



DÍOSPÓIREACHTAÍ PARLAIMINTE
PARLIAMENTARY DEBATES

SEANAD ÉIREANN

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

13 March 2013

Business of Seanad	45
Order of Business	45
Water Services Bill 2013: [Seanad Bill Amended by the Dáil] Report and Final Stages	59
Employment Equality (Amendment) (No. 2) Bill 2013: Order for Second Stage	67
Employment Equality (Amendment) (No. 2) Bill 2013: Second Stage	68
Adjournment Matters	89
Health Service Staffing	89
Youth Services	91

SEANAD ÉIREANN

Dé Céadaoin, 13 Márta 2013

Wednesday, 13 March 2013

Chuaigh an Cathaoirleach i gceannas ar 10.30 a.m.

*Machnamh agus Paidir.
Reflection and Prayer.*

Business of Seanad

An Cathaoirleach: I have received notice from Senator Colm Burke that, on the motion for the Adjournment of the House today, he proposes to raise the following matter:

The need for the Minister for Health to clarify the up to date position in respect of agreements entered into by the HSE with universities in Pakistan for the recruitment of non-consultant hospital doctors and to explain why two-year contracts are being offered in the absence of any clarification from the HSE as to how many Irish doctors are on two-year contracts in HSE hospitals.

I have also received notice from Senator Trevor Ó Clochartaigh of the following matter:

Go dtabharfaidh an Aire Leanaí agus Gnóthaí Óige míniú ar an gearradh siar siarghabhálach de 10% atá déanta ar thograí óige atá dhá riaradh ag Youth Work Ireland Galway agus cén fáth an bhfuil riaradh na scéimeanna céanna curtha faoi scáth Bord Seirbhíse Óige Átha Cliath.

I regard the matters raised by the Senators as suitable for discussion on the Adjournment and they will be taken at the conclusion of business.

Order of Business

Senator Maurice Cummins: The Order of Business is No. 1, Water Services Bill 2013 - Report Stage (amendments from Dáil Éireann), to be taken at 1 p.m and No.2, Private Member's Business, Employment Equality (Amendment) (No.2) Bill 2013, to be taken at 5.30 p.m. and to conclude no later than 7.30 p.m.

Senator Marc MacSharry: We will not be opposing the Order of Business today. I welcome the Bill to be debated this evening in Private Member's time but it is a shame that we could not have accepted the Bill proposed by Senator Averil Power which dealt with the same area. It is regrettable that when a very good Bill is put forward by the Opposition, the set piece

tends to be that the Government declares it has a Bill of its own and will bring it forward because it does not want the Opposition scoring any goals on its watch. No doubt Senator Bacik will acknowledge this evening the efforts of Fianna Fáil and of Senator Power in particular in bringing forward that Bill almost a year ago because I am sure it helped to inform the Bill from the Labour Party Senators.

Today we will have an announcement from the Government, to which we are all looking forward in the hope that it will give some respite to the many struggling families throughout the country. However, we have serious concerns about the banks controlling the process. As is envisaged under the Personal Insolvency Act, they have absolute control with a veto and are still in the driver's seat. Media reports have been building up over the past three days - I am sure it has something to do with the Meath East by-election where issues of mortgage arrears and negative equity will not be lost on many of those voting in a few weeks' time. However, I very much hope the Government will inject some kind of control into this scenario because the banks have not stood up to their end of the bargain so far. They have got the capital to assist them with their losses and have had all the assistance of the taxpayer. However, we have not had real measures to assist people on the ground. We very much hope that will happen today. In the 18 months since the publication of the Keane report which promoted split mortgages as the panacea to many of the ills brought on by the mortgage crisis, only 50 have been implemented, which is scandalous.

In 2011 we published a Bill proposing a debt-management office where the people would be represented through an independent arbitrator. We believe something like that will be required to force the banks to do what is necessary to look after the people who have looked after them so well.

I seek a debate on the dividend payable to the Government by State agencies. In the past week ESB announced results with €200 million in profits and €78 million of a dividend is payable to the State. That €78 million should be ring-fenced and distributed through some kind of coupon method to the struggling families who cannot afford to buy home-heating oil or pay their gas or electricity bills at this most difficult time. Middle-class families - not those one would automatically assume to be in the poverty trap - are struggling and avoiding putting on the heat in their homes because they cannot afford to do so. Surely there is some way to redistribute that €78 million dividend to ease the pain of struggling families.

Senator Ivana Bacik: I welcome the initiative on mortgage arrears being announced today and which has been discussed in the media in recent days. It is undoubtedly a very pressing issue. The Taoiseach and Tánaiste have expressed concern over the past two years over the delays and lack of impetus in the banks in dealing with this. It is really welcome that the focus will be on owners of investment properties and ensuring that banks will have targets to reach resettlement of mortgages and will not be simply be allowed to let things drag on further. The priority must be to ensure that people are able to remain in their family homes. It is welcome to see steps finally being taken to address this and an agreement being reached with the Central Bank on it.

I again raise the issue of the Guthrie cards from the newborn heel-prick tests that I raised yesterday. I commend the Irish Heart Foundation on raising this issue yesterday. It also raised a similar concern to that which I expressed yesterday, namely, that many parents of children born up to 2002 are not aware that they only have until 31 March to ensure those records are retained and that they must take the initiative in order to ensure the records are retained. I agree

with Senator Norris that it is most unfortunate that a data protection ruling has prevailed, resulting in these absolutely invaluable records on the health of children and future adults being destroyed. I am glad that the Minister, Deputy Reilly, has agreed to take up with the HSE the issue of whether parents have been sufficiently informed. I hope we will see an extension of the 31 March deadline to ensure that people have adequate time to contact the relevant hospitals and to get the records of their children retained.

During our Private Members' time this evening, the Labour Party group will introduce the Employment Equality (Amendment)(No. 2) Bill 2013 and I would welcome support from all sides of the House for it. Senator MacSharry mentioned Senator Power's Bill and I commend her on her initiative last year. It was unfortunate that at the time she did not withdraw the Bill because both Ministers, Deputies Quinn and Shatter, who were present during the debate had suggested to her if that had been done it could be reintroduced as a Government Bill, which is what had happened previously with my FGM Bill. It is a good way to approach Private Members' legislation. We are hopeful that tonight the Government will accept our Bill, which goes somewhat further than Senator Power's Bill in that it covers all nine grounds of discrimination and changes the current opt-out from the anti-discrimination laws of religious-run institutions in respect of all nine. Earlier Bills, including Senator Power's, did not cover all nine grounds. However, we are not claiming that this is a perfect Bill and I would welcome input from colleagues from both sides of the House as to how it could be improved and how protection for employees and prospective employees in religious-run schools and hospitals could be made more robust. I believe the Bill can be strengthened and improved upon, and I look forward to this evening's debate.

Senator Fiach Mac Conghail: I wish all our Ministers *bon voyage* and best wishes as they travel all over the world for St. Patrick's Day celebrations this week. It is important that our Ministers support our State agencies in their work to promote Ireland's strengths from culture to tourism, encouraging inward investment thereby creating jobs. I applaud our diplomatic service, Culture Ireland, Tourism Ireland, IDA Ireland and Enterprise Ireland which are working extremely hard for our citizens. Our Ministers visits to all these regions will be an important part of that strategic development.

I am proud to be a Senator and I take my responsibilities seriously. I hope to use whatever influence I have correctly and judiciously. I rarely speak on the Order of Business and only on issues about which I know little or issues about which I would like to know considerably more. That is the role I see myself having and that is my privilege. I accept that my colleagues in Seanad Éireann also have that position. This morning I ask for a debate on the Government's intention to sell off the harvesting rights of our forests. Much has changed in recent months following the successful strategy of the Minister for Finance, Deputy Noonan, and the Government with the promissory notes. Circumstances have changed since the original IMF-EU discussions in 2011. I understand that the Minister for Agriculture, Food and Marine, Deputy Coveney, is extraordinarily busy during the EU Presidency, as the Leader explained last week on the Order of Business. However, this issue of selling off our harvesting rights to reap private profits that ultimately will have no direct benefit to our citizens is a concern.

In a report commissioned by the Coillte branch of IMPACT, the economist, Mr. Peter Bacon, concluded the State would be liable for costs of €1.3 billion following a sale of these rights. To cover these costs, Coillte would need to sell at €78 per sq. m. While I am not an expert, the maths do not add up. The recent price Coillte gets from sawmills has been just over €43 per sq. m. according to that report. The British Government recently abandoned a similar sell-off

plan. There are important environmental, cultural and heritage reasons for us not to sell our woodlands. During this terrible recession we need to keep some of our national dignity intact. Forestry and wood-processing industries support thousands of jobs directly and many more indirectly. There are worthwhile restoration programmes undertaken by the National Parks and Wildlife Service, Coillte and others, and, as Mr. Paddy Woodward mentioned in today's edition of *The Irish Times*, by NGOs such as Woodlands of Ireland. The recreational value of public forests is confirmed by 18 million annual visits nationwide.

I understand Woodlands of Ireland will publish a report shortly and crucially the Government is due to consider a report compiled by the stockbroking firm, Goodbody, on the issue. I call for a debate in the Seanad on this important national issue. I will be publicly opposing the sale of our forests or our harvesting rights into private ownership. We own the banks; we need to keep the forests.

Senator Feargal Quinn: At yesterday's meeting of the Oireachtas Joint Committee on Jobs, Enterprise and Innovation we had a very interesting debate on town centres. It was initiated by RGDATA, the body representing smaller independent shops. While the town centres of Ireland are being devastated in many cases, I do not believe it is up to the State to solve this - it is the sort of thing that needs to be solved by each individual town. There are some great examples of towns that are doing a lot and being successful. We could do with a debate here because the debate initiated yesterday was very worthy. The State can do certain things to help the independent shops. The State needs to address black-market operations, fuel laundering, illegal cigarettes and others. The other aspects are things we need to do ourselves. I fear there is not enough attention focused on enterprise. Throughout the country wonderful steps are being taken with regard to enterprise, particularly youth enterprise. If we can manage to encourage people to feel they can do it themselves rather than have somebody else do it for them, we can change the culture of enterprise in this country. It is worthy of a debate in the House and I urge the Leader to allocate time for that debate soon.

Senator Michael Comiskey: I support my colleague, Senator Mac Conghail, in his call for a debate on the sale of forest harvesting rights. It would be good to have that debate because it would enlighten all of us in considering what is the best way forward. I believe no decision has yet been made. Our forests provide many amenities, with walking and other activities taking place in them. We must consider that before making a decision.

I wish to raise the Central Applications Office, CAO, points for students entering agricultural colleges or doing third level courses. The points have increased by 5.5% this year and since 2007 there has been an increase of 40% in the number of points required. It is very important that we give our students every opportunity to go to third level agricultural colleges. There has been a 10% increase in the number of jobs in the farming and fish sectors over the last couple of years. There is a great future in those sectors, especially now that we are reaching the endgame with Common Agricultural Policy, CAP, reform, which will generate certainty for agribusiness. It is therefore important that as many students as possible take up agricultural courses.

Senator Paschal Mooney: I am reluctant to raise this again but it is not helpful to the future viability of this House that, yet again, on the main day for debate in this House, Wednesday, it appears from what the Leader said that the sitting will suspend after the Order of Business until 1 p.m., it will suspend again following the Water Services Bill until 5 p.m. and that the Water Services Bill will be the only business today.

13 March 2013

I have had informal discussions with the Leader on this. As a long-serving Member of the House, I understand and appreciate the difficulties for a Leader in encouraging Ministers to come to the House. However, I have put forward the view that we could be very usefully engaged in debates on various issues. For example, the House has had little debate on European and foreign affairs for some time. There is as much happening outside this country as is happening inside it that could be usefully debated here. It would be helpful to the collective wisdom on all sides of the House. It would not necessarily require the line Minister to be present. A Minister of State could attend. It would at least provide an opportunity to highlight issues that are relevant to this country, particularly its role and standing in the world. The Tánaiste and Minister for Foreign Affairs and Trade is now President of the Council of Ministers for Foreign Affairs and appears daily in the media with regard to worldwide issues. That is only one example.

There are also many domestic issues that could be debated in the House that do not necessarily require legislation to generate such debates. The debates could feed into policy. Again, I appreciate that it is difficult to get a Minister to the House, but it does not reflect well on this House, its future and its impact with the general public that the sitting will be suspended for long periods on this day of the week.

I did not intend to speak for so long on that issue as I wish to raise another matter. Will the Leader convey to the Minister for the Environment, Community and Local Government, Deputy Phil Hogan, the great concern being expressed by people employed in county development companies throughout the country as a result of the Government's policy on alignment, as it is called? There has been very little clarity since the decision was made as to how the new structures will be formed. I ask the Minister to clarify the future of the jobs of those involved. Over 2,000 people are employed in county development companies throughout Ireland. In my county there are 19 to 20 people employed. I attended a lobby meeting with them last Monday afternoon and they are genuinely concerned about their future. Their contracts end on 31 December and they have no idea what will happen after that. Will the Leader convey to the Minister the importance and urgency of clarifying the future of the jobs of those very fine people in the context of the alignment of the county development boards?

