and private sectors. The moral disgrace of homelessness and the unprecedented highs of the social housing waiting lists have obscured another major challenge which the Government has ignored. Ordinary workers can no longer afford to buy their own homes. Homeownership in our view is an important part of Irish life. A safe and secure home is a building block for a strong community. Having a place to call one's own is the bedrock of stable family life. Working hard and owning the roof over one's head has been an aspiration that many have realised over the past few decades.

However, for an entire generation, the dream of homeownership is slipping away. While income levels have risen slowly, property prices have exploded by 90% since 2012. As the property price escalator speeds up, those left in the rental market fall further behind. Rent prices have surged over 25% higher than the 2008 peak with renters in Dublin paying over half their income for somewhere to live. The current 60% homeownership rate is the lowest since 1971. The age at which homeownership became the majority tenure category was 35 years of age in 2016. Prior to that age, more households were renting rather than owning their own home. When one compares this to previous censuses dating back to 1991, the ages which mark the changeover between renting and homeownership was 32 years in 2011, 28 in 2006, 27 in 2002 and 26 years in 1991. It is clear that homeownership is moving further away from young working people. The social contract that promises each generation a stake in their country is under strain.

What is Fine Gael doing to address this generational crisis? Since Fine Gael came to power seven years ago, it has launched six separate housing plans and relaunched them countless times. During that same period, Fine Gael has not built one single affordable home. In January of this year, the Minister for Housing, Planning and Local Government, Deputy Eoghan

Murphy, announced a three-pronged affordable policy, each prong more blunt than the last. The first was the Rebuilding Ireland home loan that repackages existing housing authority loan schemes. Over half the applicants, some 54%, however, have been refused a loan to date, while those who can get one are still competing for the same small supply of homes.

The second blunt prong was the cost rental pilot scheme. In 2015, the Fine Gael Government committed €10 million to a cost rental pilot project. This was reheated in January by the Minister, even though the project has yet to go to tender or have any guiding income criteria.

The third blunt failure was the affordable purchase scheme. This scheme sees €25 million committed to serving State-owned land for building affordable homes in co-operation with local authorities. Six local authorities built no homes at all last year. The Government has failed to deliver with programmes such as repair and lease. The lack of specific targets in each area means that this plan is doomed to fail before it even gets going. The lack of an affordable housing scheme demonstrates the sheer incompetence and inertia that governs the Department.

All the while, the Government has not put its money where its mouth is. Despite the fanfare around the capital plan, the allocated capital budget for housing is still 24%, or €225 million, behind 2008 levels. Still, there is no definition of what is an affordable home. In the face of these ballooning property prices, Fine Gael has, at best, engaged in token gesture policies and, at worst, ignored a growing chasm in the property market.

Tonight's Fianna Fáil motion sets down a marker. It will re-orientate the Government towards addressing the affordability gap that is swallowing up a generation. That must be placed at the heart of policy. We believe the State has a central role to play in delivering homes that someone on the average industrial wage can afford. Homeownership cannot be allowed to become the preserve of the few or the old. The next generation must get their chance to have a stake in their communities. The State owns and controls enough zoned land to build 114,000 dwellings, half of which can be affordable homes. Drawing on NAMA and local authority data, it is calculated the State controls over 3,000 ha of zoned land for housing across the country. This total is made up of 1,691 ha controlled by NAMA and more than 1,300 ha controlled by local authorities.

This means that more than 48,000 homes could be built on council-owned zoned land and more than 65,000 homes could be built on NAMA-controlled land. We need driving ambition to realise the potential of these lands, an ambition that is sorely lacking in the Government.

The new State-led scheme that Fianna Fáil will propose will set specific local authority targets and establish a special purpose vehicle to finance the scheme along with State capital investment and re-investment of the proceeds of sales into building further homes.

This will create a small, efficient and focused housing delivery agency to monitor and deliver housing and quality. There will be localised income thresholds to reflect different circumstances in each area and a 50,000 unit target over a term of government. This compares favourably with the 10,000 target in the Fine Gael scheme. The people know the Government will not deliver on the target of 10,000 based on its abject failure to date. Fianna Fáil will press the Government for a clear commitment on this in the upcoming budget negotiations. The State should initiate the scheme with upfront and ongoing investment taking place on a sustainable off-balance-sheet basis.

Addressing the growing gap between homeowners and renters will be the defining chal-

lenge of this Dáil, one that will have profound long-lasting effects. This motion is a small step towards that end. It is time for the Government to replace spin with bricks and mortar and get affordable homes built. Anything else will be a major social and economic failure.

Will the Minister initiate an affordable housing scheme? When will the Minister commence an affordable rental scheme? When will construction commence? People do not want any more press launches, photo opportunities or nice colour brochures. They simply want homes to live in. They want affordable homes that will provide hope for a generation condemned to out-of-control rents in Ireland. They deserve a great deal better than this. They deserve a great deal better than this Government as well. The Government must act now.

Deputy Pat Casey: I welcome tonight's motion on affordable housing, which has been brought forward by my colleague, Deputy O'Brien. Affordable housing is an area of the systemic housing crisis that has been consistently overlooked by the Government, yet it remains an essential keystone in the solution of delivering homes for all our people.

It is an historical fact that there is an embedded and consistent ambition within Irish people to own their own homes. For generations of Irish people, that ambition has been the core aspect of the social contract between the people and the governing system. One of the measures of the success or otherwise of our independent nation has been the capacity of people to own a home, raise families and have substantial ownership in our society.

Since the previous Fine Gael-led Government abolished the affordable homes scheme in 2011, it has regrettably but predictably contributed to the unsustainable growth in house prices. This has arisen due to a lack of supply and a minimalist approach taken by the Government to encouraging - never mind supplying - affordable homes to the thousands of people who need them.

Only recently, Fine Gael attempted to expand the affordable home loan scheme through each local authority. Yet, we need only look at the example of County Wicklow. Government data reveal only two successful applications in Wicklow in the two years since the Government was formed. That is a shambolic result.

The capping of supports for house buyers in Wicklow and the income thresholds involved are forcing many people who were born and bred in Wicklow and who want to own homes in their communities to be priced out of their home county. Wicklow is being gentrified by cash-rich middle-class Dublin. Maybe this is the Fine Gael master plan.

Fianna Fáil has consistently called for the full implementation of the cross-party report on the housing crisis that calls for a housing agency to take full charge of all aspects of our broken housing system. We will insist on independent verifiable data on affordability in each county, thereby informing the public policy response required in each county where prices can be extremely varied. We will also impose targets for each county on the numbers of affordable units to be supplied. Failure will result in immediate support responses from central government.

A crisis demands an emergency response. We will deliver affordable houses for Irish people to purchase in every county in Ireland. We will do so through the State directly building homes, where possible, on State lands, and by accessing off-balance-sheet finance. We will do what the State should be doing, that is to say, governing on behalf of all the people and not only the chosen few.

The political establishment in Ireland has failed the people again in the manner in which our housing crisis is being spun but not analysed, manipulated but not managed, debated but never delivered. We all know where this road ends. It ends with failure. It ends with people losing the limited faith they have in the ability of politics to address the needs of all our people.

It is not too late to put in place an affordable housing system that is vested in our State and that allows us to frequently put housing policies under the microscope of the people. The upcoming budget must deliver on affordable housing. The people demand nothing less.

Deputy Shane Cassells: This afternoon I met representatives from ICTU to discuss the housing crisis. For their members, the issues of pay restoration and changes in terms and conditions, as well as all the normal union matters, will count for little if they cannot put roofs over their heads through purchasing a home or at the least gaining secure tenancy. The issue of affordability is key to what was in their minds. While they acknowledged that schemes were up and running again in certain parts of the country, few of these schemes could be chalked down as affordable or within the purchasing power of union members.

I see it in my native county. Developers are seeking to get schemes progressed but we are talking about high-end developments. They will not provide starter homes for people in their 20s or 30s. This goes to the heart of what we are discussing with Deputy Darragh O'Brien's motion, that is to say, affordability.

I witnessed something interesting this week that needs to be addressed as part of the conversation about developing much-needed affordable homes. At a county council meeting this week in my native county of Meath, an addendum item appeared on the agenda. The notice related to a €2.3 million loan to buy land in order that 55 county council houses could be built in Ashbourne. It sounds like a good news story in the round. The proposal is in a town where a large number of people are trying to obtain housing either on the county council waiting list or the private housing market. Instead, the reaction from locals on social media on the evening of the meeting was one of outrage and sheer anger. People were branding this a disgrace and asked whether the councillors were out of their minds. Why would anyone be against housing? It was because they made the point that the town, which is the second largest in the county and the fastest-growing in the area, has no green area for locals and there is a lack of amenities for the vast population that exists here and now and that has emerged over a ten-year period.

Consequently, we have locals coming together to try to stop this development before it ever gets going. The lack of investment from the Department of Housing, Planning and Local Government in tandem with the channelling of funds to local authorities to meet the needs of the population that exists here and now has led to a backlash from these communities when it comes to any new houses being built, whether private, social or affordable. They are objecting to bricks and mortar because they believe their community is not being resourced. No one is catering for the people whose families are there at present.

We are entering a dangerous space, one to which the Department needs to front-up. I have been raising this for years. At a time when there is a housing crisis and we need to see affordable homes built, we have communities rising up and objecting to housing developments because of a lack of amenities and green areas. They will send these projects to planning appeals and delay them. Then the Government will have an even greater problem. It is one that frankly the Government deserves because it has not addressed the sheer lack of resourcing these councils face. Consequently, the councils are unable to provide the facilities that they need in

tandem with affordable housing.

Those in government may bury their heads in the sand, decide to disregard such people and plough on but these people are real. The comments of these people in these communities were insightful. This was not a matter of politicians throwing scuds. These are ordinary people living in a community where housing is needed. They said they would not allow the project because the people who live there here and now are not being looked after. That is a quandary but one that can only be solved by addressing the reality that investment needs to take place. The Government cannot blame development plans. Counties such as Meath, Wicklow and Kildare, where the population has exploded, receive low levels of funding *per capita* from the Department, with County Meath at the bottom of the list. In addressing the requirement to provide affordable homes, the Department must focus on creating communities rather than concrete jungles. If people do not get their heads around that, last Monday's experience in Ashbourne will be repeated across the country and act as an impediment to building affordable homes.

Deputy Michael Moynihan: I compliment Deputy Darragh O'Brien on tabling the motion. I will focus on two points in the short time available. On the issue of affordable housing, Deputy O'Brien referred to the home loans provided under Rebuilding Ireland. The affordable loans scheme is a farce because no approvals are coming through. This new mechanism, which is intended to help people on lower incomes to secure housing by providing home loans, sounded good when it was first announced and in the subsequent press release. However, it is simply not working and anyone who argues otherwise is mistaken.

The Government is relying heavily on the private market to ensure people have a roof over their heads. In a small number of cases, landlords are experiencing severe difficulty when they use the machinery of the State to resolve disputes about the payment or non-payment of rent. The mechanisms in place are being blatantly disregarded, with some people failing to appear for arbitration. A holistic approach is needed to ensure everyone - landlords and tenants - is protected because we have a national crisis. A small number of cases have been brought to my attention recently and they must be addressed.

Deputy John Curran: The Minister and the Minister of State, Deputy Damien English, are both well aware that an increasing number of people who are not eligible for social housing cannot afford to buy a home. The reason is that house price inflation is outpacing wage inflation. The Ministers are aware of this development because they responded to it in Rebuilding Ireland by introducing a home loans scheme. While the scheme is fine insofar as it goes, the problem is that it does not provide for an increase in supply and it is the lack of supply that has created the current problem in the housing sector.