Senator John Whelan: I was a journalist for 30 years before becoming directly involved in politics. There is mounting concern and anxiety throughout media and journalistic circles about the consolidation and virtual monopoly that is developing in the Irish media. Almost every leading title and radio station in the country is now in the ownership of one company and is effectively under the control of one man. This would set alarm bells ringing anywhere and certainly in the corridors of power. We must have free speech, fair comment in the public interest and robust debate to protect the interests of the public and democracy. It is equally alarming that the person who owns these newspaper titles has recently issued a charter to journalists to which they must conform. It effectively amounts to censorship. If one does not have one's copy vetted by the managing director, it cannot be published. I have always said that it is not what is printed that concerns me, but what is not getting into print.

The Government has been in office for two years. It committed itself to introducing robust legislation to ensure diversity and choice in the media, but this has not happened to date. The legislation falls within the remit of the Minister for Jobs, Enterprise and Innovation, Deputy Richard Bruton, and the Minister for Communications, Energy and Natural Resources, Deputy Pat Rabbitte. Will the Leader establish what is happening with that legislation and why there is a delay? The words "*Pravda*" and "propaganda" spring to mind. It is thought by many journal-

ists that perhaps some people in the Government are of the view that this is okay because it is our man in Havana or our man in Haiti who is in control. However, I do not share that view, nor does anybody who is interested in democratic access to choice, freedom of expression and fair debate. If we do not soon pass this legislation, it will be pointless. It will not be a case of closing the stable door after the horse has bolted, because the horse will have been to Cheltenham and back and will be out to pasture. The legislation will have no purpose. We must ensure that there is fair choice, freedom of speech and freedom of comment in the public interest. There must be multiple ownership in the media. What is happening in the Irish media at present is a *de facto* monopoly which is dangerous for politics and democracy, and bad for journalism.

Senator David Norris: Like my colleagues, yesterday I received a bundle of information about the property tax, including a specimen form. All my doubts have been crystalised in this. It gives advice and guidance on how to value our property. The two principal means are two websites run by the authorities. They are confusing, highly inaccurate and utterly useless. One cannot make one's way around them. I speak from my own parochial concern. The area in the north inner city in which I live is bounded by Dorset Street, Gardiner Street, Cathal Brugha Street, Frederick Street, Rutland Place and O'Connell Street. It is in band 5, one of the more expensive bands. O'Connell Street is in band 3, Dame Street is in band 4 and St. Stephen's Green west is in band 4. In other words, they are less expensive. Part of Merrion Square is also less expensive. These are enormous houses on the south side. I could continue listing the areas.

The guidance is absolutely riddled with the most grotesque anomalies. It says that one can honestly arrive at a valuation. I had a meeting with some of my neighbours last night and we decided we would do our best to honestly value the properties, but the only way we can do it is by reference to sales and the Government's guidelines, which are totally inaccurate. How could anybody say that a property on a street in the north inner city that still has some dereliction in it has more value than one of those enormous palatial houses on the south side? It is absolutely daft. We will do our best but, my goodness, sparks will fly about this.

I am very sorry that a Member of the Lower House is in the current difficulty with penalty points. He is a decent man. It is quite extraordinary-----

An Cathaoirleach: Senator, you are not to comment on Members of the other House.

Senator David Norris: -----that another of these people has been affected by leaks from the Garda. It is a little worrying as well.

11 o'clock

I do not like the practice but I worry about the fact that, apparently, if one takes on some of the establishment, one gets a nice solid whack through leaking. It is not good practice.

An Cathaoirleach: You are way over your time.

Senator Michael Mullins: If I can be helpful to Senator Norris, there will be a briefing by the Revenue Commissioners in the audiovisual room at 11.45 a.m. today.

Senator David Norris: I would be sorry to share the same air. I have some standards as I come here but there is a limit.

An Cathaoirleach: Senator Mullins, without interruption.

Senator Michael Mullins: I share the call by Senator Quinn for a debate in the House on the challenges facing town centre businesses. As Senator Quinn correctly noted, these are facing major challenges, and the Government will not be able to resolve all those problems. Senator Quinn has contributed very significantly to helping towns around the country and we could all benefit from his wisdom in the House. I would like very much to see the debate he has called for.

I welcome this morning's instruction by the Minister for Finance, Deputy Noonan, to the banks to reduce salaries by between 6% and 10%. It is important that all sectors financed from the public purse make a contribution to national recovery. I hope the semi-State bodies, such as RTE, etc., will receive similar instructions. I ask the Leader to at some stage organise a full, open and frank discussion with the Minister for Public Expenditure and Reform, Deputy Howlin, on how further savings can be made within the public service. We cannot impose any further taxes to reduce the budget deficit of €12 billion, so savings must be achieved through cuts in public expenditure. I would like to see us exploring the possibility which works very well in industry where we incentivise people to formulate good ideas and suggestions. Many people within the public service have great ideas on how to make further savings and we should explore the issues with the Minister, Deputy Howlin, at some stage.

Senator Trevor Ó Clochartaigh: Inné, d'ardaigh mé ceist maidir le cúrsaí bochtanachta in Éirinn, ach bhí an oiread díograis ar an gCeannaire a bheith ag tabhairt amach faoi pholasaí Shinn Féin sa Tuaisceart nár fhreagair sé an cheist. Yesterday I asked for a debate on poverty and I do not believe there was clarification from the Leader in that respect. In his zeal to have a go at Sinn Féin's policy in the North, he disregarded the question, so I am raising the matter again. Some 2,479 domestic customers have had their gas supply cut, 4,181 households had electricity disconnected and gas and electricity prices have risen by an average of 30%. We heard this morning that the ESB saw revenue rise to €3.26 billion in 2012, up from €2.91 billion the previous year, and the company made €190 million in profit.

It is encouraging to see a semi-State body making a profit, as we have always argued that this can happen and we should not be selling them. Nevertheless, we must ask the question of on whose back the profit is being made. The company indicated in its annual report that it would pay a dividend of €78 million to the State, although energy prices remain stubbornly high. I call for a debate with the relevant Minister on the way the €78 million in cash windfall to the State will be spent. These profits should be used to ensure that disconnections are minimised and the profits should not be used to pay the large salaries of people in the ESB. That echoes the comments of Senator Mullins.

We should have a debate on the profits made by semi-State bodies and the ESB in particular, as well as how the €78 million to be handed back to the Exchequer could be used to alleviate pressure on households which are finding it very difficult in the days in which letters about property tax are being received. They are finding it very hard to pay electricity and gas bills and we should debate how this money could be used to help alleviate their position.

Senator Denis Landy: I support my colleague's call for a debate on the future of forestry. We have had some discussion on the matter in the House already. I have read the Peter Bacon report in detail and I am convinced it would be foolish to sell these interests.

Senator David Norris: Hear, hear.

Senator Denis Landy: We should have a debate and get the responsible Minister in here.

With regard to planning, I would say to Senator Feargal Quinn to *Mind Your Own Business*, which was the name of his book. It is an excellent read and anybody trying to survive in a small retail business in Ireland now should read it. I have done so and there is much common sense in it. Even if the Senator minds his own business, the big issue with retailing in this country is planning law, which must be an integral part of tackling this issue.

I will raise the matter of credit unions, with 13 across this country at the butt of the promissory note issue. Some credit unions invested in what was then Anglo Irish Bank, with a 100% guaranteed investment scheme in 2005 that was to mature in 2013. I understand in the order of €70 million is involved in this across the country. This investment was wiped out the day after the promissory note agreement and the passing of the related legislation. I am sure other people in this room are members of credit unions like me, and they have seen the value of their credit union shares drop. This was an unforeseen circumstance of the deal on the promissory notes and the issue should be addressed. I have raised the matter on different occasions in different forums but nothing has been done. There is an opportunity to resolve the matter and I ask the Leader to bring it to the attention of the Minister for Finance again. The ordinary shareholders and members of credit unions have been affected and this would put their minds at ease if the issue could be resolved in a fair way that would see them not losing this money.

Senator Labhrás Ó Murchú: I support Senator Whelan and I would like to have a debate on the media. We all accept that one of the strongest strands in any democratic system is a free and independent media, even in times when we may be irked by some transgressions. Deep down we know that without that independent and free expression by the media, we would be in an exceptionally serious position. That said, none of us is perfect and when the media makes snide remarks at this House, one could look at the Press Gallery and wonder where the reporters are. They arrive when there is a sensationalist issue to be discussed but what about the nitty-gritty of legislation? A third of all Bills have been initiated in this House but I do not recall seeing any member of the media present when that happened.

Monopolies in any area are not good, whether that is in business in general or the media. I was initially pleased when local radio was set up, with most of these being examples of community radio. I felt this was an opportunity to avoid the conglomerates dictating to us at a local community level. Now we can see encroachment by various people into that area, with monopolies developing there as well. The same thing has happened with local newspapers. We always felt fairly sure there was an ethical content in local newspapers, which very often reflected the actions and aspirations of the local community. However, local newspapers are being taken over by conglomerates.

We must start on the basis that we, as legislators, have faults but the media also has faults. If we could start a debate in here without having a cheap shot at anybody, it would be good for democracy. If we do not act in such a fashion, we will not be helping the issue. We should consider what happened in Britain, with the abuses evident in the media there. They were outrageous, as innocent and decent people, many in a traumatic position, were targeted. I am not suggesting anything like that happens here, although the leak of information from An Garda is only one step from it. That is not good for An Garda Síochána, the democracy or the media.

It would be helpful to have such a debate in isolation rather than when an issue arises. Will the Leader consider an open debate on the media? If members of the media could be present in

the Gallery when the debate happens, we would be engaging in a partnership to bring about the best for democracy in our country.

Senator Colm Burke: Following on from what Senator Marc MacSharry said in regard to the banks, it is important that a structure be put in place for dealing with the issues faced by many borrowers. I am concerned at the lack of joined-up thinking by all banks in regard to how they approach those who are in serious difficulty. I understand that different rules operate if the borrower employs a solicitor to speak to the banks as opposed to a retired bank official acting as the go-between between the borrower and the bank. There is a need for the banks, the Department, the legal profession and the accountancy profession to set up a proper structure. Legal officers are getting letters from the banks inviting the bank's client to fill in a form after which they will deal with the issues but they are not prepared to enter into discussions with members of the legal profession or the accountancy profession. That is wrong. It is not long ago since banks relied, and still do, on legal undertakings given by solicitors. Now they do not want to deal with the professions but rather their former employees who are acting as consultants. The issue needs to be dealt with at an early date. There is no point in each of the banks adopting a different attitude to borrowers in various parts of the country. As there is no overall procedure in place the issue needs to be dealt with immediately.

Senator Sean D. Barrett: I welcome the clarification by the chief executive of PayPal of comments referred to here yesterday about the unsuitability of many young Irish people for employment. The issue was a matter of concern to us. The comments have been clarified. The person concerned employs 1,800 people, 60% of whom are non-graduates which is good because that is where most of the unemployment lies. The complaints are in respect of timekeeping, dress code, feet on the table, bad spelling in CVs and using references. When the employer contacts the referee, the referee has not been informed. As these are issues we would wish to address, the clarification is welcome.

I support Senator Michael Mullins in regard to the attempts by the Minister for Finance to seek pay cuts of 6% to 10% in the banks. It is astonishing that since 2008, pay in IBRC has increased by 16% to an average of €71,300. The total remuneration package is €92,000. The comparators would presumably be other private sector companies but the other private sector companies are not bankrupt or banks in other countries which presumably are not bankrupt. It must be remembered that these banks destroyed their shareholders and bankrupted the country. The Minister is quite right to seek a reduction to reflect the reality of people who failed in the private sector and must conform to the pay reductions that everybody in the public sector has had to take, largely because of the errors and incompetence of the people whom he targeted yesterday. The House should welcome that, otherwise there is no penalty imposed on people who display such gross incompetence and do so much damage to this country as Irish banks have done.

Senator Jimmy Harte: I have some advice for Senator Norris in respect of his property. I would advise him to telephone an estate agent. Many estate agents in Donegal have said to me that people should contact them and there would be no fee. Most local estate agents would be amenable to give a fairly accurate valuation of one's property for free. One should do that if one considered the valuation was too high or too low.

Senator MacSharry raised the issue of repossessions. There is much emotion when people talk about repossessions. There are many properties in the buy-to-let market that are ready for repossession. An argument against that is that an already depressed market would be flooded

with properties. In many areas where buy-to-let properties would be repossessed, they would go back into the market. It would not make a difference to that market but where they are repossessed in cities or large urban areas where there is a demand, it would work. People have to separate the buy-to-let repossessions from the family home repossessions. In the 1980s and 1990s more repossessions of family homes took place than now which was very stressful. A repossession will take place only as a last resort. There has not been a tradition of repossession because people regard the family home as their castle, and rightly so. I hope the Government will make that distinction between buy-to-let properties and the family home. I have been told that certain buy-to-let landlords have not made payments for three years but are still collecting the rent. That is not good for anyone.