The Minister's amendment refers to the local infrastructure housing activation fund, LIHAF, and so forth. The policy document, Rebuilding Ireland, is two years old. LIHAF was first announced by the then Minister for Finance, Deputy Michael Noonan, in October 2016 when he allocated €50 million to the scheme, yet two years later only €1.6 million or €1.7 million has been drawn down. We have not seen any urgency demonstrated in respect of this project. The Department is stalling a programme that should be rolled out in a much more timely fashion. In advance of the announcement of Rebuilding Ireland two years ago, the Joint Committee on Housing and Homelessness expressed serious concern that the Department would not have sufficient capacity to roll out the necessary programme and called for the establishment of a national housing body.

Deputy Darragh O'Brien referred to off-balance sheet investment or funding for housing. This form of investment has a role to play in the provision of affordable housing and the cost rental market. However, it has not developed in the way it should have developed. These issues have been identified and debated in the House time and again, yet no action has been taken to address them.

In my constituency, which Deputy Ó Broin also serves, a strategic development zone, SDZ, is being developed with nearly 8,500 housing units. While the SDZ plan includes sufficient capacity and detail to provide social and affordable housing, Government intervention is needed to make clear which funding mechanism will facilitate this development. There are numerous opportunities in the greater Dublin area to develop schemes of this nature but they require immediate and direct Government intervention.

Minister for Housing, Planning and Local Government (Deputy Eoghan Murphy): I move amendment No. 2:

To delete all words after "Dáil Éireann" and substitute the following:

"notes that:

— the economic downturn had a very significant impact on housing supply and the construction industry, with housing construction falling by over 90% between the peak in 2006 and the trough in 2013;

— with the economy returning to significant and consistent growth, and with the unemployment rate at 5.9% in April, its lowest since May 2008, a significant increase in new homes is needed;

— the Government, having regard to this, has made the delivery of new homes, social, affordable and private, a top priority through the development, resourcing and implementation of the Rebuilding Ireland Action Plan for Housing and Homelessness;

— in this regard, the Government's initial focus has been on delivering homes for households in the lowest income brackets, through the commitment of over €6 billion to deliver 50,000 new social housing homes by 2021, with qualifying households also able to avail of the housing assistance payment, the rental accommodation scheme and other targeted programmes, with the aim of meeting the housing needs of over 137,000 households by the end of 2021;

— through concerted efforts by Government agencies, local authorities and non-governmental organisations, the housing needs of households in emergency accommodation or at risk of becoming homeless continue to be addressed, through a wide range of support programmes, as well as helping the most vulnerable, rough-sleeping homeless through the Housing First initiative which enables people, who may have been homeless and who have a high level of complex needs, to obtain permanent secure accommodation with the provision of intensive supports to help them maintain their tenancies;

— almost 26,000 households had their social housing needs met in 2017, exceeding the target set by 23%, and almost doubling the levels achieved in 2015;

— the social housing construction programme included some 850 schemes, or phases, with 13,400 homes in the pipeline, at the end of 2017, representing a very substantial

increase of almost 5,000 new homes being progressed, compared with the 8,430 homes in the programme one year earlier;

— at the end of 2017, some 2,512 homes were completed, 3,650 were under construction and 1,912 further homes were about to go on site, with the remainder progressing through the various stages of planning, design and procurement;

— notwithstanding the responsibility of each chief executive for the staffing and organisational arrangements necessary for carrying out the functions of their respective local authority, the Department of Housing, Planning and Local Government has, since 1 January 2015, approved 793 housing-related staff sanction requests from local authorities, and that additional supports are also being made available to local authorities to meet staffing costs associated with the delivery of their social housing build programmes;

— the Government has also implemented a suite of measures to facilitate increased residential construction activity and ensure the sector's capacity to produce more affordable homes, through, *inter alia*:

— fast-track planning reforms and more flexible planning guidelines;

— €200 million investment in enabling infrastructure to service-open up housing lands with proportionate affordability dividends for house purchasers; and

— the progression of large-scale mixed-tenure housing projects, with social, affordable and private housing, on publicly-owned lands;

— the Government has also introduced targeted and time-bound measures to limit excessive rent increases, for example, through rent pressure zones, and to provide further protections and effective support services to both tenants and landlords;

— in budget 2018, significant obstacles to building more homes more quickly were removed, by:

— investing more capital funding in direct house building by the State;

— removing the Capital Gains Tax incentive to hold on to residential land, as well as escalating penalties for land hoarding; and

— providing a new, more affordable finance vehicle for builders through House Building Finance Ireland;

— these measures are having a positive impact, with all relevant indicators clearly showing that the supply-based measures under the Rebuilding Ireland Action Plan for Housing and Homelessness are working, with latest planning permissions and commencements data both up 27% year-on-year and registrations up 41%;

— having recognised the affordability pressures faced by some households, particularly in the major urban centres, the Government announced a further package of measures in January, with the potential to deliver more than 3,000 new homes initially and a target for at least 10,000 new affordable homes to buy and rent;

— the new measures are targeted at low- to moderate-income households, with

annual gross income of up to €50,000 for single-income households and €75,000 for dual-income households;

— up to the end of October of last year, two thirds, or over 5,300 homes, of the overall number of houses purchased by first-time buyers in the greater Dublin area, Cork and Galway were purchased for less than €320,000, and that across the rest of the country, just over 90%, or 3,380 homes, of the overall number of houses purchased by first-time buyers were purchased for less than €250,000;

— a new Rebuilding Ireland Home Loan was made available from 1 February 2018, providing long-term, fixed-rate mortgages for first-time buyers;

— in 2011, reflecting the reality of market conditions across the country at that time when house prices fell by some 50% and the consequent significant easing of affordability in that period, all affordable housing schemes were stood down, and a new affordable purchase scheme is being established very shortly, that will see affordable homes built initially on State land, in co-operation with local authorities, with affordable housing targets to be published shortly;

— €75 million of additional Exchequer funding is being made available for enabling infrastructure, including to facilitate affordable housing provision, with a particular focus on our cities where the affordability challenge is greatest;

— the Government's ambition is to make cost rental a major part of the housing system, with rents set at levels to cover construction costs and the management and administration of developments, but with only a minimal retained profit margin and this will be informed by a pilot project being progressed in Dublin at Enniskerry Road, Sandyford;

— detailed discussions are continuing with the European Investment Bank regarding the application of its international experiences in developing and supporting affordable housing to large-scale cost rental projects in Ireland;

— the publication of new build to rent and co-living planning guidelines will encourage development and investment in more rental accommodation at more affordable rents; and

— as part of Project Ireland 2040, the Government has committed to establish a new national regeneration and development agency, including consideration of how best to make State lands available, including suitable lands in the control and ownership of Government Departments and State agencies, to the new body for, *inter alia*, affordable residential development."

I welcome any opportunity to discuss housing issues in the Chamber. While I always try to be constructive in my engagements, the Fianna Fáil Party motion makes it difficult to do so because it lacks all credibility. Either Fianna Fáil is aware of its recent role in the over-leveraging of the housing sector that destroyed the economy and simply wants to ignore it and spin tales to members of the public, which they will not fall for, or, worse, it does not recognise the mistakes it made in the recent past and does not understand what it did wrong. It is ten years since the financial crisis, eight years since we lost our economic sovereignty and four years since we got it back.

The Fianna Fáil Party is clearly not ready for office if this motion is anything to go by. We have a serious housing crisis which was caused by 13 years of Fianna Fáil in power. It is this crisis that the Government of Fine Gael and Independents is trying to fix. It appears from the motion that Fianna Fáil is completely blind to that fact.

Let us examine the introductory calls made in the motion. It notes that "the affordable housing scheme was stood down by the Fine Gael-Labour Government in 2011". The scheme was stood down in 2011 because it was unnecessary, the reason being that housing prices had fallen by 50% and the value of some land portfolios had fallen by as much as 80%. Hundreds of thousands of people were plunged into negative equity, causing major distress in their lives. Affordability was simply not an issue. Do the Deputies opposite not remember this? Do they need me to explain that the housing sector imploded under the most recent Fianna Fáil Government? Building activity declined by 90% in that time and almost two thirds of builders lost their jobs as a result. Do the Deputies opposite need me to remind the House that their party's housing policies and tax incentives throughout the 2000s blew a hole in the public finances, which bankrupted the country and resulted in the loss of our economic sovereignty?

An interesting subsequent clause in the motion refers to the "Residential Tenancies Board third quarter of 2017 rent index". Are the Deputies opposite aware that we have had a fourth quarter report which confirmed that rent pressure zones were having an impact, driving inflation in Dublin down 3% on 2016? Do they accept that rent pressure zones are working? They must do so because today the Fianna Fáil Party introduced a Bill that proposes to extend these zones to student accommodation.

While the motion makes reference to rents in the fourth quarter of last year, it compares them to rents in 2011. Why has 2011 been chosen as a comparative year? Is it because it was the year Fine Gael and the Labour Party entered government to clean up the mess left by the previous Fianna Fáil-led Governments and to allow the dramatic increase in rents in the intervening period to be blamed on us? In 2011, we commenced the bailout. Hundreds of thousands of people had to emigrate, we had 3,000 ghost estates, rents tanked and house prices continued to fall. It would take a further three years to exit the bailout and a further seven years to balance the public finances and get everyone back to work. We achieved this only this year and we did so without the need for a second bailout and faster than anyone had predicted.

The years since Fine Gael assumed responsibility for the economy have been a success in economic terms. However, in terms of housing, we are now facing a great social cost and suffering arising from that success. These are compounded by the under-supply that preceded 2011. Surely the broken housing sector, which is now being fixed, is the long sting in the tail for a country that was so badly let down by the Fianna Fáil Party's 13-year reign. Our difficulties manifest themselves most severely and distressingly in the large number of homeless families in emergency accommodation tonight who are not mentioned in the motion.

The motion condemns the failure to build affordable homes since 2011. Is that a joke? The average price of a house nationally in 2011 was roughly €228,000. In 2012, house prices continued to fall and the average price house nationally reached €203,000. In 2013, the figure increased to €206,000 and increased again to €215,000 the following year. It was only later that house prices began to creep up above the €300,000 mark in places like Dublin. Even now, figures for Dublin show that up to the end of October 2017, two thirds of the overall number of homes purchased by first-time buyers in the greater Dublin area, Cork and Galway sold for less than €320,000. Everywhere else in the country, approximately 90% of first-time buyers bought

homes for less than €250,000. These are the figures for the period leading up to October last year.

Affordable homes are being built and sold even today. The Government recognises, however, that we are still not building enough homes. What has not helped is the number of developers and small builders who were put of business by the collapse of the construction sector under Fianna Fáil's watch. Do the Deputies opposite remember the National Asset Management Agency and the €32 billion in debt foisted on the backs of taxpayers? Do they remember all the small construction companies that folded and builders who had to emigrate? They are still struggling to get back on their feet but with new initiatives from the Government, for example, Home Building Finance Ireland, we will help them.

When the Fianna Fáil Party states no affordable homes have been built since 2011, it is simply wrong. Our problem for much of the past seven years has not been affordability of homes but the reverse. We are now confronted with supply and affordability problems and the Government is fixing these as a priority. We launched a number of affordability measures last year. They include the local infrastructure housing activation fund, LIHAF, to which previous speakers referred, the introduction of a successful fast-track process and new apartment guidelines which will drive down costs and rent pressure zones, which Fianna Fáil supports and recognises are working - hence the legislation it introduced today.

Earlier this year, I launched three new affordability measures. A number of successful applicants have been approved under the Rebuilding Ireland home loan, although drawdown has not yet taken place because a couple of months are needed to find a home and secure agreement on sale. The affordable purchase scheme, which was also mentioned, was launched in January and we will also introduce cost rental projects at scale thanks to our partners in the European Investment Bank. We will build on these measures with further details under Project Ireland 2040 and these will be announced very soon. The Deputy condemned the delays in undertaking an affordable pilot scheme since it was announced in 2015. Deputy Darragh O'Brien may not be aware of this but that scheme was stood down and the money was put into emergency accommodation. The scheme was a subsidy-based scheme and the new Government in 2016, which took over the housing portfolio from the Labour Party, decided it was better to use land to achieve affordability - State land to drive cost rental and other measures. That is how we are now proceeding. That is what has been recommended by all of the experts outside of Government.