Senator Susan O’Keeffe: Sligo Institute of Technology is having its innovation and enterprise week. I am pleased that tomorrow evening I will host an event for parents, one could call it career guidance for parents, specifically concentrating on the STEM subjects - science, technology, engineering and mathematics. This is an area of huge growth. The US council on science has recommended to President Obama that it needs at least 1 million graduates in the next decade to fill the jobs that are becoming available. In Ireland we will need top grade graduates in these areas. It is welcome that Dublin City University recently reported a large increase in the number of applicants for these areas this year and last year as there had been a fall-off in previous years.

I am trying to give parents more information about the jobs that are becoming available in order that they can encourage their children to take up STEM subjects. In this regard I ask the Leader to invite the Minister of State, Deputy Sean Sherlock, who endorses the event I am hosting, to the House for a discussion on how we can support the advancement of STEM subjects. Science Foundation Ireland is doing a good job through its smart futures project. It can take some credit for the increased number of applications in third level institutions this year. The Minister of State has been in the House on a previous occasion but I would like him to give an update on this area and how we can find new ways to relate to second level students, their teachers and career guidance teachers and find other ways to encourage and support children who may have an interest in this area but are not sure where the jobs are. Perhaps the Minister of State would share some of his ideas with us and how we might reach out to the US, which has some innovative programmes. Intel runs a programme specifically for young women and young girls to encourage them and, perhaps, we could have an interesting debate on that area.

Senator Catherine Noone: I welcome moves by the Minister for Finance to deal with bankers’ pay. Bank officials are essentially public sector workers and it is only right that their pay should be reduced. It is not the big headline pay we should be thinking of but there are numerous bankers on €100,000 plus who can easily take a hit in their wages. No loss making business could possibly justify such huge remuneration for staff. Sometimes the part played by banks in the crash is forgotten. Although it is way too late to talk about it, it is a real pity that reckless lending is not a criminal offence because many of these bankers should be in jail. We could consider making reckless lending a criminal offence in legislation.

Senator Sean D. Barrett: Or remuneration of bankers.

Senator Catherine Noone: Unfortunately, they are not lending at present.

I congratulate Senator Feargal Quinn on publishing his book, *Mind Your Own Business*, and support his call for a debate on retailers in small towns who have been so badly let down

by the planning authorities in recent years. We have a responsibility because of that careless planning that allowed multinationals in on the outskirts of towns which, essentially, wipes out all business in small towns. The effect has been catastrophic to small towns. It is a debate that we need to have in this House. As Government, we need to have a strategy in this area because our planning was so much at fault in this regard.

Senator Martin Conway: In the private sector, a company that makes money in the open market is quite entitled to set its wage limits and rates as it sees fit. We may think it is obscene but that is the free market. With banks in this country, it is a totally different situation.

Senator Sean D. Barrett: Hear, hear.

Senator Martin Conway: I support the Minister for Finance with his instruction and, I hope, ultimatum to the banks that have been bailed out by the hard-pressed taxpayer in this country to reduce their salaries. They had better act on it fast. Perhaps the Leader could get an update for us on the criminal investigations that are taking place and when we will see delinquent bankers who brought this country to its knees face the rigours of the law and enter into court. I would like to see that happen quickly, as the vast majority of Irish people would.

Senator Catherine Noone: Hear, hear.

Senator Martin Conway: It was remiss of me a couple of weeks ago not to pay tribute to Senator Quinn. I was at the launch next door of his book, *Mind Your Own Business*. He is a man who can be described as a creator in this country. He has created many much such as reality television, his chain of supermarkets and his enlightened contributions to this House.

An Cathaoirleach: Is Senator Conway looking for a debate on this book?

Senator Marc MacSharry: Or royalties.

Senator Maurice Cummins: Mind your own business, a Chathaoirligh.

Senator Martin Conway: Senator Quinn has certainly initiated many a very worthwhile debate in this House.

Senator David Norris: Hear, hear.

Senator Martin Conway: His latest contribution in terms of planning is apt because my county, no more than the Cathaoirleach's, has been destroyed. A county on the coast of this country with panoramic landscape has been destroyed by very badly developed and planned properties, particularly in the seaside areas. All we can do is learn from this and try to ensure that in future we do right and protect the fabric of society which is the town centres. In the past tax incentive schemes have not worked but there is merit in some sort of a tax incentive scheme for town centres to create a level playing pitch because, unfortunately, facilities such as free car parking that exist on the outskirts of towns do not seem to prevail within town centres. In order to create a level playing pitch, there needs to be some sort of a tax incentive scheme for town centres, particularly in small towns with a population of less than 10,000.

Senator Jim D'Arcy: Yesterday Senator Michael Mullins drew to our attention the fact that Ms Louise Phelan, vice-president of global operations of PayPal, stated that some of graduates need to up their game. Senator O'Keefe spoke of the importance of our graduates also. Ms Phelan stated that all our work will be in vain if our graduates get a reputation of not know-

ing how to carry themselves in the workplace, and some thought this was harsh. Ms Phelan, as well as being vice-president of global operations for PayPal, has a deep commitment to public service. Her brother was a Senator here at one time. We need to take her words seriously. I call on the Minister for Education and Skills, Deputy Quinn, to look at setting up something in transition year to incorporate work ethics and a preparation for working into the school system. Even at a graduate level, we need something like that. We need to listen to Ms Phelan. We cannot blame the messenger for the message.

If the Cathaoirleach will indulge me, it has just been announced that the Garda in Dundalk is launching a major investigation into a suspected criminal operation in diesel laundering involving CAB. This is a first. Previously, it was simply a Revenue matter. Matters are moving on. We have discussed diesel laundering in this House on many occasions with the Minister. In addition, and separately, the Garda is bringing its first case of diesel laundering to court. Could the Leader invite the Minister in to give us an update on how matters are progressing? There is enough green diesel coming in here to fuel all the tractors in Alberta, Manitoba and Saskatchewan. We need to keep working on this.

Senator Aideen Hayden: I support the Senators who called for a debate on the future of small and medium-sized towns. I also want to highlight the work on this matter over many years of our colleague, Senator Paul Coghlan, particularly in highlighting the planning laws which allow very large retailers to locate outside of town. We all will be aware of the soulless business parks. It would not matter whether one was in Clonakilty or Clonmel, they impact on the hearts of our towns. Recently I had reason to drive through a number of towns and in Arklow, for instance, I was particularly struck at the impact of driving down a street where shop after shop was closed and all that were open were discount stores such as €2 stores and €1 stores. I ask that this House have a debate on the issue of the future of our towns. I would go so far as to say we need a national action plan to deal with this scourge. It must be very disheartening for those who live in these towns, including my own of Dún Laoghaire, looking at this level of deprivation and defeat. It is something that we need to address.

On another matter, I would urge caution on the matter of buy-to-let mortgages. As I stated in this House yesterday, one in five are now living in rented properties. There are statistics that show most Irish landlords only own one or two properties, which most bought in good faith to support their pensions. They did it with the full blessing and 100% mortgages given to them by the lending institutions. There are receivers being appointed by banks over buy-to-let mortgages and in many instances, the receivers are coming in, receiving the rent from tenants and not doing essential maintenance for them. When we go down the road of repossessing buy-to-let homes, we must bear in mind that a rented property is somebody else's family home. I would go so far as to say that there is a need for legislation to protect tenants in situations where homes are repossessed by banks.

Senator Maurice Cummins: In response to Senator MacSharry on mortgaged arrears, I can assure him that the Government is taking a hard line with the banks to ensure that the question of mortgage arrears is dealt with as soon as possible and without any further delay. The Government has set targets with the banks to which they must adhere and the Government will ensure that they adhere to those targets.

Senator Bacik called for an extension of the deadline on Guthrie cards. She mentioned that the Minister has alluded to these cards. I will ask that he extend the deadline from 31 March. We will have a discussion on the Private Members' Bill from 5.30 p.m. to 7.30 p.m.

Senator Mac Conghail raised the matter of the St. Patrick's Day celebrations. Quite a number of Ministers and officials are going to many countries throughout the world for St. Patrick's Day to sell our country in the best possible way. It is an opportunity which no other country has. We can sell our country, particularly in the United States, and try to bring badly needed jobs here. This is probably the reason we have not had such a busy schedule this week. A number of Ministers are away. In addition to St. Patrick's Day we also have the Presidency of the EU, so not as many Ministers are in the country as normal. I ask Members, including Senator Mooney, to take this into consideration.

Senator Mac Conghail and other Senators raised the issue of harvesting rights in the forests. The Minister for Public Expenditure and Reform, Deputy Howlin, came to the House to discuss a number of areas regarding the sale of State assets. The programme for Government includes the NewERA plans for the investment of proceeds from the sale of State assets in new, vital economic infrastructure which will come with additional job opportunities and make the economy more competitive. The Government has decided to issue a new licence for the national lottery and sells the non-network part of Bord Gáis Éireann, some ESB power generation assets and the harvesting rights of some forestry assets. Following agreement with the troika, the Government will re-invest half of these proceeds back into the Irish economy with vital new infrastructure, with the remainder to be used to pay down our sizeable national debt. We can have further debate if the House wishes it and if the Minister of State, Deputy O'Dowd, can come here to discuss it.

Senator Quinn and several other Senators spoke about the life being drained away from many town centres throughout the country, which he blames on planning. Certainly planning has had much to do with it in recent years. We have seen a build-up of shopping centres on the outskirts of cities and towns to the detriment of core city and town centre areas. While a committee debated it yesterday, we should probably broaden the debate and bring the relevant Minister to the House to discuss it. From listening to Members, quite a number of them would like to have a say in this debate. I will try to arrange it as soon as we possibly can.

Senator Comiskey also raised the issue of harvesting rights and the importance of access to third level education for all our young people, particularly those involved in agriculture. We would all agree with this.

I have addressed Senator Mooney's point. He also asked that the Minister for the Environment, Community and Local Government, Deputy Hogan, who came before the House yesterday, would clarify the situation with regard to local development companies. I will certainly ask the Minister to do so and I am sure he will in early course.

Senator Whelan raised the issue of media ownership, which would probably come under the remit of media mergers which are covered in the new consumer and competition Bill which is being drafted. It is a large, complex and very comprehensive legislation and I am not clear when it will be published. I will try to get an update for the Senator. Senator Ó Murchú also raised this matter.

Senator Norris spoke about the property tax. The Revenue Commissioners have sent out leaflets. It is self-assessment, and while there will be difficulties with some people thinking their property has a higher value than the Revenue band in which it has been placed and others thinking their property is of a lower value, it is up to people to provide an estimate which they believe is correct based on property values in the area.

Senator Mullins spoke about the salaries of bank employees, which other Senators raised also. He called for the Minister, Deputy Howlin, to come to the House to address where further savings can be made in public expenditure. The Minister, Deputy Howlin, and the Minister of State, Deputy Hayes, have come to the House several times in recent months to discuss this issue. I am sure they would be quite willing to come here again.

Senator Ó Clochartaigh raised the issue of semi-State bodies, in particular the ESB, which are deemed to be making excessive profits. It is certainly a matter which the energy regulator should take on board because he gave the go-ahead for increases in these charges. He should certainly examine his own conscience when allocating increases for energy suppliers. I take on board what the Senator said.

With regards to Senator Landy's point, I will not tell people to mind their own business, but we compliment Senator Quinn on his book. With regard to credit union investment with the former Anglo Irish Bank, I have already raised the matter with the Minister for Finance but I will take it up with him again.

Senator Colm Burke called for more joined-up thinking where banks are in negotiations with members of the legal profession and accountancy firms. The Senator also said there should be one policy in this regard.

Senators Barrett and Jim D'Arcy spoke about the remarks of Louise Phelan of PayPal. She clarified her remarks and her clarification is to be welcomed. She was speaking about how people carry themselves in the workplace and the work ethic of our young people. Our young graduates should take on board what Ms Phelan stated because she is the chief executive of a large company, and it is very important that chief executives have a good impression of our graduates. It is important that, as Senator Jim D'Arcy stated, this type of education is included in secondary schools so people know how to conduct themselves when they enter employment. I remember 20 or 30 years ago in Waterford a famous Sister of Mercy, Sister Eucharía, had commercial classes. She was well ahead of her time in educating people on how to behave themselves in the workplace. We need more people like Sister Eucharía to educate young people, who may be the best intellectually but still have much to learn with regard to how to behave in the workplace.

I note Senator Harte's comments with regard to the repossession of buy to let properties in particular, which is a different view from that of Senator Hayden on the matter. The Minister for Finance will impress on the banks that they must do more about mortgage arrears and will set targets to which they must adhere.

Senator O'Keeffe asked that the Minister of State, Deputy Sherlock, come to the House to advance STEM subjects and the links to jobs and future employment. I will certainly invite him to come to the House to discuss this matter.

Senator Noone spoke about towns and planning. The reckless trading of bankers is certainly an offence which I am sure the Garda is examining.

Senator Conway raised the issue of criminal investigations. That is a matter for the Garda but I shall try to get an update on the subject. As always the Senator praised the beautiful county of Clare and urged the protection of its villages.

Senator Jim D'Arcy referred to diesel laundering. We all wish the Garda well in curbing

13 March 2013

the illegal trade as it plays havoc with the economy. It also plays havoc with the environment of many counties in Border areas because the sludge is dumped and so on by people involved in the illegal activity.

Senator Hayden, as she did yesterday, warned about buy-to-let mortgages. She advised that the people who live in them, including tenants, should be protected.