The Deputy then goes on to condemn the lack of specific targets, dates and locations for affordable homes under the affordable purchase scheme that I announced in January last. Rebuilding Ireland is a five-year plan to rebuild the housing sector and is a €6 billion commitment to 50,000 social housing homes. We are almost two years in and are ahead of our targets. Our initial focus was on restarting local authority house building and on delivering more emergency accommodation. That building was restarted last year when three times as many social housing homes were built as in the year before. This year, we will double that number. It is right that we focused our attention initially on those who need our help the most. Would Deputy Darragh O'Brien have done it any differently? Otherwise, we would not have solutions such as Housing First, like a national director of Housing First or a 40% decrease in the number of those sleeping rough on our streets.

I stated when I took office that affordability would be a priority of mine. That is why I secured in last year's budget negotiations €75 million for new affordability measures that are

being developed now. All Deputy Darragh O'Brien's party looked for was tax breaks for developers - the same old story. Already, we have identified through finance or land the potential for at least 4,000 affordable homes, rising to 10,000, and the targets, locations and dates are coming soon. I hope to see the first affordable purchase scheme homes being tenanted before the end of the year. That is only the beginning of our ambition. That is only what we propose to do with local authority land.

Deputy Darragh O'Brien then goes on to condemn the capital spend on housing when compared with the 2008 levels. I do not why the Deputy persists with this. How is 2008, the year of our financial crisis, two years before our bailout, a reasonable year of comparison? We lost our economic sovereignty precisely because our spending commitments were built upon unsustainable Government finances. We were building probably twice as many homes as were needed. How is this a comparison? Interestingly, local authorities were not building anything then. Fianna Fáil had taken local authorities out of the building game long before the crash. It is 16 years since a local authority in Wicklow built a home but that will change this year under our Government. Fianna Fáil is the party that got local authorities out of house building and Fine Gael and the Independents in government are getting them back into house building.

The Deputy calls on me to equip the new regeneration and development agency with an affordable housing remit. We have already stated that we are doing that. He states that there should be an affordable housing scheme on income criteria with repayments being no more than 35% of income. We are already doing that with the Rebuilding Ireland home loan. The Deputy calls on me to review and upgrade local authority staffing capacity. Since January of 2015, we have approved more than 790 housing-related staff for local authorities up and down the country and at the second housing summit this year I stated, "Appoint more and we will pay for them."

The Deputy calls on me to expedite cost rental across the country. I am glad that Fianna Fáil is finally waking up to the importance of cost rental as a model. We will introduce it. We are working on a pilot of scale right now with the European Investment Bank and Dublin City Council. Cost rental needs to become a major part of the rental market. However, I will not try to fool the public. I will not make empty promises. Cost rental, if it is to be done right, needs to be piloted properly. Transforming our rental landscape cannot be achieved overnight when supply is still so tight. I recognise there is still a serious undersupply of housing but all the indicators are pointing positively in the right direction. Commencement notices have increased by 41%, planning permissions by 27% and connections to the ESB by 30%.

The Central Bank forecasts that 23,000 homes will be built this year and 27,000 homes in 2019. I hope it is correct because that is well ahead of our targets under Rebuilding Ireland. There have even been increases in the labour force, which was up at least 14% at the beginning of 2017. An Bord Pleanála's fast-track process has already seen approvals for over 6,000 new places to live. As all those homes are built, we will deliver further affordability.

A lot more has to be done. Under Rebuilding Ireland and Project Ireland 2040, we have the vision, and thanks to the prudent management of our finances, we have the money. Now we need to drive delivery and implementation. New structures, such as the housing summits, do that, as does the new delivery unit headed up by the Minister of State, Deputy English, in my Department.

There is still more to come. A new agency, not some monitoring quango such as Deputy

Darragh O'Brien suggests in his motion but something real with teeth, is coming.

Deputy Darragh O'Brien: That will be a first.

Deputy Eoghan Murphy: We are still waiting for the Deputy's great big housing policy announcement, although I have heard on enough occasions that it is coming. When we were in opposition, we published serious and detailed policy papers on a range of issues, properly costed and with draft legislation to back it up. Deputy Darragh O'Brien has produced nothing. Instead, he has put a marker in the sand, one that will blow over with the coming tide. Not only that, the Deputy cannot learn from the lessons his party taught us that got us here and when he calls for action, it is action that we are already taking. Fianna Fáil supports Rebuilding Ireland and it has no alternative but to hark back to its glorious failures of the past.

An Leas-Cheann Comhairle: We now move on to the Sinn Féin slot of 15 minutes, commencing with Deputy Eoin Ó Broin.

Deputy Eoin Ó Broin: I was beginning to get worried there. There was so much the Minister said I was agreeing with, I thought something had changed radically.

Deputy Eoghan Murphy: It would be a first.

Deputy Eoin Ó Broin: Let us see if I can change that.

Deputy Darragh O'Brien: There is a new relationship happening.

Deputy Eoin Ó Broin: I will start with some disagreements with the Minister. The Minister, Deputy Eoghan Murphy, started by stating that the broken housing system is now being fixed. The problem, of course, is the facts tell a very different story. The affordable housing crisis is, in fact, getting worse. House prices are rising, rents across the country are rising, home repossessions are increasing and notices to quit and homeless presentations are continuing to increase. None of those are signs that the broken housing system is being fixed. None of that is surprising.

Rebuilding Ireland contains no affordable housing scheme, no targets for the delivery of affordable rental or purchase homes, and no dedicated funding stream to deliver those much needed homes. Indeed, many of the measures the Minister discussed that the Government has introduced on the back of Rebuilding Ireland have either had no impact on affordability or in some instances are making matters worse. Let us have a look at that list of schemes.

Help to buy was introduced and there is some evidence to suggest that it is pushing up house prices and that the majority of those who are benefitting from that scheme did not need taxpayers' assistance to purchase their homes in the first place. New apartment guidelines have generated strong opinion that they will push up apartment and house prices because they will increase the value of the land and, therefore, the ultimate price of the units on it. While strategic housing developments will increase the delivery of private homes, there is no evidence to suggest that in and of itself, it will generate or assist affordability.

Then we have the land initiatives - this flagship project of Rebuilding Ireland. It is incredibly slow. Local authorities lose control over the nature of the mixed tenure that is in the developments, suiting the market rather than the needs of local communities, and there is no guarantee in any of the land initiative projects currently under negotiation by either Dublin city or south Dublin that affordability of any measure will be delivered.

Then there is the Local Infrastructure Housing Activation Fund, LIHAF, this wonderful project the intention of which the Minister seems to be repeatedly revising. We are now told that was never an affordability scheme and it was always merely about unblocking private sector development stuck for lack of infrastructure funding when, in fact, Rebuilding Ireland, if one reads it, stated it was both. When one sees what has been agreed in so-called affordability discounts on the back of €200,000 of taxpayers' money under the Department's detailed breakdown - released in very small letters which were difficult for many of us to read without a magnifying glass - it is not encouraging. If one takes, for example, the private sector LIHAF developments, the average price of the discounted units at 2017 prices is €250,000, which does not take account of inflation by the time those houses are on the market and for sale. In almost every local authority area where there is a LIHAF-funded scheme, one can buy houses cheaper than would be delivered benefitting from LIHAF. In Dublin city and county, it is even worse. The average price of the discounted houses at 2017 prices is €318,000 but, of course, that will go up another 10% or 20% between now and when the houses are sold. What is worse is when one looks at what is being delivered in terms of affordability in LIHAF on mixed use or public land. There is either no agreement on affordability, particularly on the bigger sites in the likes of Cherrywood, The Grange or the strategic development zone, SDZ, in my own constituency, or the house prices are far above what is affordable for ordinary people. The facts from the Government's own figures show that it will not work.

Home Building Finance Ireland, I stated at the time of the budget, is a good initiative. The problem is it has not happened yet and we do not know when it will happen. The Government has this tendency of making an announcement and then repeating it as if what was announced has happened. We need to see the legislation. We need to see how it will operate. Crucially, we need to see how those loans will be linked to the delivery of genuinely affordable homes.

On the revised council mortgage, I praised the fact that it had a lower fixed interest rate but that mortgage is of no use if people cannot access affordable homes to buy with it. In many of the areas of the greatest need for affordable housing, that loan, good and all as it is in design, will be of little benefit.

On the rent pressure zones, I listened carefully to the Minister today. It was as he stated on promised legislation last week. In fact, the Residential Tenancies Board, RTB, fourth quarter index he quoted shows that the rent pressure zones are not working. The figures show the annual increase across the State is 6%. In 22 of the Twenty-six Counties, on the basis of the RTB's fourth quarter figures, the rental increase was above the 4% cap. There is no evidence that the cap is working for rents, and particularly new rents. Of course, the issue of student accommodation is particularly acute. If the Minister would simply clarify whether student licences are covered under the Residential Tenancies Act, it would be very welcome. If they are not, he should include amendments to his Residential Tenancies (Amendment) Bill to clarify that issue.

One of the few decent initiatives in terms of the potential to deliver genuinely affordable homes was the €25 million for Ó Cualann-type developments. I welcomed it at the time. The problem is nothing has happened with it. The Minister keeps telling us the scheme is coming. The frustrating thing is the Minister does not need to design a new affordable housing scheme. We know the income limits. We know the eligibility criteria. A circular just needs to be issued to local authorities and then that money can start to be drawn down. While I know the proposal, as it was being discussed some months ago, was for 75% of the cost of the land and the site development to be offset for the local authority, with that fund, 100% would be much better.

The really remarkable thing is when we take all of these schemes together, what we see is the private sector-led interventions will receive over €1 billion of taxpayers' money. The one bit of real investment in affordable housing is only a measly €25 million. It shows very clearly, in this as is in so many areas of Government policy, that the over-reliance on the private sector to deliver social and affordable homes is where the Government's policy focus is at and that is why it is not working.

I do not say this lightly but after two years of Fine Gael housing Ministers, it is clear they are neither interested in nor capable of delivering genuinely affordable rental and purchase homes on the scale that is needed to tackle the crisis. Is it any wonder the Minister for Housing, Planning and Local Government has resorted to manipulating the homelessness figures in a desperate attempt to save face?

Deputy Eoghan Murphy: I have to object to that.

Deputy Eoin Ó Broin: Something-----

Deputy Eoghan Murphy: That is a very unfair comment to make.

Deputy Eoin Ó Broin: Something we will deal with-----

Deputy Eoghan Murphy: On a point of order-----

Deputy Eoin Ó Broin: It is something we will deal with-----

Deputy Eoghan Murphy: On a point of order.

An Leas-Cheann Comhairle: There is no point of order.

Deputy Eoin Ó Broin: -----in the housing committee tomorrow.

Deputy Eoghan Murphy: That is very unfair. I have not manipulated any figures.

Deputy Eoin Ó Broin: I have evidence-----

Deputy Eoghan Murphy: The Deputy knows it is not the case.

Deputy Eoin Ó Broin: I have evidence to prove it and I will present it to the housing committee tomorrow.

Deputy Eoghan Murphy: The Deputy has misinformed the public outside the Chamber; he should not misinform the Chamber.

An Leas-Cheann Comhairle: The Minister-----

Deputy Eoghan Murphy: I ask the Deputy to withdraw the remark.

Deputy Eoin Ó Broin: I absolutely will not withdraw the remark.

An Leas-Cheann Comhairle: The Minister is in the House long enough to know a political charge. It is not a personal charge.

Deputy Eoghan Murphy: Deputy Ó Broin will regret that.

Deputy Eoin Ó Broin: In fact-----

An Leas-Cheann Comhairle: Perhaps Deputy Ó Broin will confirm-----

Deputy Damien English: It is an untrue charge.

Deputy Eoghan Murphy: It is an absolutely personal charge as to my character.

An Leas-Cheann Comhairle: -----whether it is a personal charge or a political charge.