Order of Business agreed to.

Sitting suspended at 11.40 and resumed at 1 p.m.

1 o'clock

Water Services Bill 2013: [Seanad Bill Amended by the Dáil] Report and Final Stages

An Cathaoirleach: This is a Seanad Bill which has been amended by the Dáil. In accordance with Standing Order 118, it is deemed to have passed its First, Second and Third Stages in the Seanad and is placed on the Order Paper for Report Stage. On the question “That the Bill be received for final consideration”, the Minister may explain the purpose of the amendments made by the Dáil. This is looked upon as the report of the Dáil amendments to the Seanad. For Senators’ convenience, I have arranged for the printing and circulation of the amendments. The Minister of State will deal separately with the subject matter of each related group of amendments. I have also circulated the proposed grouping in the House. Senators may speak only once on each grouping. The only matters which may be discussed are the amendments made by the Dáil.

Question proposed: “That the Bill be received for final consideration.”

Minister of State at the Department of the Environment, Community and Local Government (Deputy Fergus O’Dowd): Amendment No. 1 provides that the Minister for Finance may guarantee the borrowings made by Irish Water or Bord Gáis Éireann for the purposes of this Bill. It will not mean that all the company’s borrowings will automatically be guaranteed. The guarantee would only be applied on a case-by-case basis after the Minister has consulted with the Minister for the Environment, Community and Local Government. The provision for guarantee of the borrowings of a semi-State company is a standard provision included in the legislation which established other State bodies. This section provides that the Minister for Finance may after consultation with the Minister for the Environment, Community and Local Government provide a guarantee of the borrowings of Bord Gáis Éireann and-or Irish Water for borrowings made for the purposes of this Bill. It also provides for the Minister for Finance to seek a security from the board of subsidiary for borrowings and for the Minister to provide details to the Houses of the Oireachtas each year concerning any guarantees made under this section.

Senator Cáit Keane: I am very pleased with the amendment. We need to ensure it comes back to the House every year because I get nervous when I hear of any establishment borrowing and we are guaranteeing. We know what borrowing, guaranteeing and loans mean to the country. It is important that it comes back each year to the House for checks and balances so that we ensure nobody loses the run of themselves and borrows too much from any source. Even if the

money were made available to them, we have to keep an eye on borrowings.

Senator Diarmuid Wilson: I welcome the Minister of State, Deputy O'Dowd, to the House. I agree with what Senator Keane has said on these amendments. Am I correct that the Minister of State said that only specific borrowings would be guaranteed?

Deputy Fergus O'Dowd: I understand the ceiling on it is the total amount at any one time.

Senator Diarmuid Wilson: If, God forbid, Irish Water were to find itself running into-----

Deputy Fergus O'Dowd: I apologise. It is not automatic; it has to be applied for. However, the maximum borrowings are €500 million at any one time.

Senator Diarmuid Wilson: If, God forbid, Irish Water were to find itself in serious financial difficulties, does anything in the Bill allow the Minister to bail it out?

Deputy Fergus O'Dowd: On the cost analysis that has been done, the maximum borrowing of €500 million is more than adequate to meet any anticipated borrowings. Clearly Irish Water will have an income from domestic and commercial water charges.

Senator Tom Sheahan: Will there be a contingency fund to deal with emergencies such as the cryptosporidium problem we had in Galway a number of years ago if, God forbid, something like that were to happen again?

Deputy Fergus O'Dowd: In its plan of development obviously Irish Water will need to have due regard for water supplies that need to be upgraded. A number of those supplies have been identified already. I am not saying they are necessarily from cryptosporidium, but last year a number of boil notices had to be issued in cases where the EPA felt there was an issue with water quality. I am confident that no issue arises in terms of the capacity of Irish Water to have adequate funds to deal with any such issues that might arise.

Senator Paschal Mooney: In what circumstances might Irish Water have a requirement for borrowings? What might the figure be? To what purpose might it be put? Everyone accepts there is an ongoing difficulty in certain parts of the country with the infrastructure on which our water services are currently provided. There is a considerable level of leakage mainly as a result of wear and tear, and because insufficient resources were provided for investment purposes up to now. Once the board takes over the management of the utility its first major priority will be to stop the leaks because of the wastage involved.

Senator Sean D. Barrett: Cuirim fáilte roimh an Aire Stáit. I agree with what Senator Keane and others have said. I hope that the borrowing will be accompanied by the Department of Public Expenditure and Reform having a much stricter regime than in the past on capital expenditure, including cost-benefit analysis not done by the promoters, but done independently. It was not just rescuing banks that got us into trouble. There was a tradition both in the banks and in the public sector of not doing proper capital investment appraisal. Based on the last troika review even with the cutbacks in capital spending we are spending approximately 4.2% of GDP against the average of 2.8% for OECD countries. We still have very large capital investment and there is still the danger it could lead to a repeat of past mistakes, which the Houses of the Oireachtas are trying to correct. We need cost benefit analyses. I would back it up with a central office of project evaluation to ensure that we do not go down the road graphically illustrated by Senator Keane, whereby people get their borrowings guaranteed, it then becomes like snuff

at a wake or a celebration breaks out, engineers go a little wild and spend loads of money and somebody else has to make up the balance.

I support the amendment but it, in turn, must be supported by a better way of doing business with capital spending than what we have been used to in the past.

Senator Kathryn Reilly: I missed the first part of the debate and the Minister's explanation, so I apologise if I mention things that have already been dealt with. I have some questions that might not be related to the amendment. This amendment refers to the legislation which allows a subsidiary to borrow money, and the interest and the capital could end up being repaid by the Exchequer. With regard to metering and the money going to the subsidiary, do we know what metering will cost? If the taxpayer will be giving more money to the subsidiary as it is needed or if more money is needed because of the borrowings, how will the additional revenue be raised? One of my fears is that Government accountability will hide behind the Irish Water subsidiary. In the case of the HSE, for example, in many cases we do not have ministerial accountability for the HSE, and I fear this subsidiary would be used in the same manner.

Some of my other concerns about this have already been raised by other speakers so I will not repeat them. However, perhaps the Minister would discuss metering and if the subsidiary needs additional money, how that money will be raised.

Senator Denis Landy: On the issue of accountability, I am cognisant of what Senator Barrett said. Sometimes Senator Barrett is on the button and sometimes he is not. When he hears it is the public sector the negative statistics tend to flow. That is where he is coming from and I respect that. However, my experience with capital schemes in my area is that there tends to be an overrun of 3% to 4% allowed on any big project, and spending is generally kept within that. My question for the Minister is similar to what Senator Barrett asked, as I understand it. Who will be the person watching this? Obviously Irish Water will have a certain amount of money for capital projects and a certain amount of revenue. It will trade as a company, albeit in the public sphere. However, who will control it? Will it be the Minister? Will the Minister tell the company to bring in the books so he can look at them and see where the company is going? The Minister is pointing at us but who will it be in the real world? We know how things operate in here, in so far as the information comes in and we do what we have to do. However, in the real world, who will be watching the pennies?

Deputy Fergus O'Dowd: To take the last point first, it is the duty of the Oireachtas to ensure that due process is carried out with regard to all annual reports brought before it. I appreciate that the Senator is talking about day-to-day expenditure, but the accountability of Irish Water under the legislation is to the Oireachtas in terms of its annual report. I have no doubt the report will be subject to annual, if not more frequent, debates. I also expect that Members of the Oireachtas will insist on the representatives of Irish Water appearing before the Oireachtas on a regular basis so Parliament can carry out due diligence on all the issues.

The regulator is the Commission for Energy Regulation, CER, and it will carry out the function of regulating water. On Senator Barrett's point, there will have to be transparency and accountability from the regulator and to the regulator. In terms of the development plans, what must be improved and what will be allowed in the budget, Irish Water will present a budget for the operating costs and the plan for reducing the amount of unaccounted for water, which is very important. All of that will be put before the regulator. The regulator will have to give an indicative decision on how it proposes to deal with it and on what it thinks. Senator Barrett's

point is germane. The regulator will carry out due diligence on what the costs are and will hold Irish Water accountable for all of those. There cannot be any hidden costs and the regulator's job will be to ensure that this would be the case.

The third point is that the guarantee is not automatic. In other words, if funds must be guaranteed, the Department of Finance and the Department of the Environment, Community and Local Government will carry out their due diligence on them as well. There is the regulator, the Oireachtas and the Departments to ensure that the process is accountable and transparent and that there are no hidden costs.

Senator Reilly asked about meters. We did a cost benefit analysis and an indicative cost when we put the process out to tender. It is currently out to tender so it is not possible to say now what the actual cost is, because that could lead to increases rather than reductions in expenses for the taxpayer. However, when the decision is made and the meters are costed there is no reason that there should not be full accountability and transparency. Obviously, the Department did a cost benefit analysis and that would be available, as well as everything relating to that. This will only work on the basis that it is transparent and accountable, and that there is full and proper vigilance on the cost of Irish Water.

Senator Paschal Mooney: I put a number of questions to the Minister.

An Cathaoirleach: You have spoken on the amendments already.

Senator Paschal Mooney: Yes, but I did not get a reply.

Deputy Fergus O'Dowd: What was the Senator's question?

Senator Paschal Mooney: It was in the context of why there would be borrowings and whether the money would be used for investment.

Deputy Fergus O'Dowd: The budget for water infrastructure at present, both capital and current, is €1.2 billion. The income from that nationwide at present is €200 million. That is from commercial metering. Uncollected accounts in that area amount to more than 30%, which is also a serious issue. Irish Water will start with the money it will get from the commercial rates. It will also get whatever actual cost is factored in for domestic income. Clearly, it will have an overdraft, which can be to a maximum of €500 million. The moneys it will need should be available, but will have to be accounted for in a proper, transparent way.

An Cathaoirleach: Group 2 is the subject matter of amendment No. 3.

Deputy Fergus O'Dowd: The purpose of amendment No. 3 is to provide the board with powers to undertake preparatory work pending the assignment of full water services powers by future legislation. A similar provision for the Commission for Energy Regulation was included in the published Bill. This amendment will clarify the range of functions that the subsidiary, Irish Water, and the board may carry out pending the provision of full utility powers to be assigned by legislation later this year. This will allow the board and Uisce Éireann to carry out the necessary activities as it prepares for full water services powers. The amendment has been included following discussions between the Department and Bord Gáis and with the Parliamentary Counsel. It will give the board and Irish Water greater certainty as the preparations for the establishment of a full water service utility proceeds in advance of the next Bill.

Senator Cáit Keane: I support the amendment. With regard to the preparatory work that

has been done with the companies that will be carrying out the work, is that online at present? I should have checked before I came down but I did not. Is there detail of the various companies to which tenders have been awarded to do the work? How far on is the work? How far on is the process for the subsidiary companies and are they listed online? What about negotiations with local authorities and the eventual transfer of staff? At what stage is the detail of how the staff will work?

The amendment indicates that the board “shall not perform a function under this section” if the Minister indicates it should not do so. Does the reverse apply? I presume it does, for example, if the Minister indicates an operation has been in train for a year and that a better idea should be applied. The positive “shall” is in the other legislation but this is a negative term, “shall not perform a function”, which is good if the board is performing functions that we do not want performed.

Senator Diarmuid Wilson: Will the Minister of State outline the water service’s functions? Are the water service’s functions the same or similar to the functions of the water services authority under the 2007 Act.

Senator Tom Sheahan: I have a question along the same lines as Senator Wilson. What is the definition of the workings or functions of the authority? The Minister of State referred to 30% unpaid water rates in the current system. With all due respect, if 30% of €500 million in water charges is uncollected, the issue will have to be ironed out from the very start. The authority would be run to the ground very quickly if that was the case, and there should be a legal function so that this could not happen. Currently, if one is in arrears paying for water, the supply is cut, and it is somewhat archaic that local authorities are charging €1,100 to reconnect such supplies. That is not practical. If a person cannot pay water charges, how can he or she pay the reconnection charge of €1,100? Perhaps that should be tweaked by the new authority as well.

Senator Kathryn Reilly: With regard to the transfer of powers, what discussions have taken place between the Department, senior engineers and representatives of water service workers? What concerns do these people have about the current and proposed governance arrangements? With current governance arrangements, what problems, if any, have been identified by the Department that it is hoped will be improved in the new service? How will the transfer of functions bring improvements? SIPTU has concerns about the serious implications for the future of local government and its ability to respond to emergencies at a local level so will that be a problem?

Senator Michael Comiskey: I welcome the Minister of State to the House. It is good to have him here. I have a couple of points on the contractors and assignment of contracts. We had problems in Border counties with contractors doing work for the councils over the past number of years and not paying subcontractors. We must be very careful that this does not happen. When the Minister, Deputy Hogan, was here the last day, it was mentioned that subcontractors must have a turnover of €400,000, which is quite significant. There are some small subcontractors that would be well capable of doing the work but do not have the €400,000 turnover. The Minister, Deputy Hogan, indicated that one or two subcontractors could come together and be in a position to provide the service. We should keep that in mind.