Deputy Eoin Ó Broin: It is a political charge. I am absolutely convinced and there is mounting evidence on this fact that the Minister has allowed the direct manipulation downwards of housing and homelessness figures. We will challenge it tomorrow in the committee. If the Minister believes what-----

Deputy Eoghan Murphy: Bring it on.

Deputy Eoin Ó Broin: -----he is saying he would come to the dedicated session of the housing committee on this issue and this issue alone which we have requested-----

Deputy Eoghan Murphy: Deputy Ó Broin has accepted it was a miscategorisation.

Deputy Eoin Ó Broin: -----sooner rather than later.

Deputy Eoghan Murphy: The Deputy has accepted it was a miscategorisation and he is on the record-----

Deputy Eoin Ó Broin: I have to say-----

Deputy Eoghan Murphy: The Deputy is on the record accepting it was a miscategorisation. Yes or no?

Deputy Eoin Ó Broin: Given how bad-----

Deputy Eoghan Murphy: He is.

Deputy Eoin Ó Broin: Given how badly the Minister has handled this, I have to say this particular debacle could be the undoing of his time as housing Minister in this State.

Deputy Eoghan Murphy: Bring it on.

Deputy Eoin Ó Broin: Let me turn to Fianna Fáil. One of the great mysteries of the Thirty-second Dáil is Fianna Fáil housing policy. On this, I agree with the Government. It is almost as if it has become the fourth secret of Fatima. Deputy Darragh O'Brien's predecessor in the role kept his cards so close to his chest that many of his own party members did not even know what Fianna Fáil policy was. I know the reason Deputy O'Brien was appointed was to bring more energy to the role and he has certainly done that.

Deputy Darragh O'Brien: How does the Deputy know that?

Deputy Eoin Ó Broin: The jury is out at this point on whether there will be any actual substance. On the basis of this motion it does not seem to be the case. It has nine demands, none of which has any specifics. There are no targets or costings and the idea that setting up an agency, which would take at least a year to do, is any quicker than what the Government has proposed is absolutely absurd. It highlights once again that what Fianna Fáil is trying to do, while facilitating Government policy year-in, year-out through facilitating the budgets, is to present itself as

somehow a party of opposition.

None of this is surprising. In the confidence and supply agreement, Fianna Fáil did not insist on or secure any specifics in terms of housing delivery. In the last two budgets, Fianna Fáil did not demand publicly or secure any changes to the policy the Government has been implementing since Rebuilding Ireland. The Minister is absolutely right. Fianna Fáil is actively and tacitly supporting the policies it is now standing here criticising. It is no surprise because the under-investment in social and affordable housing of this Government and the over-reliance on the private sector is what Fianna Fáil did when it was in power for 14 years. Because they have such problems remembering-----

Deputy Darragh O'Brien: That is not true.

Deputy Eoin Ó Broin: -----I took the time to table what it actually delivered on-----

(Interruptions).

An Leas-Cheann Comhairle: Deputies, please.

Deputy Darragh O'Brien: I read the Deputy's document. It is full of-----

Deputy Eoin Ó Broin: What it actually-----

An Leas-Cheann Comhairle: This is a serious business. Deputy Ó Broin, without interruption.

Deputy Eoin Ó Broin: I do not mind.

Deputy Eoghan Murphy: Which document?

Deputy Eoin Ó Broin: What Fianna Fáil actually did-----

An Leas-Cheann Comhairle: We do not have to continue. I do not have to take this. I am asking Deputy Ó Broin to continue without interference from Deputy O'Brien or from the Minister, Deputy Murphy.

Deputy Eoin Ó Broin: I thank the Leas-Cheann Comhairle.

An Leas-Cheann Comhairle: I know Deputy Ó Broin will not invite interruptions.

Deputy Eoin Ó Broin: I do not mind the interruptions. Let us look at Fianna Fáil's record. Over those 14 years, it delivered on average 5,500 real social houses a year. That is less than the current Government is delivering. During that same period of time, the number of subsidised private rental tenancies for social housing actually increased. They increased beyond recognition. By the end of the period of time, there was almost a 500% increase in using private rental sector accommodation for social housing tenants. Housing waiting lists increased by 258% and shared ownership schemes, which the Deputy was so fond of, actually left almost 50% of the households with those mortgages in substantial mortgage distress. It is no wonder Fianna Fáil is willing to support Fine Gael's policy. All it is doing is continuing the broad policy framework that Fianna Fáil was responsible for when it was last in government. Probably the worst thing is Fianna Fáil keeps telling Sinn Féin that it did the responsible thing and supported this Government yet at no stage has it actually used the leverage it claims to have to get the Government to do anything different. It is one of the reasons the motion in front of us today has no specifics

because a real party of opposition, particularly a party of opposition that has the leverage Fianna Fáil has, would be demanding specific changes to Government policy.

Deputy Darragh O'Brien: We will be in the budget.

An Leas-Cheann Comhairle: Please, Deputy O'Brien.

Deputy Eoin Ó Broin: What I would like to hear from Deputy O'Brien, whether it is today, later on in the debate or between now and budget time, is what increasing capital investment he would like to see in budget 2019-----

Deputy Darragh O'Brien: We will. Deputy Ó Broin will hear that.

Deputy Eoin Ó Broin: -----and what specific targets and specific interventions. Sinn Féin will not be supporting the motion. We have tabled an alternative set of proposals which are based on what we have done in the past in the costed delivery of social and affordable housing. The measures are very clear. Our view is there needs to be a doubling of capital investment by the State in the delivery of social and affordable homes. We think it is eminently achievable with both Exchequer revenue and other sources such as credit union and the Housing Finance Agency. We think Part V should be returned to 20% in standard private developments and 30% in strategic development zones to deliver more social and affordable housing. The issue is why Fianna Fáil did not secure that in the last budget or the budget before.

(Interruptions).

An Leas-Cheann Comhairle: There can be no interruptions. Let us respect the dignity of the House.

Deputy Eoin Ó Broin: I do not mind the interruptions.

An Leas-Cheann Comhairle: No interruptions.

Deputy Eoin Ó Broin: What we also need is for the Government to immediately introduce the affordable scheme it has been talking about. We are happy to work with it to ensure it has the right design. It needs to deliver homes, not at €320,000, but for families between €35,000 and €75,000 a year at genuinely affordable prices. That is somewhere between €170,000 and €280,000. Many local authorities still do not have enough staff and there needs to be additional resourcing for that. Crucially we need to reduce the length of time it takes to deliver social and affordable homes. The 18-month approval, tendering and procurement process is simply too long and must be reduced, not to the 12 months the Government is currently targeting but below that.

We also need to see the fast-tracking of the home building finance Ireland legislation. I know it is not the Minister's portfolio. It is under the Department of Finance. It is something the House agrees on and would work constructively with the Government on if it was laid before the House. We also need to be much more proactive with the credit unions. It is almost four months since the Central Bank made its decision to allow credit union finance into social housing. If that money was released it would free up Exchequer revenue to put into affordable housing and yet little action is being taken by either the Department of Finance or the Department of Housing, Planning and Local Government on it. We need a coherent and proactive plan by the Minister's Department and the Department of Finance to get approved housing bodies back off balance sheet. My understanding is since redesignation has happened, there have been

no meetings with the approved housing body sector to address these issues. We need to ensure that no LIHAF funding is given to any development that does not deliver some coherent level of affordability at affordable prices.

What real Opposition parties must do is in the run up to budget 2019 is say what they would do differently in government. They should say it not only in rhetoric but in concrete measures with proposed expenditure that is fully accounted for. That is what a real Opposition party does. It is not what is in this motion today. That is why Sinn Féin certainly will not be supporting it. We will be moving our own amendment to the motion.

Deputy Jan O'Sullivan: When I read last week in the report of the Business Committee that we were to have a debate on affordable housing, I was hoping we would have an interesting, constructive debate with specific proposals coming from the new Fianna Fáil spokesperson on housing. This is a very disappointing motion. We have had several very constructive debates in this House with people across parties where we have tried to tease out the various complex issues that arise in respect of the housing crisis. This motion is just designed to be sabre-rattling to indicate somehow or other that Fianna Fáil has loads of muscle to stand up to Fine Gael and that it is planning an election at some stage in the year to come. One would never think it is in a confidence and supply situation where it can use real power in the lead-up to the budget by putting figures on this issue. It is the woolliest motion I have read in a long time. Even the proposals are general, for example, "earmark an additional capital investment for a State-led affordable housing scheme in 2019", etc., with no figures or anything else, or "expedite the establishment of a cost rental model across the country with clear localised income criteria and location targets". We had a very good debate on cost rental a couple of weeks ago with very specific proposals and many contributions. Another proposal in the motion states: "utilise State and local-authority owned lands in the development of social and affordable units." That is everybody's policy but it is entirely non-specific. Is Deputy O'Brien saying all the land should be utilised for social and affordable housing? If he was, we would support him. As far as I can see Fianna Fáil's policy is similar to Fine Gael's policy, which is to use most of that land for market priced houses and only a relatively small percentage for social and affordable housing.

10 o'clock

Deputy Darragh O'Brien: It is not.

Deputy Jan O'Sullivan: If the Deputy meant something different, he should have specified something different because this is entirely woolly and general. It is very disappointing.

At the beginning of 2012, I moved into what was then called the Department of the Environment, Planning and Local Government. We had no money whatsoever following the collapse of the economy. The construction-led boom left houses in places where nobody wanted to live. One of the big jobs I had when I came into that Department was to deal with ghost estates. I chaired a committee in the Custom House where there were representatives of various bodies, including the construction industry, etc. We had to deal with houses nobody wanted to live in because they were built in places where there were tax breaks and in counties where there were too many houses. The local authorities had been starved of funding. They had been taken out of the construction business and the private market was providing the rented houses to meet the social need. That was what we inherited. We had no money to spend because of the troika and the bank guarantee, and the State was trying to deal with the mess it had inherited. We were dealing with budgets where we literally did not have any money to spend on houses. The only thing I could think of doing at the time was to use the small sum of money that I could scrape

together to set up a void scheme. The current Government has continued that and something like 7,000 or maybe more-----

Deputy Eoghan Murphy: 8,000.

Deputy Jan O'Sullivan: -----local authority units have been brought back into use because that is all we could afford. As soon as we could afford to start construction of local authority houses again, we began and the current Government has continued this, although I have many negative things to say about the speed at which that is happening.

The affordable housing scheme was stood down because all houses were affordable at that time. Deputy Darragh O'Brien admits that in his motion where he states: "Dublin's residential property prices have increased 90.6% from their February 2012 low". They were at a low in 2012 and that is why the affordable housing scheme was stood down. Nobody was building. Let us be realistic: the Minister said the average price of a house in 2012 was €203,000 and Fianna Fáil is trying to reinvent history by somehow trying to make a comparison with 2011, as if the economy was the same in 2011 as it is now. A great deal of work had to be done to bring the economy back. Housing is playing catch-up and that needs to speed up.

The Government's response is too slow. It needs to move quickly. We keep hearing about schemes coming. We have called again and again for a proper affordable housing scheme and for the land owned by the State, most of which is owned by local authorities, to be used for social and affordable housing, not for market housing.

Deputy Darragh O'Brien: That is what I am saying.

Deputy Jan O'Sullivan: It has to be genuinely affordable housing. One point I commend Deputy O'Brien on is his attempt to define affordable housing as being related to income. I agree that the previous scheme which Fianna Fáil presided over was simply a percentage less than the market price. We need to relate affordability to people's incomes because while the cost of housing and rent have gone up exponentially in recent years, people's incomes have not gone up to anything like the same extent. I agree with him on that point.

It is really disappointing that there are not more specifics in the motion. We will not be able to support it. All the points in Sinn Féin's amendment are specific and positive ones that we can support. Deputy Cassells has gone but I could not figure out what his point was because he seemed to be justifying what I see happen in my constituency where Fianna Fáil local representatives object to housing developments but do not propose any alternatives.

Deputy Darragh O'Brien: I never objected to one.

Deputy Jan O'Sullivan: I think that is what he was saying, that it is all right to object to housing because there are no other facilities in the area.

Deputy Darragh O'Brien: What happened with the Labour Party in Fingal? It is a pity that Deputy Brendan Ryan is not here because he would tell the Deputy about it.

Deputy Jan O'Sullivan: That is all I could understand from his contribution. I have refused to object to local housing developments where Fianna Fáil representatives have objected to them. Only if I can suggest an alternative will I object to anything that involves building houses for people who so badly need them. I hear a lot of talk about what should be done at a national level but I see a lot of action at local level which is stopping developments.

Deputy Darragh O'Brien: I have never objected to one.

Deputy Jan O'Sullivan: We need to decide what we want.

The cost-rental model is good. The Ó Cualann Cohousing Alliance model in particular has been very positive. I urge the Minister to move as quickly as possible. I know Ó Cualann has gone to some other local authorities to speak about its model. It is very positive and provides affordable homes.

We want to try to make constructive contributions on what is a really serious problem for people who are faced with unaffordability and see themselves stuck in the rental market although they want to buy a home, they have a job and they see rent going up. They are in competition with others who may be happy enough to be in the rental market, but people who want to buy cannot buy, and the social housing lists are getting longer. We need to see things happening, as opposed to potential actions. I urge the Minister to give the local authorities the tools to use their lands to provide social and affordable housing at scale and not just as a small percentage of the various sites. To judge by what councillors around the country tell us, they may well want all the houses in a particular area to be affordable whether for those on the housing waiting list or for purchase or affordable rent but because of the way the system is organised they have to agree to market rents for many of those houses. I hope we will have further constructive debates. This is a disappointing motion and I hope we will see more specific motions from Fianna Fáil soon.

Deputy Joan Collins: I do not support the Fianna Fáil motion because of the points made by other Deputies. It recalls the launch of the St. Michael's Estate public housing on public land initiative last Thursday week. At that time, when pressed by Vincent Browne on whether he supports public housing on public land at St. Michael's Estate, Deputy Darragh O'Brien replied "Yes" and he also said that a Fianna Fáil Senator had spoken to the St. Michael's Estate regeneration group. When Vincent Browne then asked whether he would support a national campaign for public housing on public lands, the Deputy dodged the issue and would not give a commitment in respect of it. We sort of agreed that we could put forward a Private Members' Bill on the policy in this regard being brought centre stage in the context of the Government's overall housing policy.

The Minister, Deputy Eoghan Murphy, visited St. Michael's Estate this morning and met the regeneration team, the members of which presented to him a breakthrough model to deliver superb affordable village homes for Inchicore. Inchicore neighbours are working together to secure affordable, energy-smart homes to improve the locality and the amenities. I am pleased to support and work with the St. Michael's Estate regeneration team. My home is on Ring Street, Inchicore, which is down the road from St. Michael's Estate. There is an amazing, empty and secure space of almost 12 acres at St. Michael's Estate in front of the beautifully restored Richmond Barracks and the recently open Goldenbridge cemetery in the heart of Inchicore. The regeneration team and I believe that there is a wonderful, people-centred way to harness this land, which is owned by all of us - the public.

At this time of chronic housing shortage, the State should not be giving publicly-owned land to developers but this is what is planned as part of the housing land initiative. Dublin City Council has selected prime locations in Dublin for development, including St. Michael's Estate. Within this initiative, the council plans to put these lands out to the market and to seek expressions of interest and development proposals. The preferred or selected developer will

then secure the land and, in return, will be free to build a substantial amount of private housing, with a much smaller proportion of affordable or public housing.

Earlier today, the Minister of State, Deputy English, in response to a Topical Issue debate on affordable housing put forward by a number of Deputies-----

Deputy Darragh O'Brien: I was one of those Deputies.

Deputy Joan Collins: I know that. The Minister of State said that the council wanted to see housing development on this site on a 30% social, 20% affordable and 50% private basis. This model is a win-win for developers because the vast majority of the homes will be sold for developer profit. We have a different vision. We want the St. Michael's Estate to be retained by the State in order to develop quality, safe, energy-smart public housing that will be affordable to rent for families, young couples and elderly people. According to the recent ALONE report, many older people are finding it stressful to get rented accommodation and they have no secure tenure into the future.

The St. Michael's Estate plan is a ready-made pilot project to change the way we deliver housing in Ireland. It would be a game changer if developed nationally over time. A report published by housing policy expert, Mel Reynolds, last week shows that the housing and homelessness crisis is unnecessary. He has put together information which indicates that 114,000 dwellings could be built on zoned land owned or controlled by the State. Within local authorities and NAMA there are over 3,000 ha of such land - 17% of all undeveloped zoned land in the State. Approximately 70,000 of these dwellings could be built in Dublin, thus eliminating the housing waiting lists of the four Dublin city councils - on which there are 40,000 families and individuals - 7,000 could be built in the constituency of Dublin South-Central and 2,000 in Inchicore. Only 2,378 houses were built by local authorities and housing bodies in 2016 and 2017, which is 4% of what could be done. Mel Reynolds has pointed out that if this level of building on public land is implemented, it would have a huge effect on land prices. This is the reason for the current housing crisis. The profits of speculators hoarding land come before meeting people's housing needs. A mass programme of public housing would also hit house prices and rents in the private sector. This is why it is not happening. When replying to the Topical Issue debate earlier, the Minister of State said that the Opposition is only interested in social housing and that we do not want private housing. I do not object to private housing on private land but I do object to private housing on public land, particularly in light of the current housing crisis.

In the few minutes remaining, I would like to read into the record the comments of a young girl named Nicola Quinn who is part of the St. Michael's Estate regeneration team. Her words epitomise the plight of young people and others who cannot afford to buy the houses being built by private developers and who also cannot afford to rent. She states:

> A NEW PLAN for Inchicore means that ordinary young people like me can dream about renting at a price I can afford.
>
> I'm 27 years of age. I'm a postgraduate student at University. I'm working with a global engineering company. I have friends and work colleagues from across the globe. I vote. I pay taxes. I have opinions, aims and aspirations. I'm a young, independent adult.
>
> But I am living at home. Going through the same hall door since I was in a school uniform.

It's the only living choice I have right now. And it's the only choice that thousands more young adults like me have here in Dublin and across the country. Eurostat figures in 2016 tell us that a massive one in four Irish adults over 25 are living at home.

We are a generation trapped in our box rooms, locked out of the extortionate private rental market and unable to get a start on an out of reach housing ladder for ordinary people.

She goes on to say very eloquently:

I can at last begin to dream that there is a better way to do things, that there is a different way to think and plan for housing that ordinary people like me can aspire to and, above all, afford.

For over a year now I have been working with the St Michael's Regeneration Team in Inchicore – where I grew up. I have met with the team every week, as a volunteer, to develop our plan for the 12 acres of green space that is right in the middle of our community.

What's really ground-breaking about this proposal and what attracts me most to it is that all of houses on the site would be rented on a long term and secure basis, at a cost that is weighted according to people's ability to pay. It's called the cost rental model. It's new here in Ireland but it is actually the successful rental model that has been in operation in countries across Europe for decades.

So say, you're somebody with an income of about €30,000, your rent for a home suitable to you could be no more than €400 a month. Compare that with the €1,600 average it would cost me today to rent a two bedroom apartment off a private landlord or vulture fund in Inchicore and you can see immediately why I'm excited about this new, fair rent model. At last, it's a housing model and a rent that I can live with.

This is the reality for many young people, bus services employees, rail services employees, post office employees, Eircom employees and retail outlet employees. Nicola also states:

Instead, what is proposed with the Fair Rent Model plan for Inchicore is that the 12 acres of public land is retained by the State – not given away. The State builds the homes, which the State continues to own, and then rents these homes to a mix of people – families, single people, older people – on a long term and secure basis.

The best bit about this proposal is that not only do people like me get the chance and the choice to live at a rent we can afford but that the State can recoup its initial outlay for building the homes.

So, at St Michael's Estate, for example, if there were 300 one, two and three bedroom homes rented out, the State could expect to earn over €2 million every year – meaning that over a 25 or 30 year period the community would pay for itself.

This proposal has to be piloted on St. Michael's Estate. Councillors and the community can discuss the details in further detail. There are already 55 new houses in Thornton Heights and an old folks development is under way at site B on St. Michael's Estate. This can be a game changer for ordinary people who are priced out of the market.

Deputy Michael Collins: I am grateful for the opportunity to speak on this Bill. I have spoken in this Chamber many times about the current housing crisis. We need to relieve pres-

sure from people who fear homelessness. I plead with the Minister to take solid action. With a staggering number of children living either on our streets or in emergency accommodation, it is important that we make provisions to protect their family unit and their childhood as much as possible. The emergency accommodation available for these families is neither safe nor sufficient for the huge demands that exist. We owe a huge debt to the various charities, such as Focus Ireland, the Simon Community and the Fr. Peter McVerry Trust, that assist the homeless community throughout the country on a daily basis. In the current climate, tenants are finding it extremely difficult to source adequate accommodation as a result of a lack of supply and high demand. According to census 2016, some 260,000 houses throughout the State are vacant. Common sense dictates that these houses could go a long way towards solving the immediate housing crisis. In order to achieve this, the building control and regulation process must be changed if we are to fast track the utilisation of these vacant or derelict buildings. My constituency in Cork South-West has many of these types of buildings. Throughout every town I travel I see these houses, some even without roofs on them, and there is no law on it; they are just left there. If a few slates fall to the ground they get a letter and no more. The buildings should be confiscated from people after so many years if they are not using them.

There is a pattern of vacant above-the-shop units in every city, town and village. These units could be refurbished to provide much needed residential dwellings. During the discussions on housing in the talks for the formation of Government in 2016, I raised awareness of this issue and gave the example of my home town of Schull in west Cork where very few families live over commercial premises. This trend, which has been occurring over the past 20 years, has impacted very negatively on our towns and villages such as Ballinee, Eyeries, Goleen, Kilcrohane, Kealkill, Drimoleague, Timoleague, Durrus, Ballydehob and Schull. I have spoken at length of a regeneration programme for these small rural towns and villages and the ability to rebuild these communities. I proposed that we should encourage families to take up residence over shops and commercial units by offering refurbishment grants. This would help in some small way in easing the housing pressure and it would promote the survival of our rural towns and villages.

The Minister and the Government have done little to fix the current housing crisis. On a regular basis we see new motions from all ends of the Opposition introduced as an effort to tackle the housing crisis but we have seen little action on the Minister's side of the House. I hope the Government will act to relieve the current housing crisis and take my recommendations into account as a way of addressing this crisis.

Deputy Danny Healy-Rae: I thank Fianna Fáil for bringing this motion forward, which is very important, even though we have already spoken many times in the House highlighting different aspects and the measures that could and should be taken to alleviate the housing problems we have.

I support the motion for the provision of affordable houses to buy or to rent. It is a very laudable idea. There are many couples and young people struggling to pay even the rent. Consider the town of Killarney, for example, where rents of more than €1,000 and €1,200 per month are now common. Rent of €2,000 per month has been asked for houses in and around Killarney. With the incomes people have, and with families and everything else, they cannot afford these rents. When they get a notice to quit, which many of them seem to be getting recently and especially around Killarney, Tralee and Castleisland, they are very worried that they will not find a home, that they will be out on the road or their family will finish up in one room in the homeless centres in Tralee or Killarney. They are scared of their lives of this happening. Many

couples are very worried about this.

This evening I want to determine the funding available for demountable homes, which I have come across in Kerry. The information I have heard from the housing section is that it is hard to get money from the Department to fund demountable homes. These people have an asset which is the site on which to place the demountable home. I want to determine if the Government is giving enough money to the local authorities or if it is the case that something has happened whereby the local authority is not approving this funding. I praise our local authority, especially the housing section and the grants section, for the great work it is doing giving grants to older people and to those who have a disability so they can stay in their homes for longer. That is where everybody wants to stay.