Senator Sean D. Barrett: We still need to flesh out what will be the free allowance and the price. Some people’s consumption could be so small that metering in order to reduce consump-

tion would yield no return on the meter. Unless we know what economists call price elasticity, demand is impossible to calculate.

The Minister of State referred to area meters, meaning we could locate leaks to a certain part of a townland, for example. It seems plausible that we could install many meters at a significant expense but not collect anything, depending on what is the free allowance. What will be the cost of the meter and what will be the free allowance? If a little old lady is living on her own, it may be pointless to go through the exercise of installing a meter as it will not make any difference to the national consumption and we would not get back the cost of the meter. If we did the job in stages, we would know through area meters if the rate of lost water reduced substantially, and there would be no need to go after single elderly people living on their own for no great benefit.

We need to fill in some of the blanks, including how much is the free allowance. I have heard that described as generous but I do not know if we yet have a quantification of “generous”. What will be the cost per unit of consumption?

Senator Denis Landy: There are a couple of issues. This amendment was thrown up when we examined how the transfer would come about from what was a traditional local authority function to Irish Water. I raised the issue on Committee Stage as there will be a difficulty in a number of areas where local long-standing agreements have given local authorities access to private land so that they could check lake, borehole and river intake sources. This was done on an agreed basis with landowners. The Minister of State’s response the last time was that way leave does not apply to water, as water pipes are laid on public roads. If a service is required to go across private land, the way leave legislation only applies to the ESB and will not allow local authorities or Irish Water to cross such lands without due permission or cost. Have those issues been dealt with through this amendment?

Some reference has been made to the staff. Much good work has been done on this issue and I know from speaking to a former colleague in South Tipperary County Council that a unit has been set up there this week that will pull together all the information required. I welcome the fact that this has been done through proper industrial relations mechanisms, with staff volunteering for the work. The individual to whom I was speaking was very happy and excited about the opportunity to get into a new challenge in his life and career as a public servant. He is my age.

I welcome all this work but I am concerned about outstanding issues which I flagged on Committee Stage. The Minister of State gave some comfort in his words at that stage but it was not really the answer I wanted to hear. I am still asking for an answer rather than comfort.

Deputy Fergus O’Dowd: Far be it for me to offer Senator Landy anything but comfort, given the problems we have to deal with. There have been many questions and if I do not answer some, I will be happy to deal with them if Senators give me notice. The next Bill will address all the issues raised by Senator Landy, including the legal and important technical points which must be resolved. What the Bill is doing is setting up the body called Irish Water, Uisce Éireann and the amendment gives it powers to do certain works and not to do other works. That is just as an interim measure. In other words, the power to instruct or not to instruct, will be in place only temporarily. When the full Bill is enacted there will be no need for ministerial intervention. We are establishing Irish Water and giving certain powers to the regulator in advance of full powers being given. The second piece of legislation will give powers to the regulator

but we are allowing it to commence its work. Issues in regard to how Irish Water will operate will be dealt with in the next Bill before the end of the year.

Metering will complement conservation. Senator Barrett asked about the advantage of metering. It is a fact that a person living on his or her own in a flat uses very little water compared with a household of three or four. One could argue that one person in an apartment or whatever would use less water than anybody else but that will not always be the case. The first advantage of metering is that when the meter is being installed, any unaccounted for water on the customer side will be detected. I was speaking to people in County Mayo two weeks ago who told me that by metering a group water scheme they reduced unaccounted for water by 60%. In order words, it detected a 60% leakage on the customer side, not water on the main road or outside the property of the people in the scheme. As I understand it, a scheme in Cavan-Monaghan which had upwards of 80% unaccounted for water has now been resolved. It has saved that amount of water by metering. The best supporters of metering are the group water schemes all over the country, some of which I am meeting this evening. Metering actually works. A cost benefit analysis has been done and in individual cases it makes much sense. I accept that the extensive district metering will reduce leakage to a particular geographic location but it will not identify the street or road. From this point on, where there is significant leakage, metering will help find it. The level of the free allowance has not yet been decided. That is a matter for the Government to decide and will be announced in due course by the Minister, Deputy Phil Hogan.

A question was asked about the number of contractors involved. As the country has been split into eight areas, there could be up to eight regional contractors. After that, depending on the size of the area, one can tender for local contractors. If a regional contractor wants to install 20,000 meters in a particular town or area, it can choose from the list, which will be transparent, and will be published. In respect of everyone named on the list there will be transparency as to who they are and they must be eligible. If a person is not eligible, the contractor has a right to query that as it is entitled to have the information. A small contractor who has a JCB would not have the turnover as an SME. Obviously, local contractors could then be involved with the local people who are appointed to do the work. That is the important point. The legal liability that attaches to the regional contractor will attach to the local contractor and people it may bring in locally to do the work. Standards will have to be set in order that cowboys do not get involved. There will have to be total accountability back up the line as well as down the line.

Quality standards will be regulated. The quality of water will be set by the EPA and the HSE. It is important that the quality of water is improved. While the vast majority of water in the public mains is fantastic there are problems with group water schemes that have to be dealt with. The EPA will be the regulator. We want to be in a position to attract into areas, water intensive industries, such as pharmaceuticals, agriculture, ICT and so on. If we improve the quality and supply of water, Ireland could be a European centre for water intensive industries, whereas some parts of the UK have a water shortage.

The relationship between local authorities and Irish Water is critical. I acknowledge the fantastic work of local authorities, staff, engineers, plumbers and so on who have the capacity, ability and commitment to improve the infrastructure. To ensure that continues there will be service level agreements between local authorities and Irish Water in order that those working for local authorities will continue to provide that service up to at least 2017. If any person has an offer of employment in Irish Water, that is fine. There will be some voluntary transfers of people in that capacity. I do not know if I have answered all the questions but if I have omitted any please come back to me.

Senator Sean D. Barrett: There was a question on-----

An Cathaoirleach: The Senator has contributed already.

Senator Sean D. Barrett: I was responding to the Minister of State's kind invitation to the question whether he had answered all the questions. I was going to ask if he had any idea on the price? I thank the Cathaoirleach for his indulgence.

Senator Diarmuid Wilson: I will speak with the Minister of State again regarding functions.

Senator Paschal Mooney: We are awaiting a reply on the functions of Irish Water.

Deputy Fergus O'Dowd: Where a local authority carries out any activity in respect of water services that same powers will attach to Irish Water in the context that it must negotiate with the local authority before proceeding to carry out works. It will have the same powers as a local authority. Legally, it has the same statutory powers to ensure the water supply is safe and to carry out whatever works are needed and work that a local authority would do. There will be extra works that a local authority will do in terms of flood relief. There are many other activities which are not transferring to Irish Water, such as the emergency response teams.

Senator Paschal Mooney: I have a brief question.

An Cathaoirleach: Senator Barrett's question remains to be answered.

Deputy Fergus O'Dowd: I do not know the cost. The regulator will do due diligence on all of that area. All costs submitted will have to be transparent and will be transparently decided. Nothing will be hidden.

Senator Sean D. Barrett: I was asking about the price to the consumer? Is it known what the consumer will pay per litre?

Deputy Fergus O'Dowd: No. The average commercial charge for water at present across all counties is €2.52 per 1,000 litres. In Denmark one will get three quarters of a bottle of water for €1. That is an indication of how expensive water is there. That is very expensive water compared with ours. The actual cost will be determined by the regulator. I do not know if that is helpful. People will know the cost well in advance. They will know their water usage and can predict what they will probably use.

Senator Sean D. Barrett: Go raibh maith agat a Aire Stáit.

Senator Paschal Mooney: My comment is in the context of the transfer of functions and what the Minister of State has said about functions. Since the 2007 Act, local authorities have increasingly taken over private water schemes within local authority areas. Will the transfer of the functions include a continuation of the taking over of private water schemes by the new water services authority?

Deputy Fergus O'Dowd: I think that is presently the arrangement between all group water schemes. In other words, whatever arrangement is in place with the group water scheme will not change as a result of this. Clearly, issues arise with group water schemes. The experience in County Mayo is that one cannot cost the voluntary effort that goes in. I would hope the voluntary effort that the community puts in to make efficient and effective group water schemes

13 March 2013

would continue. Irish Water will not be trying to take that power away from anybody, but whatever relationship one has with one's local authority will continue and will not change. That is the position as I understand it.

Senator Paschal Mooney: Essentially, it is about the current extension of town schemes which, inevitably, take over the group water schemes outside of the town boundaries. I am wondering whether that policy will continue with Irish Water. Will it continue to do that?

Deputy Fergus O'Dowd: As Senator Mooney correctly points out, it is a local authority that is making the decision in terms of its development plan to do something in a particular area. That is part of the local authority's planning process, etc. I cannot say here that a particular group water scheme will come into public ownership as a result of Irish Water. That would be a local matter for them to negotiate.

Senator Paschal Mooney: I am trying to establish whether the policy of the takeover of group schemes will continue.

Deputy Fergus O'Dowd: To be fair and honest on this one, in the next Bill the policy must be clarified, in other words, how one resolves the issue, should the situation arise, as I am sure it will, of the powers as between those of a local authority that wants to do action X and Irish Water that does not want to do it.

There is also the question of planning. If a local authority, town council or city decides to develop water infrastructure at location X in its development plan, there is the question of whether the funding will be provided for that, and if not, how does one resolve that?

Those are important issues which we will resolve in the second piece of legislation. It is a critical part that Irish Water have due regard for local development plans and the IDA Ireland and Enterprise Ireland plans for industry and how a conflict, if one arises, is resolved. That all must be done in the next piece of legislation. Until then, there is no issue of conflict or change.

An Cathaoirleach: I call the Minister of State on amendment No. 4.

Deputy Fergus O'Dowd: Amendment No. 4 is a grammatical change to section 24 and does not change the purpose or meaning of subsection (1) of section 24.

Question put and agreed to.

Question, "That the Bill do now pass", put and agreed to.

Sitting suspended at 1.45 p.m. and resumed at 5.30 p.m.

Employment Equality (Amendment) (No. 2) Bill 2013: Order for Second Stage

Bill entitled an Act to provide for certain changes in the exclusions of discrimination provided under section 37 of the Employment Equality Act 1998, and to amend the exclusions of discriminations available to educational and medical institutions in receipt of funding provided by the Oireachtas.

Senator Ivana Bacik: I move: "That Second Stage be taken today."

Question put and agreed to.

Employment Equality (Amendment) (No. 2) Bill 2013: Second Stage

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

Acting Chairman (Senator Susan O’Keeffe): I call Senator Bacik and she has ten minutes.

Senator Ivana Bacik: It gives me great pleasure to introduce the Employment Equality (Amendment)(No. 2) Bill 2013. I welcome the Minister of State at the Department of Justice and Equality, Deputy Kathleen Lynch, and thank her for taking the Bill on behalf of the Government.

I also welcome to the Visitors Gallery representatives of many groups who have an interest in the Bill. They have campaigned for it for many years and are here to listen to the debate. Among them is the Gay and Lesbian Equality Network, GLEN, ICTU, the INTO and the Labour Party’s lesbian, gay, bisexual and transgender group. Plenty of other groups will arrive shortly such as the Equality & Rights Alliance, the Equality Authority, LGBT Noise, BeLonG To, USI and OPEN. The ICCL is also represented here. There is a broad range of groups present. I welcome Deputy Aodhán Ó Ríordáin. It is always good to see Members of the other House attend. He has also campaigned for the Bill for a long time.

I am proud and delighted to introduce the Bill on behalf of the Seanad Labour Party group. My colleague, Senator Mary Moran, feels the same way and she will second the Bill. She is the Labour Party’s education spokesperson in the Seanad. The Bill came from an initiative that I took along with Deputies Aodhán Ó Ríordáin, Ciara Conway, Dominic Hannigan and John Lyons. We believe that it is important and in line with long-standing Labour Party policy to bring forward legislation to change the current position as set out in section 37 of the Employment Equality Act 1998.

Most of the people present are well aware of section 37 and its provisions. It was amended by section 25 of the Equality Act 2004. Subsections (2) to (6) of the 1998 Act allow for certain exclusions of discrimination on particular grounds in certain employments, to allow differential treatment based on a characteristic related to a discriminatory ground where it constitutes a “genuine and determining occupational requirement” and where the objective of the differential treatment is legitimate and the requirement proportionate. However, section 37(1) of the 1998 Act is the contentious provision that today’s Bill seeks to address. Section 37(1) currently provides that a specific exclusion of discrimination exists for religious, educational or medical institutions that are under the direction or control of a body established for religious purposes or whose objectives include the provision of services in an environment which promotes certain religious values. It currently provides that a specific exclusion of discrimination exists for religious, educational or medical institutions which are under the direction or control of a body established for religious purposes, or whose objectives include provision of services in an environment which promotes certain religious values. That deals specifically with religious-run institutions, both educational and medical, and a third type which is religious.

13 March 2013

The exclusion means that such institutions are not seen as discriminating if they give more favourable treatment on the religion ground to an employee or a prospective employee where reasonable to do so in order to maintain the religious ethos of that institution, or where they take action reasonably necessary to prevent an employee or prospective employee from undermining the religious ethos of the institution.