Deputy Collins has said that many houses are vacant but I do not agree with my colleague that these houses should be knocked or taken away from the owners. I believe that many of those who have a house and who cannot use it for the time being may come back when they get the opportunity. Funding must be made available for rural cottages because, again, those people have the sites.

Deputy Mattie McGrath: I thank Deputy Darragh O'Brien and I wish him well in his role as Fianna Fáil spokesperson on housing and on the motion tonight.

Did the Minister say that there have been nine Ministers with responsibility for housing? Was it uimhir a naoi or were there six or seven Ministers? We talk about Charlie McCreevy's dirty dozen of tax cuts, but these housing Ministers are the useless six or seven, or whatever it is. The Government talks and talks but it will not walk the walk. It has promised housing but every figure that the Minister, Deputy Murphy, brings out and every statistic in print that has been predicted or suggested has failed miserably.

With regard to policy, back through the decades Fine Gael was never good at building houses. Houses were built under Fianna Fáil governments when there were no cranes or such equipment. Fine Gael never built them because it is not interested in the small people, na daoine beaga. It was only interested in the big landlords with daffodils up and down the drive and the twisted boreen or laneway going up. It was "To hell with the people". The policy is quite clear; the Government does not want to house people. It tells us about all the money it gives to the councils, but the council tells us that it does not have the money. Deputy Danny Healy-Rae has said that the council does not have money for demountable homes and for many other things.

Nothing has changed. The figures are being massaged, managed and manicured to lead people to believe the Government. In Dublin tonight there are 30 pregnant mothers who are homeless, yet the Government wants to bring in abortion. That would get them off the lists. Has the Government lost its way completely? Or maybe it has not lost its way and it is a carefully laid plan not to house these people or allow them to build houses. They will not allow people to build houses in the country. I know of at least 12 young couples who have the wherewithal, the money and the site but they cannot get planning permission. Any way they go they cannot get housing. There is some plan greater than we can crack as to why the Government will not house people or allow people to house themselves with dignity.

It is great that we have so many people who want to get on an affordable scheme so they are not demanding a house from the State. They want to pay, get an affordable scheme and get a loan but the Minister will not do it. He refuses to do it in spite of all the work done by Fr. Peter

McVerry and all the other organisations. There are many organisations also in Tipperary, from Carrick-on-Suir to Clonmel and from Tipperary town to Thurles and Nenagh. Voluntary groups have delivered. Last week I attended a launch on what the voluntary sector intends to build. They have done this under Dr. Donal McManus and the Irish Council for Social Housing and the other agencies. They can do it. People can do it if the Minister would let them get planning. The Government will not do this and it is a mockery. There were 11 houses built in Tipperary over five or six years. It was not even two houses per year. It is a joke.

It is time the Minister copped on, stepped up to the plate and came clean with the people. He must tell people why he will not house them. We have more than 3,100 approved applicants on the housing waiting list in Tipperary. There are 10,000 people looking for houses. It is the same story up and down the country but the Minister brings out this report and that report. If reports could build houses we would have houses galore. Consultants and everyone else get paid to compile these reports, do grand launches and turn sods, but then nothing happens. There is something seriously wrong with the Government and the people will tell the politicians this when they go back for votes. It is time the Government delivered something other than spoof and talk.

Deputy Seamus Healy: The hypocrisy in the House tonight is absolutely breathtaking. The Fianna Fáil Party abolished the local authority public house building programme and handed it over to the private market. The Fine Gael Government since 2011 embraced the abolition of the public housing programme and embraced the privatisation of the housing programme. It has made matters worse ever since. The Labour Party representative, who spoke earlier, introduced the infamous housing assistance payment scheme, which gave hundreds of millions of euro to landlords while condemning ordinary families to an existence. It is an existence because when a person has paid rent to the local authority and the huge top-up to the landlord, he or she does not have two cents to rub together at the end of the week. Any little thing that might get in the way such as an illness, a communion, a confirmation or a death throws a family into poverty and into the hands of moneylenders.

When did we last have nearly 10,000 people homeless? When did we have people dying on our streets? We have that now because this Government of Fine Gael and the Independent Alliance, supported by Fianna Fáil, has embraced the private market in the building of public housing. That has created a major crisis. It has in fact created an emergency.

I remember well when the Fianna Fáil-Progressive Democrats Government abolished the local authority house building programme. I was on South Tipperary County Council at the time and I remember responding to the circular by prophecising that this would happen, but even I did not believe that we would have 10,000 people homeless or people dying on our streets. That is what has happened, though. That is what putting one's faith in privatisation means, namely, ordinary families coming off the worst. What could be worse than being homeless or dying on the street?

Of the 10,000 people homeless, 3,500 are children. Approximately 100,000 people are on local authority housing lists, 25,000 or more are on the infamous HAP scheme, approximately 30,000 families are in serious mortgage arrears, and rents are sky rocketing to the point that they are now 25% higher than they were at the height of the boom. Not a day goes by that a homeless person does not come to the office or ring the phone of every Deputy. Sometimes, two or three homeless people present everyday, even in my office in Tipperary. Not too long ago people were saying that the peak of the crisis was to be found in Dublin, but it is all over

the country now.

Even our President has indicated that the policy being pursued by this and the previous Governments as well as the preceding Fianna Fáil Governments is wrong. He stated:

> We have to accept once and for all that people who need housing and cannot provide from their own means should not be abandoned to the marketplace and the principle should be accepted that their housing should be as good as any other housing.... One of the most basic deprivations a human being can sufferer, or fear, is that of being homeless ...

He also stated, "It's about democracy. You can't leave the provision of housing to a residual feature of the market place. We have done that and homelessness is a consequence of that."

We need to do a number of things if we are to make any progress on this housing crisis. First, we need a declaration of a housing emergency. We all know why, that being, we are in an emergency. It is possible to declare an emergency - it has been done before. The previous Government did it with the FEMPI legislation. It should be done again, and the quicker, the better.

We need a major public house building programme. We must return to local authorities building at a significant rate of at least 10,000 houses per year, but more if possible. We need to use moneys offered by the credit union movement to help in that regard. We need to stop the evictions and repossessions, which are only building up the crisis and adding to local authority housing lists. We do not need new laws or the like. The Government simply needs to instruct the banks that we own - Allied Irish Banks and Permanent TSB - to stop their repossessions, to stop taking houses from people and families, and to leave roofs over their heads. That would be of significant benefit to families that are suffering in these circumstances.

The rent pressure zones have not, and will not, work, so we need real rent controls. That is one reason for a housing emergency to be declared. Rents are now 25% higher than they were during the boom peak and families are being fleeced. Even families in what would be regarded as good quality employment are living from hand to mouth because they have little or nothing left at the end of the week. We need rent controls urgently.

We need to introduce legislation that would allow tenants to continue their tenancies after their private landlords sell on their houses. Such legislation is available in other jurisdictions and is nothing new. It has been discussed in the Chamber previously. The law should be introduced immediately because this issue is directly contributing to homelessness. It is the main cause of homelessness among families, as they are being required to leave their homes when their landlords sell their buy-to-let properties.

The limits placed on inclusion on local authority housing waiting lists need to be increased significantly. They were reduced by the previous Government and now there is a large cohort of people who do not qualify to join the lists or to get mortgages. They are paying exorbitant rents. This situation needs to be dealt with urgently. The new Rebuilding Ireland loan scheme has made matters worse, particularly given that a 10% deposit is required. Previously, someone could get a 98% loan from a local authority. Now, someone must have a 10% deposit, but can anyone explain how a family paying anything up to €1,500 per month in private rented accommodation can also save for a 10% deposit? It is not possible. The scheme is unworkable and needs to be changed urgently.

An Leas-Cheann Comhairle: We now move to the Fianna Fáil speaking slot of ten min-

utes. I call Deputy O'Rourke, whom I understand is sharing time with his colleagues.

Deputy Frank O'Rourke: We will take three minutes or so each.

I welcome the opportunity to contribute on this motion, which was tabled by my colleague, Deputy Darragh O'Brien. When one drills down into it, the principle is a basic one: people who want and are willing to provide for themselves cannot do so because their incomes do not match the cost of a house. When people seek a mortgage to purchase the house they want to buy, they are told that their income is at such a level that any mortgage they might be given will not allow them to buy it. In my constituency of Kildare North, a three-bedroom semi-detached house probably costs in the region of €260,000 to €270,000.

An interesting statistic on which there has been no discussion is that couples or individuals who, in light of their income-to-house price ratios, have been refused mortgages because of their inability to repay them are actually paying far more in monthly rents than their mortgages would ever be. Rents are increasing year on year or, in some cases, month on month. People are paying €1,300, €1,400 or €1,500 per month in rent and are still being told they would be unable to repay a mortgage. We must examine people's ability to pay and factor that into the consideration of house prices and mortgage approval. If a person has been paying a high rent for two or three years, that should be factored into a consideration of his or her ability to pay in order to help them access funds to purchase a home and get onto the property ladder.

The home loan programme is not working. The statistics pertaining to my county show that more applications are being refused than granted. That initiative is not assisting positively in any way in getting people into their own homes.

Council-owned land banks, of which there are many around the country, have been mentioned. Land owned by councils that is zoned residential could be developed through Government borrowing at the close to 0% interest rate it can access on the European markets, which compares very favourably to the interest rates available from the private sector and commercial banks. The development of that land, which is owned and in the trust of the State, utilising borrowing at that low interest rate could assist in making properties more affordable if it is done in an appropriate way. That is an opportunity of which the State is not taking ownership.

As was stated earlier, the local infrastructure housing activation fund, LIHAF, which I have discussed with the Minister, Deputy Murphy, and the Minister of State, Deputy English, is far too slow. I acknowledge that it is not geared towards delivering affordable housing but, rather, opening up land to deliver housing stock, which is also important.

I listened to the Sinn Féin contribution to this debate while in my office. I will not take any lectures from Sinn Féin about confidence and supply, supporting Government and having an input into the delivery of housing. Two and a half years ago, Sinn Féin had the opportunity to enter Government but it ran for three months and stated that it would not consider forming a government unless it were the lead party in that government. There was little hope of that. I also listened to the lecture delivered by Deputy Jan O'Sullivan. The best housing policy the Labour Party put in place was the creation of the housing assistance payment, HAP, which was actually a transfer list designed to reduce the housing list and make the statistics look better so that the Labour Party could pretend to the electorate that it was dealing with housing lists when it was not so doing. We should not take any lectures on housing from those parties.

Deputy Eamon Scanlon: Ordinary people can no longer afford to own their own homes.

I have spoken many times on the tenant purchase scheme. I thank Deputy Darragh O'Brien, Fianna Fáil spokesperson on housing, for the opportunity to do so again. The tenant purchase scheme was first established by Fianna Fáil. Opening a pathway to home ownership is at the heart of Fianna Fáil policy. The right to buy under the tenant purchase scheme has been an important tool in extending home ownership opportunities to low income households but the requirements to qualify for the scheme are too strict for many people on social welfare and the elderly and must be changed.

People whose name was previously on the title of a property such as a family home, a parent's home, or a home from a previous relationship that was sold following a divorce or a bank forcing the sale and who are now in a new relationship and seek to purchase a house from a local authority are being restricted from doing so. Although the local authority will agree to sell them a house, it will not lend them money for the purchase because such people previously had their name on another property. They are told to get a loan from a bank. However, when such people go to the bank, the bank will not lend to them because of the incremental purchase charge the local authority puts on the house. That is causing much hardship. I have discussed such a case of which I am aware with the Minister.

Elderly people who wish to purchase their house under the tenant purchase scheme but cannot show an annual income of €15,000 are excluded from being allowed to do so even though many have been in their house for 30 or 40 years. Such people may be in their 70s or 80s and retired. Those houses will not come back into the housing stock because in many cases family members live with the elderly person and the house is transferred to the son or daughter or other person living there. It is very unfair that those elderly people are being discriminated against because they do not have an annual earned income of at least €15,000.

I previously raised the issue of a housing development in Lucan on which 178 houses are being built. The site is owned by NAMA, which has done a deal with the developer such that NAMA gets paid as the houses are built and sold. I have no issue with that. However, rather than being sold to people struggling to purchase a home for themselves, every house in the estate has been sold to a vulture fund. People are queueing outside the finished houses to rent them for €2,200 per month. If that continues, what chance will any young couple or family have of ever purchasing a house in Dublin city? That is the situation across the city, not just in Lucan, and should not be allowed, particularly on land owned by NAMA.

Deputy Aindrias Moynihan: The country is facing a growing housing affordability problem to which the Government has yet to face up. Ordinary people can no longer hope to afford to own their own home because of rising prices. Fine Gael has an appalling record on providing affordable housing. It scrapped the existing affordable housing scheme in 2011 and nothing has since been built. The flagship LIHAF scheme is still not delivering. In my area, the LIHAF in Ballincollig, which was to be the largest in County Cork with an investment of €7.4 million, was to deliver 520 affordable homes. It has now been dropped from LIHAF 1 because it was not progressing. Across a field from it, 34 social houses planned for Old Fort Gate have not been delivered. The Poulavone social housing scheme is still far from completion. When one considers such situations in one corner of the constituency, it is hard to blame people in Ballincollig for feeling that the Government has not delivered and has abandoned people in terms of housing. That is only one corner of Cork North-West. There are similar situations in many other places because affordable houses have not been built for many years.

Fianna Fáil has put forward a clear list of measures to boost overall supply and address af-

fordability. The Minister must facilitate home ownership by requiring lenders to take account of rent payments when deciding on mortgage approval. People are paying high rents and it is impossible for them to put together a deposit at the same time. A first-time buyers savings scheme is needed. The Government must encourage residential development in town and village centres, in which there are many vacant units. That would greatly add to the sense of community in such places. Renters must be supported by strict policing of rent pressure zones with more enforcement powers.

We need an end to spin and schemes and a move towards blocks and mortar and the delivery of houses that people on ordinary wages can hope to someday afford and call home.

An Leas-Cheann Comhairle: In the absence of any Government Deputies offering, we move back to Fianna Fáil. I call on Deputy John Brassil, who I understand is sharing time.

Deputy John Brassil: I am glad to speak on this Fianna Fáil motion. I hope the Minister takes account of the measures it proposes. It is not good for society to have a situation whereby well-paid couples and individuals cannot afford to buy their own home.

Should I wait until the Minister, Deputy Murphy, and the Leas-Cheann Comhairle have completed their negotiation? I do not like talking to myself.

An Leas-Cheann Comhairle: My apologies to Deputy Brassil but Fianna Fáil has the last slot so if he does not mind, given that the Minister of State, Deputy English, has arrived I will allow him to speak. He thought he was winding up the debate but he is not.

Deputy John Brassil: That is no problem.

An Leas-Cheann Comhairle: Deputy Brassil can restart. The Opposition has kindly allowed the Minister of State to take his slot.

Minister of State at the Department of Housing, Planning and Local Government (Deputy Damien English): I like it when I have co-operation from the other side. Thank you, a Leas-Cheann Comhairle, for the opportunity to say a few words. I apologise as I did think I was winding up the debate. I was wound up earlier by some of the comments made.

Deputy Eoin Ó Broin: We do our best.

Deputy Eoghan Murphy: You do it well.

Deputy Damien English: It is one thing the Opposition Members are good at. I will give them that. A couple of points were raised earlier. I heard some of the comments made by the Minister, Deputy Eoghan Murphy, and by Deputy Jan O'Sullivan in response to what Fianna Fáil is calling for in the motion. Very often we are accused of not addressing the housing shortage early enough and not stepping in, but as Deputy Jan O'Sullivan and the Minister, Deputy Eoghan Murphy, said we took the first chance we got when the State finances were repaired and there was money and we made sure to put it back into housing. Listening to Fianna Fáil one would forget that for seven or eight years there was no money. It was not there. I listened to Deputy Cassells and many others speaking as if there was money and there was never a problem with housing. We had better not forget that housing construction fell by 90%. Hundreds of thousands of people lost their jobs and left. I will never ever forget knocking on doors in 2011 and meeting people who said this country had no future and their children had no future. That is what they were saying. They could not see any hope. I do not go back to that very often in

this House but we had better not forget what has happened in the past seven or eight years and prior to that. I do not mind all the political slagging. That is all part of it, but it comes back to housing construction. However, we had better not forget the hurt that was in people's eyes. I have only seen that same hurt since in the last couple of weeks over the recent scandals, but back in 2011 people were genuinely afraid that their children and grandchildren had no future in this country. It does not work to just put down a motion about affordable housing as if one could just fix the entire housing crisis by clicking one's fingers. One cannot just rewrite history. It takes time to get housing construction going again. The underlying idea behind Rebuilding Ireland, the Action Plan for Housing, was an investment case to secure the money that was needed to invest in housing. We put together a business case and a plan and secured €6 billion of taxpayers' money to invest.

I listened to comments earlier about the great work being done by many NGOs such as Focus Ireland, the Peter McVerry Trust, the Simon Community and many others. There was also much praise for housing associations and the great work they do. People also need to realise that they are also spending taxpayers' money. They are part of Rebuilding Ireland. They work with local authorities and the Department of Housing, Planning and Local Government. They are all playing their part as stakeholders in the delivery of houses, housing solutions and homeless services, but that is being done with taxpayers' money. This year we will spend the guts of €2 billion of taxpayers' money and the taxpayers need to know that their money is funding solutions. When Members of this House constantly say what the Government is not doing and praising everybody else they should realise it is taxpayers' money being channelled through a Department by the Government. In some cases it is matched with voluntary help and fundraising but a lot of taxpayers' money is funding those solutions too.

The Government's approach is working and it is providing solutions. The fact that we are in here discussing a motion on affordable housing shows that our plan is now working because stage 1 of the plan was to address homelessness and social housing, and to restart social housing which had been stopped well before any recession. Let us not kid ourselves. Many local authorities did not have housing teams for many years before the recession because they did not need them. The first step was to go back into local authorities, put the teams together, channel the taxpayers' money through local authorities and put them in a prime position to deliver housing. They are now doing that. Last year we saw an additional 7,000 houses coming into the system through a combination of direct build, acquisition, Part V, long-term leasing and other schemes as well. In addition, another 17,000 to 18,000 houses were provided through the housing assistance payment, HAP, and other schemes as well. In total, 26,000 families had housing solutions. A total of 4,700 people left the homeless situation.

Regrettably, we admit that there are still between 9,500 and 10,000 people in a homeless situation for various reasons. Everyone has their own individual story. We met many people today who were in a hotel for three or four months last year in the Fingal area and now they are in a house. I made the point that the story is changing for many of them. When we first started to tackle the situation people were living for two or three years in emergency accommodation in a hotel or bed and breakfast. Thankfully, there has been a lot of movement in that regard. I accept that there are still far too many people in emergency accommodation, bed and breakfasts and hotels but the story is a little bit different. People are not there for as long as they used to be. They are moving through the system. They recognise that. They do not want to be there. We do not want them there - nobody does. It is not a place to be or to raise a family. Thankfully, with taxpayers' money being spent in the right way, through a plan, this year we will see

more than 8,000 new social houses coming into the system. Many of the people who are in emergency accommodation tonight, who are homeless or without a house or in an overcrowded situation with their family will be in a home during this year.

Many others will avail of the HAP scheme and other schemes and housing solutions that are being provided. Deputy Frank O'Rourke suggested that in some cases the scheme is not working the way it should be. We accept that and we will address it and move things on. I heard some speakers criticise the HAP scheme. I remind them that before the HAP scheme there was rent assistance which prevented people from increasing their income. That discouraged people from going back to work. If one got a job one was penalised and lost the assistance straight away. The HAP scheme was brought in to encourage people to get back into work when they could and to take up a job, and to better provide for themselves and their families. It did not hold them back. That is what it was there for, but it also meant that more than 30,000 people are in a home today of their choosing - one they found that suits their needs that is subsidised through the State. They will adjust their needs as they go along and many of those people will choose to leave and go on to either their own private house or into a permanent social house. HAP is not a scheme to put people to one side because more than 1,000 people have left it and moved into a permanent social house. It is part of a journey that people are on.

We do not want to rely on the private sector all the time for social housing solutions but in the short term when we are rebuilding the construction housing sector we will have to rely on the private sector to some extent or make it a partner until the State is in a position that the housing stock is replenished and it can continue on by itself. That is what the approach is about. There is a commitment from the Government with the support of many others as well to deliver a minimum of 50,000 social houses in the next three or four years. People ask why the houses are not there. Anyone with common sense knows one cannot do it in six months or a year. We are approximately 19 or 20 months into our programme. The Department has been totally reorganised and we have different teams and schemes working through local authorities which have changed their processes. A lot of change has happened which will deliver all those thousands of houses this year, next year and into the future.

Part of the remit of Rebuilding Ireland was to put in place a sustainable residential housing construction sector to give people confidence that it is a safe place to invest in their skills, be it in formal education and training, an apprenticeship or traineeship or at fourth level. We are encouraging people to go back into those areas to retrain, add to their skills and as the Minister, Deputy Eoghan Murphy, said earlier to restart their companies and put them together again, to invest in this sector and plan for the future. That is what this document was about, namely, putting people in a position that they could have confidence to invest again in a housing construction sector. There was a guarantee to deliver 25,000 to 30,000 houses every year for the next five, ten and 20 years to match proper planning. That is what it is doing. This year the supply of housing will increase by more than 20,000. The industry itself says 23,000 and the Central Bank says the same. The Department conservatively estimates the total will be approximately 21,000. That is ahead of our own target. Next year we will build on that. Each and every year the supply of housing increases, which will deliver social housing, affordable housing, housing for the rental sector and across all the different areas, and private housing at the right price as well. The supply of housing is the solution to all of the problems. That is what is being achieved by Government intervention through the Action Plan for Housing devised by the Department. That is what it is there for. It does not mean one can fix the problems in one night, one weekend, six months or one year. We cannot do that. It is a five-year plan to deal with all

the housing-related problems and it is delivering because we can see the social housing.

Going back to the people who are homeless, we wish they were not in emergency accommodation. It is not a place to be. All our efforts are to make sure they are not there but there has been progress. In terms of people's individual stories for being there, two or three years ago it was nearly always based on economic need but that is not the story any more. There are different stories but it is not just due to economic and financial reasons. There is movement and we are addressing all the various scenarios. We are working with individuals and families to get them back into a home or get them back on track if they have other needs as well. Progress is being made.

I heard the comment that funding for other services around housing has to match. Deputy Cassells has a bit of a cheek to come in here and say the Government has to build houses and then provide all the services around them as well. We watched construction in this country go to 90,000 houses per year without the services around them. All the counties surrounding Dublin and in the greater Dublin region were let down by Governments that allowed house after house to be built without the proper services and infrastructure. Rebuilding Ireland, which was launched by the Minister, Deputy Eoghan Murphy, is a long-term plan which includes the services around the houses. It plans where we are going to put the houses in the future and where there will be schools, shops, education facilities and health services around them.

11 o'clock

A site in Ashbourne that is big enough to provide educational facilities - which is what is was purchased for in the first instance, as well as housing and some community amenities - was chosen. It is not all just for houses. Let us not kid ourselves. That is not what the council brought forward in its plan. Ashbourne exploded because of a lack of planning. It is full of houses, like everywhere else in the greater Dublin area. There is no longer a lack of planning. The plan is in place and we will deliver services with houses.

I was in Balrothery, which is in Deputy Darragh O'Brien's constituency, earlier today opening new houses. Residents told me that two years ago they opposed the building of those nine houses because they thought that a playground should be built on the site. They told me they were wrong to oppose the development and that they are happy the houses have been built. I want to be clear on this - they said they were wrong. Likewise, when the position is explained to residents in Ashbourne, they may also realise that they are wrong to object.