To put it bluntly, therefore, a Catholic Church-run school or hospital can currently discriminate against, refuse to hire or even dismiss a person from the lesbian, gay, bisexual and transgender, LGBT, community, for example, because their sexuality may be seen to offend against the religious ethos of a church that is intolerant and prejudiced against homosexuality. Similarly, a school or hospital run by a religious body or the Catholic Church can discriminate against a lone parent employee or prospective employee because of religious doctrine against non-marital relationships. This provision in section 37(1) has been subject to criticism from many individuals, including the groups represented in the Visitors Gallery and many others. They include the Human Rights Commission, ICTU and teaching unions. For years, unions and civil liberty groups have been calling for the repeal or amendment of the existing law. These calls have been supported by numerous groups, including the National Women's Council. It has been Labour Party policy for many years to address this matter.

Section 37 has been particularly criticised because it confirms a controversial decision of the High Court from the 1980s - the decision of *Flynn v. Power* from 1985 *Irish Reports*, usually referred to as the Eileen Flynn case. As the Minister of State is well aware, Eileen Flynn was fired from her job in August 1982. She had been a teacher in the Holy Faith Convent in New Ross, County Wexford. The reason for the dismissal was that she was pregnant but not married. On a very dark day for the courts, the dismissal was upheld by the High Court on the grounds that the Holy Faith order was entitled to take action, including this most severe action of dismissal, to prevent its ethos being undermined.

The continued existence of a provision allowing an opt-out from discrimination - effectively allowing and enshrining the principle in the Eileen Flynn case in statute - has created a chilling effect for LGBT employees, single parents or any others who work or would like to work within religious-run schools or hospitals, and who may be at risk of being seen to offend in some way the ethos of the religion concerned.

Given how much Irish society has changed in the last few decades, it is truly remarkable that people working in schools and hospitals, the vast majority of which still have a religious ethos, are in fear of such action being taken against them for having children outside marriage, being gay or even divorced. There is a range of reasons involved. We believe that the chilling effect must be challenged and the climate of fear must now be consigned to the dustbin of history.

Deputy Ó Ríordáin put it very well saying that, as a teacher, he knows only too well about the chilling effect section 37 can have on staff. People are afraid to be open about their private life among their peers. However, it has also denied many young LGBT people role models in their classrooms as it prevents teachers from being open about their sexual orientation. I know that Senator Moran will speak more about that practical impact.

Last week, we got the unanimous support of the Labour Parliamentary Party for the Bill. On Thursday, we published the Employment Equality (Amendment) (No. 2) Bill, which amends section 37(1). It significantly raises the bar which employers must reach if they wish to discriminate on the grounds of religious ethos. We hope the Bill will receive the support of all

parties and I believe it will. The need to challenge homophobia is accepted across the political spectrum, including parties and Independents. I have been glad to receive support in principle from Senators Norris and Zappone in particular for this initiative.

Two years ago, the programme for Government stated that LGBT people should not be deterred from training or taking up employment as teachers in the State. Therefore, we believe that passing this legislation would represent a key programme for Government commitment. This is not just something that the Government parties believe. There have also been previous attempts by other parties to deal with this matter. I wish to pay tribute especially to Senator Averil Power on the Fianna Fáil benches who published a draft Bill last year seeking to amend section 37. Sinn Féin also published a similar Bill in recent weeks. I commend Senator Power because when she put the Bill forward it was important that the issue be kept alive on the political agenda. Had the Bill not been put to a vote, it would very likely have been developed further as Government legislation and I hope we will see that outcome from this debate.

While we should support all these efforts to amend the law and keep the issue alive, it is important that whatever legislation is introduced should cover all nine grounds of discrimination in the original Employment Equality Act. In addition to the grounds of sexuality or marital status, these include family status, disability and all the other grounds that are provided for. Our Bill will cover all the groupings and grounds of discrimination in the existing equality legislation.

I will now briefly address the Bill's content and what it seeks to do. Its key purpose is to protect individuals against discrimination in an appropriate and balanced way, while respecting religious freedoms. The proposed amendment of section 37(1) would offer protections to staff of religious-run medical and educational institutions to a far higher degree than at present, but it still allows the institutions to maintain their religious ethos. However, the Bill provides additional protections for employees or prospective employees where health or educational institutions are in receipt of State funding. That is a critical distinction to be made.

Both the Constitution - *Bunreacht na hÉireann* - and relevant EU law make it clear that a balance must be struck between individual rights and religious freedoms. The Bill seeks to recognise that balance, but also seeks to ensure that the private lives of teachers and health workers should never be used against them again.

The Bill is short, containing just three sections. Sections 1 and 3 are technical sections. Section 2 is the substance of the Bill providing for the amendment of section 37(1) of the 1998 Act and inserting a new section 37(1). The new section 37(1) would preserve the right of religious, educational or medical institutions to discriminate by giving more favourable treatment on the ground of religion to employees or by taking action described earlier to prevent employees from undermining the religious ethos of the institution. However, a new part of section 37(1) provides that where an educational or medical institution is State-funded, that institution cannot give more favourable treatment on religious grounds unless such treatment does not constitute discrimination under any of the other grounds; and the religion of the employee must be a genuine, legitimate and justified occupational requirement. It, therefore, sets the bar much higher in respect of favourable treatment on religious grounds.

Similarly, the Bill provides that a State-funded institution cannot take action to prevent the undermining of its ethos unless by reason of the employment itself or the context, the action taken is objectively justified by a legitimate aim and the means used are appropriate and neces-

sary. A final provision in the new section 37(1) provides for a presumption of discrimination - in other words, an additional hurdle for a State-funded institution to get over if it seeks to justify any discrimination.

The drafting may appear somewhat complex or cumbersome and, indeed, the equality legislation is rather complex in its entirety. Frankly, however, the legislation is somewhat conservatively drafted. I would like to have gone further in the Bill, particularly in respect of the undermining of ethos provisions. We were advised, however, that EU Directive 78/2000 requires a somewhat more conservative approach. Article 4 of that directive gives protection to the right of churches to require individuals working for them to act with "loyalty to the organisation's ethos". I understand there is some suggestion that it requires a more conservative approach than is taken in the Bill. While it is radical in that it covers all the grounds of discrimination, I would personally favour a more robust approach to protect equality in the second aspect of the new section 37(1) which deals with the undermining of ethos. It is something that we could tease out on Committee Stage. I would welcome the input and comments from colleagues on both sides of the House on that particular issue. Once the Bill goes through Second Stage, it will have to be referred to the Attorney General and Parliamentary Counsel, so I hope we can see a more robust approach then.

I note that the Irish Council for Civil Liberties has described the Bill as creating a partial thaw in the chilling effect, but I hope it goes further than that. I think it creates significant additional hurdles for any religious-run school or hospital which seeks to justify discriminatory treatment. It would undoubtedly secure much greater protections for employees or prospective employees of such institutions. I am glad that members of the LGBT community, particularly in the teaching profession, have welcomed this measure. In addition, it has been welcomed in principle by the National Women's Council and trade unions.

I wish to pay tribute to the Minister for Education and Skills, Deputy Ruairí Quinn, who has already produced an action plan to tackle homophobic bullying, and Mr. Neil Ward in the Minister's office who has been very helpful on this issue. In addition, the Minister for Justice and Equality, Deputy Alan Shatter, and the Minister for Health, Deputy James Reilly, have made it clear that they are determined to see the commitment in the programme for Government fulfilled.

Sadly, Eileen Flynn passed away in 2008, without seeing an end to the legal discrimination she suffered. This Bill, however, will ensure that no teacher or health worker will suffer the same fate. I commend the Bill to the House.

Senator Mary Moran: I also welcome the Minister of State to the House for the debate on this important Bill to amend section 37(1) of the Employment Equality Act which, when passed, will end finally the power of religious-run organisations or institutions to avoid employing or firing a person on the grounds of their sexuality or for being a single mother and will allow people to speak about their sexuality in the workplace. I also welcome to the Visitors Gallery members of the Gay and Lesbian Equality Network, GLEN, the Irish National Teachers Organisation, INTO, the Labour lesbian, gay, bisexual and transgender, LGBT, group and the Irish Congress of Trade Unions, ICTU.

Equality is a fundamental basic human right. Individuals in society have the right to seek gainful employment and to advance in that employment without being discriminated against because of personal characteristics unconnected with their work performance. The passing

of this Bill will ensure that religious-run or controlled schools or hospitals no longer will be protected from discriminating against employees on the grounds of religious ethos because of their sexuality or because they may be single mothers. I am pleased this Bill fulfils Labour's commitment in government to introduce legislation that will ensure greater employment equality, particularly for people who are in the minority, and will ensure that employees are protected against discrimination at all times based on their sexuality.

Our society has witnessed many changes on all aspects of life in recent decades. Everyone will agree we have moved and advanced quite a lot in recent decades. Politically, economically, socially, educationally and culturally, our country today is much more diverse, open and questioning than it was even a generation ago and this diversity is essential to help foster our ideas and to gain new perspectives. While I am now showing my age, one of my earliest memories on entering the teaching profession was the case involving Eileen Flynn to which Senator Bacik has referred, that is, the young County Wexford teacher who was fired from her teaching position simply because she was a single mother. In 1985 or thereabouts, after the case was taken, I remember it still being a huge topic of debate in every school, staffroom and house in the country. I consider this to have been one of the lowest periods for religious-run schools. As was noted, Eileen Flynn was fired simply because she was deemed to have gone against the religious ethos of the schools. Eileen Flynn's case showed up the hypocrisy of many others in religious-run schools. At the time, I did not realise how extraordinarily brave this lady was for not being afraid to bring her case to the courts, because it would have been much more difficult 30 years ago, and I am only sorry that almost 30 years later, it still is a topic for debate in the Oireachtas. I would like to believe we have moved away in recent years from such closed thinking and that a teacher or medical professional's merit is and should be based on his or her performance in the job rather than on his or her sexuality or on what goes on in his or her private life.

The recently published action plan on bullying urges a crackdown to prevent and tackle homophobic and transphobic bullying in particular in schools. I warmly welcome the plan, which will encourage schools to face the problem of homophobic and transphobic bullying. While it is there to protect the pupil, one must also protect teachers or medical workers who are afraid to reveal their sexuality in case they get fired. It is no good to state simply that one does not know of anyone who has been fired for this reason but one must be able to state categorically it will not be possible for any person to lose their job because of his or her sexuality. As an educator, I make the point that children in schools can be particularly astute at spotting weaknesses in others, including and sometimes in particular, their teachers. A teacher who is gay or lesbian and who does not feel protected within his or her job can often show his or her susceptibility within the classroom. This can be acted on easily and such teachers - or medical professionals in the case of hospitals - can become the target of indirect or sometimes even direct bullying. This leaves them in a position in which they could be afraid to report it to the school authorities, fearing it could affect their position within the school. This can leave them feeling isolated and withdrawn and can affect their daily working lives within the school. These of course are symptoms which can lead to further problems with mental health issues and, as anecdotal evidence suggests, could leave such people feeling suicidal because they believe they have nowhere to go. Teenagers who perhaps also are at a vulnerable age and who may have realised they themselves are gay or lesbian may perceive such a teacher to be a vulnerable person, which can in turn cause them to fear coming out and consequently, it becomes a vicious circle.

The Bill before Members is a response to the changes that are evolving continually in our

society. Introducing legislation is one thing and I both welcome the all-party support that has been in evidence and commend Senator Power on the Bill she introduced to the House last year. However, when the Bill is passed, as I presume and hope, no time should be lost because 30 years has been long enough to wait for this and hopefully Members will witness its swift passage into law as soon as possible. I commend the Bill to the House.

Senator Averil Power: I welcome the Minister of State to the House and welcome that Members today are taking another important step towards the achievement of real equality in Ireland. I join Senators Bacik and Moran in welcoming to the Visitors Gallery people from groups that have worked for a long time to achieve the end to the discrimination under discussion today. It is hard to believe that in 2013, a person still must fear that he or she could be discriminated against by an employer solely on the grounds of being lesbian, gay or bisexual or because he or she is an unmarried parent or is separated, divorced or cohabiting outside marriage. Unfortunately, however, this still is very much the case for teachers, doctors and other staff of religious-run schools and hospitals. As other Senators have observed, under current Irish law such bodies may discriminate against employees on the grounds that their sexual orientation, gender identity, marital status or family status is a threat to the religious ethos of the institution. Thus, employees may be penalised not because of anything they have said or done in their workplace but simply because of who they are. It is utterly unacceptable to me and should be equally unacceptable to all Members that publicly-funded institutions can discriminate against employees or potential employees on such grounds.

As Members are aware, the current situation is a source of real fear and unhappiness for LGBT staff in particular. Many teachers have told me how the current legislation has made them feel they must hide their sexual orientation from their colleagues. They have told me that day in and day out, they go to school and pretend to be someone else. On Monday mornings, while other colleagues talk about how they spent their weekend and about their families, they just sit there quietly without engaging in the conversation. They even go to great lengths not to be seen socialising in their own time with their long-term partners in the town in which they work. It really angers me that people who are great at their jobs and respected by the students and parents are being made to feel so unhappy at work. They should be judged on the same basis as everyone else, namely, their effectiveness in the classroom and not on the basis of a prejudiced view of their sexual orientation. Given that more than 95% of schools are under Christian denominational patronage, it is not as though they can avoid this threat by seeking employment elsewhere. Freedom of religion is an important value that I respect fully. However, it should not be used to permit discrimination that would be unacceptable and illegal in any other employment, especially by State-funded institutions.

The current position also has a profoundly negative impact on LGBT young people by robbing them of positive role models at a difficult time in their own lives. While matters have improved considerably over recent years, many gay teenagers still experience a deep sense of unhappiness, isolation and depression as they struggle to come to terms with their own sexual orientation. Moreover, despite the incredible work being done by BeLonGTo and other groups, LGBT young people are still four times more likely to commit suicide than their peers. Much valuable work is being done at present to tackle homophobic bullying and I welcome in particular the importance the Minister, Deputy Quinn, has attached to this issue over the past two years. However, what message does it send to LGBT young people and their friends that as a society, we still condone legalised discrimination against teachers solely on the grounds that they are gay?

Consequently, I greatly welcome the Bill before Members, as I believe it presents an opportunity for them to unite on a cross-party basis and end this discrimination for once and for all. However, I have a number of concerns about the current wording. I appreciate it has been drafted to strike a careful balance between the competing constitutional values of freedom of religion on the one hand and equality and the right to earn a livelihood on the other hand. I also understand that striking that balance is not easy because when drafting Fianna Fáil's Bill last year, we were obliged to do a lot of work to ensure it would be constitutionally sound.

6 o'clock

We can understand, for example, the motivation behind exempting fully private institutions. It is not within our power to say that there should be female priests in the Catholic Church and therefore I understand the motivation behind that part of the legislation. However, I am worried about whether the protection for staff of publicly funded institutions in the current draft is strong enough.

This time last year I published a Fianna Fáil Bill to amend section 37 of the Employment Equality Act. The Bill unequivocally stated that nothing in section 37 could be relied on by an institution to justify or permit discrimination or to allow any action to be taken against any employee or prospective employee on the basis of that employee or potential employee's civil status or sexual orientation. The effect of the wording was that schools and hospitals would still be entitled to insist that staff members demonstrate respect towards their ethos in the workplace and not actively seek to undermine it but they would not be able to discriminate against conscientious employees just because they do not approve, for example, of their sexual orientation. The protection afforded by the wording was clear and unconditional.

In contrast, the wording before us today still permits discrimination in some circumstances. The Bill states that taking action against an employee should be deemed discrimination unless "by reason of the ... employment concerned or the context in which it is carried out, the action taken is objectively justified by legitimate aim and the means of achieving the aim are appropriate and necessary". I appreciate that the onus is on the employer to show that he or she can satisfy this provision but I am concerned about the fact that it is included. I accept that staff should be required to respect and not actively seek to undermine the ethos of the employer. However, I do not accept that there are any circumstances in which an employer should be able to take action against employees solely on the grounds of their sexual orientation. The Bill provides that there are such circumstances and I seek clarity on what they are and what prompted Members to include the provision in drafting the Bill.

The acid test for any proposed new legislation is simple: whether a teacher reading the new provisions is able to take comfort from them and decide he or she is safe. I am genuinely concerned that the wording before us does not give the unequivocal guarantee to which Senator Moran referred in her speech. We support the legislation on the basis that it is a step forward. We are only on Second Stage. I look forward to working with Members on all sides on Committee Stage to strengthen the wording and to ensure it gives people the protection they need and deserve.

I wish to ask one question before I conclude. When we discussed the legislation last year, the Minister for Justice and Equality, Deputy Shatter, made progress conditional on the new human rights body carrying out a public consultation process. I tabled an Adjournment debate two weeks ago to ask if that was still the position because the body has still not been established and

I was told it is still the position and that the body would shortly be established. Is the progress of the Bill to the next Stage and the completion of its passage through this House conditional on that process? There has been a considerable delay in merging the authorities. We all would like to work together to enact the legislation as soon as possible and not be delayed by a consultation process. I seek clarity on the matter because it has not been mentioned in the debate.

Senator Jim D'Arcy: I welcome the Minister of State, Deputy Lynch. I thank Senator Bacik for introducing the Bill, which we support. It is the outworking of the Bill that Senator Power tabled before Christmas. The Minister said something would emerge from it and Senator Bacik has now tabled the Bill before the House.

I wish to outline a few case studies. A person could not become a member of the Franciscan order without being ordained. That is clear. No discrimination is involved. However, a person applying for an office job with the Franciscan order could be discriminated against if he or she were refused the job on the basis of his or her sexuality or personal circumstances. That is the category of religious institutions.

Then we come to the sphere of education. I spent a lot of time pondering the issue in terms of section 37(1). Senator Power has given me the answer I sought. She referred to a situation where a person must respect and must not actively undermine the ethos of an institution. When I started teaching I had a friend who became a Buddhist. He taught Buddhism in the school during religion class. I am afraid he lost his job. I do not think he should have been doing that. I can see very few circumstances in which a person's marital status or sexuality would come into play in terms of medical issues. I would not dwell too much on such issues in the case of someone operating on me. It would not affect me that much at the time.

I taught as a single person for many years and I also taught as a married person for many years. In addition, I taught as a separated person for a few years. However, I was the same teacher. It is time we moved on. I remember the chairperson of a board of management of a new school saying he had got his first five teachers and that they were all male, married and had children. He thought that was what was required for the school to protect its ethos. I do not know the reason. We must move away from such an approach. We must legislate for it. The Bill provides for religious institutions. Everyone agrees that religious institutions cannot be discriminated against because, as Karl Marx said, when the oppressed are freeing themselves, they must free the oppressor as well. The balance in the Bill that is being discussed across the floor is something that can be teased out as we move on. The main issue is that the Bill is before the House.

I hope that whatever the Attorney General needs to do with the Bill is done in a positive context to enhance the legislation. The programme for Government commits that people of non-faith or minority religious backgrounds and publicly identified lesbian, gay, bisexual and transgender people should not be deterred from training and taking up employment in the State. The Minister for Justice and Equality, Deputy Shatter, said unequivocally that he regarded it as wrong that people whose wages are paid by the taxpayer and who are employed to provide essential public services should feel intimidated or feel the need to live their lives in secret. That is a terrible situation. Senator Bacik also referred to fear. It is a word that struck home with me. I do not want anyone to live in fear, for example, that his or her sexual orientation or family status should become known locally and lead to victimisation by an employer. As a pluralist, constitutional democracy we must commit to both equality of treatment and tolerance. On a daily basis we hear of people suffering from stress, mental health illness and tragic death by suicide.

It would be naive to assume that some persons who suffer because of their religious beliefs or are identified as lesbian, gay, bisexual or transgender persons are not affected when victimised and targeted for treatment that is different from that afforded to the rest of the population. In recent years, equality on the grounds of sexual orientation and gender identity has become a priority for many trade unions. I am glad the unions, with others, took on this challenge. I hope it no longer amounts to a challenge and has instead become an endeavour that will reach full success. We are a young nation going through many changes and this legislation is an important instrument. However, we must also challenge our own actions and attitudes towards persons who have different beliefs or a different sexual orientation.

Acting Chairman (Senator Susan O’Keeffe): I understand white smoke has emerged from the Vatican.

Senator David Norris: I congratulate Senator Averil Power on her pioneering role in this area and, most particularly, Senators Bacik and Moran on bringing this legislation in such a clear and articulate form before the House. I also commend colleagues who have spoken and I am sure we will hear further excellent speeches on the Bill. It shows the significance and importance of this House that we can deal with issues such as this in a calm and rational manner on a cross-party basis. This feature of Seanad Éireann became clear to me when, at the beginning of the AIDS pandemic, the House held a discussion on what was then a troubled subject that the Dáil was afraid to touch. It was also in this House that moves were first made towards the enactment of civil partnership legislation.

There are times when I feel a little like a coelacanth, that wonderful fish related to the diplodocus and other ancient creatures, which everybody believed was extinct and only to be found in fossils before it surfaced. I have lived through so much and made the transition from being a criminal for most of my life to being a perfectly ordinary, accepted and banal member of the community, which is what I always wanted to be.

I remember very well the Eileen Flynn case, which was extraordinarily shocking for a number of reasons. Foremost of these was the failure of those involved to ask the appropriate questions, for example, whether Ms Flynn was a good mother and teacher. They were obsessed instead by the fact that she had a child outside marriage. It is notable that the case took place in the diocese of Ferns and we all have a good idea about what was the ethos of that diocese.

Senator Mary Moran: Hear, hear.

Senator David Norris: I found this failure astonishing but equally astonishing to me at the time was the response I received when I mentioned the case to some friends who were part of the legal establishment. According to them, while it was a pity about Ms Flynn, she was a provo. I have no idea whether that statement was a libel or true but I could not care less what her political sympathies were because they had nothing to do with her fitness to teach, unless she was teaching some kind of extraordinary violence, which I do not believe for one moment was the case. Eileen Flynn was a good mother and teacher and her case has echoes for me because the day after I acknowledged my sexuality publicly for the first time, which was in 1970, concerned colleagues told me I could lose my job. This was in Trinity College so one can imagine what it must have been like in those days for a teacher in a secondary or primary school.

This Bill is a remarkable and wonderful development and I am pleased it will pass without the House dividing on it, which is a further splendid example of co-operation in the Seanad. I

remember when the original legislation was introduced. I was naive to the extent that I could not believe that sections were being introduced providing for exemptions from the legislation's provisions. I speak as an imperfect but practising Christian. It seems extraordinary that the Christian churches would want to be exempt from equality and a requirement to treat people as individuals with dignity, which is at the very centre of the gospels. The Minister who introduced the Bill, Mr. Mervyn Taylor, was an extremely decent man, although he and I had different opinions on the situation in the Middle East. He explained to us that providing for exemptions was the only way the Government could possibly get equality legislation through the House. The former Senator Joe O'Toole and I tabled amendments and fought the exemptions on the principle that there should be equality. We argued that the proposal was a serious derogation from this principle which would have an intimidating and awful effect. As a member of the Irish Federation of University Teachers, we fought on behalf of two lecturers in Maynooth but the college got away with its actions on the basis that it was the pontifical university.

One must ask what ethos would need this kind of absurd protection and for what reason. I draw Senators' attention to a very good article published on 4 August 2007 by a legal scholar, Dr. Mark Coen of Trinity College, in which he isolated some of the principles involved in this issue. While he also addressed the gay issue, he noted that the law places employees, including heterosexual cohabitants, in an invidious position where they are employed by a religious organisation. While this may appear to be a theoretical matter, Senators should note a case in Scotland where a gardener in a public school attended a gay rights march, was dismissed, took a case and the court found against him on the basis that the group involved had every right to dismiss him. This is utterly wrong.

Senator Bacik described the Bill as slightly conservative. I believe its proposers have got the mix right, although I remain to be persuaded. If they wish to be more radical, there is nobody who likes to be radical more than me. As a former teacher, it is my view that if one wants to teach something and communicate it properly, one should believe it. My religion would have been ruined if I had been taught religion by an atheist because I would have smelled the person's lack of belief from yards off. While I would not have condemned the person, I would have known he or she was not sincere. I do not believe atheists, who are decent people by and large, should be forced to be untrue to themselves. For this reason, they should be relieved from teaching religion. For God's sake, let us have people who believe teaching religion. The ideal position would be if families were to do the teaching. However, while parents insist on ethos here, there and everywhere else, they do not want to be bothered teaching their children, leading by example and showing them how wonderful and beautiful religion is. I would not have been bothered if somebody had taught Buddhism, one of the great religions. I do not see anything in the Bill to suggest aggressive secularism or any of the other things for which we are usually attacked.

I hate the idea of a religious ethos, whether Protestant or Catholic. On the other hand, I remember arguing for what one could describe as the religious ethos in a hospital environment, namely, the Protestant ethos, simply because it appeared that it could encompass the Catholic ethos while giving freedom of choice and providing for a particular relationship between patient and doctor that was inviolable. For that reason, I preferred the Protestant ethos in the hospital setting to the imposition of a religious point of view on matters such as the availability of certain operations and procedures. I have no problem if that position appears sectarian.

Homophobic bullying is a serious problem. I salute the organisation BeLonGTo. It was wonderful that it got Síle de Valera, with her iconic surname, to launch its first posters on bul-

lying. It is worrying, however, that 80% of bullying in schools has a homophobic element and 80% of it is never addressed because people are still afraid. For this reason, I salute those members of the Irish National Teachers Organisation - I remember speaking at their conference - who have been so brave and wonderful and who, in their vulnerability, stood up and acknowledged their sexuality.

Acting Chairman (Senator Susan O’Keeffe): I ask the Senator to conclude, please.

Senator David Norris: I will do so. Thank you and goodbye.

Minister of State at the Department of Health (Deputy Kathleen Lynch): As I have said before and will say again, the next time I am called to speak after Senator Norris, I will leave the Chamber. In 1996, when the original employment equality legislation was introduced, I strongly objected to it, which left me in a lonely place. The following Sunday, when entering my local church to go to mass, I was handed a leaflet, clearly by somebody who did not know me. The leaflet, which was quite vicious, was about me and what it described as my attack on the Catholic Church and Catholic schools. Therefore, we should not underestimate the types of objections we will encounter. We will encounter some. I know for a fact that there is one person in the Gallery behind Senator Norris who actually remembers what I have described.