An Leas-Cheann Comhairle: We will proceed to the final contributions.

Deputy Damien English: I will make one final point. On local government funding, as I have explained previously, population increases have meant that counties such as Meath are underfunded. They have been underfunded for many years following population explosions. However, the first chance it got, the Government, as finances improved, began to redistribute funding to all local authorities. We are correcting the mistakes of the past in construction and everywhere else as well.

Deputy John Brassil: I am glad I had the opportunity to listen to the contribution from the Minister of State. I know that he cannot fix this overnight or in six months. I know that he cannot flick a switch and solve the problem. However, this problem has been ongoing for five years. In 2014, the former Minister, Deputy Alan Kelly, launched the plan that was going to solve the housing problem by 2021. It is now 2018 and we are only getting a trickle of houses

coming onto the market. The Minister of State said that the Government's social housing plan is working, but there are 10,000 homeless people in the country as we speak. Is the Minister of State delusional about what is working? Does he think that we, as Opposition Deputies, are making this stuff up? Does he think we would be saying that there is an affordable housing crisis and trying to put forward solutions through our party spokesman, Deputy Darragh O'Brien, if there was no issue out there? It is time to realise that there is a problem. The Minister of State telling us that there is no problem and pretending that it is going to go away will not solve it.

I worked in construction for 15 years. I worked as an engineer and I know what it takes to get planning permission up and running, to get a site serviced and to get houses built. I know that 12 to 18 months would be long enough if one had the determination and the drive. There is an affordable housing issue out there. There are many couples on good salaries who simply cannot afford to enter the housing market. We are putting forward viable proposals and asking the Government to work with us to solve a problem. I ask the Minister of State not to stand up in the House and tell us that there is not a problem because there is and it is time we addressed it.

Deputy Eoghan Murphy: Nobody said there was not a problem.

Deputy Niamh Smyth: Housing is now a national emergency. There are 10,000 homeless people in the country. I know that these figures have been bandied about all evening, but they represent the reality. Unfortunately, over 3,500 of those who are homeless are children. As the Minister and Minister of State know from their constituency clinics, many of the people who find themselves homeless or about to lose their homes are ordinary individuals with decent jobs - teachers, nurses and gardaí - who are facing repossession. There are no social housing building programmes under way in rural constituencies such as Cavan and Monaghan. With over 100,000 on waiting lists, this is a national crisis. In Cavan and Monaghan, those in need of social housing are facing waiting lists of three to five years. I know that the situation in places like County Meath is a lot worse. What does one say to people who come into one's clinic who are about to have their homes repossessed, their keys taken off them, with no homes to go to? They are facing the prospect of either being homeless or sleeping on the couch in their parents' houses. There are houses now with three generations of the same family living in them. People are losing their homes through repossession day after day and the housing crisis deepens. We are urging the Government to launch a new State-led affordable housing scheme. This must involve an initial capital investment on the part of the State, with the proceeds of sales reinvested into the building of more homes. It is essential that the Government earmarks additional capital investment for such a scheme to facilitate house building in key areas across the country. The Government must assist local authorities in reviewing their housing team needs. As the Minister of State said, the housing teams in a lot of local authorities were no longer there.

Deputy Damien English: They are there now.

Deputy Niamh Smyth: We need to give local authorities the capacity to deal with this and get housing schemes under way. We also need to re-examine the cost of supplying houses. I am not an expert but builders have told me that the initial outlay before a block is even laid is phenomenal. That is why we are not seeing the surge in the private sector building that we need. We need the private sector to build private houses as well as social housing schemes.

Deputy Mary Butler: I was absolutely shocked to learn that 120 elderly citizens throughout the country are accessing emergency accommodation. I received an update from the Department of Housing, Planning and Local Government by way of a parliamentary question on the

level of homelessness among those aged over 65. I tabled that question because I was dealing with three such cases in my constituency. I thought that if I was dealing with cases, then every other Deputy must have a similar number. There are 6,035 adults accessing these services and 120 of them are elderly. This is disgraceful. While it may be small compared with the overall number of homeless people, it signifies a failure on the part of the State to provide housing to a highly vulnerable cohort of our citizens. Older people can often find themselves in very vulnerable situations in the context of their health and personal finances and the fact that some are trying to deal with homeless issues at this stage of their lives is disgraceful. I would have thought that much earlier in this housing crisis older people would be specifically targeted. The additional needs of elderly people who are homeless must be addressed. I ask the Government to prioritise these 120 people. They are in a very vulnerable situation, with nowhere to live. Many of them have worked all of their lives and have fallen on hard times. I ask the Minister and Minister of State to think about that.

Deputy Darragh O'Brien: I thank all of my party colleagues and those from across the House who contributed to this debate this evening. The Minister of State, Deputy English, suggested that we are debating affordability this evening because social housing and homelessness are being addressed but that is patently untrue. We are debating an affordable housing scheme because Fianna Fáil tabled a motion on it. I am not going to go back and forth with the Minister regarding the Fine Gael history lesson he wanted to place on the record of the House or with the Minister of State and with members of Sinn Féin on various issues. There is a need for an affordable housing scheme and I simply asked the Minister when he is going to initiate one. I assure Deputy Ó Broin that my party is very serious when we say that the forthcoming budget must be a housing budget. There will be very specific and costed measures that we will be putting forward-----

Deputy Eoghan Murphy: It is a bit late to be looking for a housing budget. We put one in place two years ago.

Deputy Darragh O'Brien: Tá bron orm-----

Deputy Eoghan Murphy: We put in place €6 billion for Rebuilding Ireland two years ago but the Deputy is only looking for a housing budget now.

An Leas-Cheann Comhairle: Deputy Darragh O'Brien without interruption, please. He has only three minutes left.

Deputy Eoghan Murphy: The Deputy is only looking for a housing budget now-----

Deputy Darragh O'Brien: I am terribly sorry that the Minister for Housing, Planning and Local Government cannot take any legitimate criticism. What I am saying to him is that his plan is not working. He knows that.

Deputy Eoghan Murphy: Deputy Darragh O'Brien's party is supporting it.

Deputy Darragh O'Brien: Hold on one second. The Minister is in his job because we facilitate that. That is why he is there and he should have no doubt about it. I would prefer if he was more concerned about the 10,000 people who are homeless or about the people who cannot buy houses.

I want to address the point made earlier that homelessness is not in this motion. We will be

discussing homelessness in committee tomorrow. This motion relates to affordability. I have written to the Minister on two occasions recently in respect of homelessness and have yet to receive a response, bar an acknowledgement, which I have here-----

Deputy Eoghan Murphy: The Deputy got his acknowledgement.

Deputy Darragh O'Brien: I got an acknowledgement. Is that it?

Deputy Eoghan Murphy: It is all connected. It is great to see the Deputy in the Chamber. I have not seen him in weeks.

Deputy Darragh O'Brien: Excuse me?

Deputy Eoghan Murphy: I have not seen the Deputy in the Chamber in weeks and have not heard him ask one question of me-----

Deputy Darragh O'Brien: I have not seen the Minister recently either. When was the last time he appeared before the Joint Committee on Housing, Planning and Local Government?

Deputy Eoghan Murphy: The Deputy has not asked one question of me in this Chamber.

Deputy Darragh O'Brien: When was the last time the Minister came into the housing committee?

Deputy Eoghan Murphy: I appeared four times in the first quarter, which is more than any other Minister, and I will be there again tomorrow.

Deputy Darragh O'Brien: I look forward to seeing the Minister there tomorrow. Am I to be allowed to conclude?

An Leas-Cheann Comhairle: I ask the Minister not to interrupt the Deputy.

Deputy Darragh O'Brien: I firmly believe, as I think the Minister, Sinn Féin and others do, that we need an affordable housing scheme. There is no such scheme at present. The Government has not built any affordable houses. I remind the Minister that the average house price in Dublin is €368,356, or 6.5 times the average household income. I am using that as an example. I am not talking about €2 million houses. The Minister and the Minister of State seem to be saying to us that houses are affordable. Where are the affordable houses? Maybe there are such houses in some areas. We have a major issue with supply. We should not fool ourselves in that regard. We have a major issue with supply.

Deputy Eoghan Murphy: We know that.

Deputy Darragh O'Brien: Okay.

Deputy Eoghan Murphy: Does the Deputy not remember that it fell by 90% after his party came out of government?

An Leas-Cheann Comhairle: We cannot have this.

Deputy Eoghan Murphy: We cannot have this nonsense either.

An Leas-Cheann Comhairle: Some of the Minister's colleagues would feel I should-----

Deputy Darragh O'Brien: This is the Chamber where Ministers are supposed to be answerable to those who are elected. I am putting across my point of view. I did not interrupt the Minister once during his diatribe earlier in this debate. I could have interrupted him, but I did not.

Deputy Eoin Ó Broin: The Deputy interrupted me, but I did not mind.

Deputy Darragh O'Brien: I interrupted the Deputy once or twice.

Deputy Eoin Ó Broin: We can take it.

An Leas-Cheann Comhairle: Deputy O'Brien should be allowed to continue without interruption.

Deputy Darragh O'Brien: We clearly believe that an affordable housing scheme is needed, among other measures. I asked the Minister to tell the House when such a scheme will be established, but he did not answer. There is a need for an affordable housing scheme that is backed by Exchequer funds and can be leveraged through a special purpose vehicle or through credit union finance. By the way, since 1 February last the Central Bank has allowed credit unions to invest in this area. The Government has not seen that through. We want action. A maximum of 780 social houses were built last year. That is a fact. I would like to deal with something that was said here this evening about the construction of social homes. If Deputies want a history lesson, I can tell them that 14,581 social houses were built between 2007 and 2010.

Deputy Eoghan Murphy: They were built by the private sector.

Deputy Darragh O'Brien: On average, 3,645 houses were built in each of those years.

Deputy Eoghan Murphy: They were built by the private sector and not by local authorities.

An Leas-Cheann Comhairle: Minister, please.

Deputy Darragh O'Brien: I have had experience with-----

An Leas-Cheann Comhairle: These are political charges. I am surprised at the Minister because he is normally very orderly.

Deputy Eoghan Murphy: I beg your pardon, a Leas-Cheann Comhairle.

Deputy Eoin Ó Broin: It is the stress.

An Leas-Cheann Comhairle: We need to have some order in the House.

Deputy Darragh O'Brien: I have to say I have yet to find the Minister orderly. I have given the facts. The last time we were in government, an average of 3,645 social houses were built each year. That contrasts with the position during the Minister's tenure. The Minister of State, Deputy English, has said we cannot fix this overnight. I would have thought that five years would have been enough. We should have seen some progress after three years. There are 508 units being built each year, in effect. Over 16,700 houses were delivered under the affordable homes scheme that was previously in place. There is no doubt that there were imperfections with that scheme. We are looking to engage to create a scheme that will work. That is what we will do prior to the budget. We will put forward our proposals. It is up to the Government

to decide whether to accept them. As I said earlier, the purpose of this motion is to lay down a marker that this is the beginning. We want to see a housing budget. We will assist and we will be constructive. We will work with everyone, but we will not be silent when we believe the wrong track and the wrong approach are being taken. The centralisation of power within the Department is a problem in itself. The Government needs to unleash the local authorities on this. They should be trusted to do their job. Too much power is centralised in the Custom House. That is a big issue.

An Leas-Cheann Comhairle: I ask the Deputy to conclude. I have given him some extra time.

Deputy Darragh O'Brien: I thank Deputies for their contributions this evening, regardless of whether I agreed with them. It has been a useful, if sometimes a little charged, debate. We are committed to working with all parties to deliver an affordable housing scheme. Obviously, the Government is not serious about delivering such a scheme.

Amendment put.

An Leas-Cheann Comhairle: In accordance with Standing Order 70(2), the division is postponed until the weekly division time on Thursday, 17 May 2018.

The Dáil adjourned at 11.15 p.m. until 10.30 a.m. on Thursday, 17 May 2018.