The Government welcomes the attention that Senator Bacik has brought to the position of LGBT people in the teaching profession who feel compelled to hide their real identity for fear of victimisation. As Senators will know, the Minister for Justice and Equality and the Minister for Education and Skills, Deputies Shatter and Quinn, would have liked to have been present for the debate, but they are unable to be so as they are abroad on official business. When he was here last May speaking on this topic, the Minister for Justice and Equality stated unequivocally that he regards it as a wrong that people whose wages are paid by the taxpayer and who are employed to provide essential public services should feel intimidated or feel a need to live their lives in secret for fear that their sexual orientation or family status, for example, should become known locally and lead to victimisation by an employer. That is exactly how I see it and how my Labour Party colleagues in this House see it also.

It is important to emphasise that both parties in government fully support this initiative. One will recall the Government has undertaken in its programme for Government to ensure that people of non-faith or minority religious backgrounds and publically identified LGBT people should not be deterred from training or taking up employment as teachers in the State. Recognition must be given to the earlier initiative by Senator Averil Power. Her bravery in bringing forward the initiative must be noted. My experience tells me one does indeed need to be brave at certain times in one’s political career. Senator Power’s Private Members’ Bill was instrumental in initiating dialogue in the House towards progressing reform in this important area of human rights. The extensive cross-party support that exists for ensuring the equal rights of citizens, irrespective of their sexual orientation, and clarifying the law in this area, was clearly illustrated by the debate on Senator Power’s Bill last May. I recognise the fact that Sinn Féin has produced legislation on this matter. That support has not abated is evident from the recent Adjournment debate on 28 February on this very topic, during which Minister of State, Deputy Costello, replied on behalf of the Minister, Deputy Shatter. I express my thanks and that of the Government to Senator Ivana Bacik and the other Labour Senators for their initiative in developing this Bill and introducing it to the House.

I restate the commitment of the Minister for Justice and Equality, along with the Minister for

Education and Skills, to strengthening the statutory protection for equality in this area. Within the Department of Justice and Equality, both the Minister and I have previously expressed concern about the potential impact of section 37 of the employment equality legislation on LGBT persons. This section is designed to allow schools and other institutions to maintain their religious ethos. As Senator Norris rightly stated, there should be no attack on the ethos in the case of a good teacher. A good teacher is a good teacher, irrespective of his or her sexual orientation or faith.

The legislation was examined by the Supreme Court in 1996 when the Employment Equality Bill 1996 was referred to it under Article 26 of the Constitution. The Supreme Court found that it is a reasonable balancing in legislation of the different rights involved, including, chiefly, the right to earn a living and the rights to freedom of religion and association. However, as we have stated on a number of occasions, we are concerned that this is not the way it has worked out in reality. There is evidence that the balance, in practice, is not a fair one and that this provision can operate in a way that is unfair to LGBT persons.

As much as the case of Eileen Flynn, who, unfortunately, is no longer with us, sticks in our minds, it was not the only one. It was not just as a matter of Ms Flynn being pregnant and unmarried. We need to bear in mind that there were a lot of people in that category.

The two Ministers involved, Deputies Shatter and Quinn, are committed to finding a different solution which resolves this difficulty while still providing for an appropriate balance of competing fundamental rights that is constitutionally sound. We are proposing not only to welcome the spirit of this Bill, but also to take it on as a Government Bill and subject it to the rigorous scrutiny by the State's legal advisers necessary to ensure beyond all reasonable doubt that the text will pass constitutional muster. At the heart of the issues addressed in the Bill are competing constitutional rights and questions about the constitutional obligation of the State to protect the personal rights of all citizens, while also respecting freedom of religion. We are principally bearing in mind teachers and medical professionals employed in schools and hospitals which are funded largely by the State. These are people in positions of trust, charged with caring for children and the sick, and their callings are deserving of respect in society. I believe the Bill is a good one, but I am not a constitutional lawyer and have never claimed to be.

The test the Oireachtas faces when it legislates in this area is whether it has preserved a proper balance between the rights of religious denominations to manage their own affairs and maintain institutions for religious and charitable purposes and the rights of other citizens to equality before the law and to earn their living.

We must move very carefully because failed reform could do real damage to people's lives and set us back. In response to Senator Power's query, the Minister for Justice and Equality indicated last May that he wants the new Irish human rights and equality commission to examine this issue and mount a public consultation process. My experience tells me the value of a public consultation process on this issue cannot be overestimated. The members of the new commission and equality authority will be appointed very shortly.

It is important to engage the public and develop a more complete awareness of the matters at stake, the impact on individuals, their families and communities and in building wider support for this reform. The Irish are inherently decent. There is momentum behind this reform initiative but we need to ensure it involves the wider public and that there is awareness of some of the detail of what we want to do. As Senators know, the Minister set out in some detail in this

House last May how reform might be undertaken in this area. He also gave a commitment to have an extensive consultative process and formal assessment of the options. Equality legislation expressly provides for reviews of this nature. It is appropriate that the review be carried out under the aegis of the new Irish human rights and equality commission. Unfortunately, establishing the commission is a complex task which is taking longer than originally hoped. As Senators will be aware, an independent selection process in regard to the membership of the new commission is under way. The Minister hopes to be in a position to make a further announcement in relation to the appointment of the new commission soon. He intends as a priority, on the appointment of members to the two existing bodies, to invite the appointed members to carry out a consultation and report on their views and recommendations to him and the Minister for Education and Skills – the two Ministers centrally concerned – and the Oireachtas. Such a process can be carried out within a short number of months, acknowledging the need for rapid movement on this issue. We are all very conscious of delays.

In parallel, the Bill will be scrutinised carefully by the Attorney General's office. We must ensure that our legislation will withstand any challenge. I stress our commitment – once this necessary consultation process is completed – to take forward this Bill, with any amendments that might be needed, with Government support to enactment. The Bill addresses very significant problems, in particular for LGBT teachers but also for medical professionals. Failed reform is in no one's interest and we need to be confident that we have got it right and that the wider community knows that we have got it right. I thank everyone for their contributions.

I am a great believer in timing. Timing is everything in life and obviously mine was very much off when I tried to do as outlined 17 years ago.

Senator Marc MacSharry: I welcome the Minister of State to the House, as always. I also thank her for welcoming the suicide policy document my party published last week and I hope we will have an opportunity to go through it with her in the coming weeks.

I welcome this legislation and while not wanting to take an adversarial position on the Order of Business this morning, I said that it was a shame that we could not have moved forward a year ago when Senator Averil Power proposed her own legislation on this issue. However, I appreciate that it is now happening and we have a Bill to debate. Senator Bacik said this morning that Senator Power's proposed legislation did not cover all nine areas of discrimination but that could have been dealt with quite easily by way of amendments on Second Stage. Just to reiterate what I said this morning, I regret that the set piece for Private Member's Bills from the Opposition is for the Government to say it has a better plan or a bill of its own in the pipeline which it will introduce later and celebrate as a success. Having said that, I thank Senator Bacik for acknowledging the work of Senator Averil Power in this regard. It would be good for democracy, albeit at the loss of positive optics for the Government, if occasionally in this House we could signal that good ideas can be celebrated and implemented by all sides, particularly when it is possible to improve such ideas on Committee Stage. We have had a lot of examples of this in recent years and indeed, the female genital mutilation legislation put forward by Senator Bacik in Private Member's time some years ago could have been implemented much faster had it been embraced by the then Government.

All people are equal but some are more equal than others. The heroes of society are many but with regard to this issue, one such hero is Senator David Norris, whose courageous move in the 1970s, culminating in his notable victory at the European Court of Human Rights in 1988, was the start of the process of stamping out discrimination in our society. That was welcome

and this legislation is another cog in that wheel. However, the wheel is very large and there will always be discrimination and the challenge of stamping it out.

If a person is employed as a teacher, his or her favourite football team has as much relevance as the fact that he or she is gay, lesbian, bisexual, transsexual, a member of Fianna Fáil or Fine Gael or whatever else. Having said that, it would seem at times in these Houses that being a member of Fianna Fáil is grounds for discrimination. In any event, this Bill is very positive in that regard and is to be welcomed.

As we move forward, there are other issues with which we must grapple, including the question of the enforcement of this legislation. That is key. I have no doubt that following the enactment of this legislation, following further refinement on Second Stage, the question of enforcement will prove difficult because people will decide, in a confidential and private way, that they would prefer to employ a person of type X or Y. That will happen on an ongoing basis. We need only look at the instances of discrimination against pregnant women and mothers, in particular, over the years to see how problematic enforcement can be. Often it is the detection of evidence of discrimination that is the problem, rather than the lack of anti-discrimination legislation. Following the enactment of this legislation, enforcement and providing protection for people will still be a challenge. The ultimate test will be whether we can come up with better detection methods and quicker enforcement mechanisms, rather than simply passing this legislation. It is only after the Bill is passed that the game really begins in terms of improving our society.

Some have argued that various churches suppressed good moves like this in the past, which may well be true, but as someone who is Christian and a Catholic, I am open-armed about the need for absolute equality and a policy of live and let live. People must be provided with the potential to be true to their traditions while allowing for full equality. Senator O’Keeffe has pointed out that we have white smoke in Rome, which I celebrate. As a Catholic person, I hope that the new Pope will recognise that the Catholic message is still one of the best in the world but needs to be brought out of the 1700s and into the 21st century. That would serve practising Catholics like myself well and would be of benefit to the church as a whole. It is unfounded and unnecessary fear within the establishment of various churches and other organisations that has led to discrimination and abuse and we must learn from that.

Once again, I commend my colleague, Senator Averil Power, for initiating this debate, as the Minister of State has acknowledged. I also commend Senator Bacik who, as a gifted legislator, has shown again today that we can make real progress in this House. I wish to seize this opportunity to impress on Senators from the Government parties the importance of them pointing out to their more senior colleagues the usefulness of this House and the fact that they should not be threatening to abolish it purely for electoral gain. Today’s debate and this legislation is a good example of the merits of retaining this House.

Senator Katherine Zappone: I welcome the Minister of State, who is a great advocate for equality, to the House. I also welcome other colleagues and friends in the Visitors Gallery, including several Deputies from the Labour Party. I thank Senator Bacik and her party colleagues for their work on this Bill. Their collective effort, along with the support of other Senators, especially Senator Averil Power, who has shown leadership, empathy and perseverance, sends out a strong message that we cannot rest easy until section 37(1) of the Employment Equality Act is amended so that our teachers and health personnel do not live in fear for being who they are and because of the lack of adequate legal protection with regard to their private lives.

I welcome this legislation in that context but the question we must ask, as we analyse this Bill, is whether it offers them adequate protection. Are we absolutely convinced that, with this proposed legislation, the shadows hanging over lesbian, gay, bisexual and transgender employees, divorcees or single parents will dissipate? Can the Bill melt the chill factor for Irish employees within religious-run institutions that their private lives and the expression of those lives both within and outside the workplace will no longer put their job, career path or financial security at risk? Can the Minister of State and her Government colleagues assure such people of this? As it stands, I do not think they can. I have read and reread the Bill and note the drafter's attempts to put new restrictions upon the religious institutions' right to protect their ethos. I have also sought legal opinion but my conclusion is that these new restrictions are still not enough.

In order to offer an absolute assurance to Irish employees working within religious institutions that deliver public services, I proposed that it would be more effective to delete the existing subsection 37(1)(b). Why is this the case? The institutions' right to protect its religious ethos is adequately protected already in Irish law. Religious ethos is protected by sections 16, 25, 37(1) and 37(2) of the Employment Equality Act and by a number of other laws. Section 37(1)(a) allows an institution, under certain conditions, to give preference to members of its own faith for a job, promotion or particular duties. Sections 37(2) and 25 permit all employers to treat people differently where there is a genuine and necessary occupational requirement. These sections, coupled with the duties arising from the person's individual employment contract, are an adequate safeguard to the religious ethos of the institution. Why then would the State continue to insist that we need one more safeguard in the existing section 37(1)(b)? Is it genuinely required to protect the constitutional provisions on freedom of religion? Furthermore, if we asked the religious institutions today if they need this additional section to protect their ethos, would they insist that they do or might they be willing to allow it to slip quietly into the sunset because things have changed so much since the 1990s? Has the State asked the religious institutions this question?

I also believe that the offensive subsection should be deleted because although the Supreme Court found it to be compatible with the Constitution, it is by no means clear that the Constitution, as interpreted by the courts, requires an exception of this nature. Does our Constitution require the additional protections of religious ethos found in section 37(1)(b)? The Constitution, as interpreted in 1996, might have allowed for an exception like this but by no means would the Constitution require it, and the court did not say that it was required.

With regard to the Bill, the drafters offer changes in how a religious institution protects its religious ethos, by providing additional protections to those who might be discriminated against in light of their identity. In section 37(1)(b) religious institutions can give preferential treatment to a prospective or actual employee on the religion ground where it is reasonable to do so in order to maintain the religious ethos of the institution. Subsection (i) says that in the use of preferential treatment, the institution cannot discriminate against an employee on "any of the other discriminatory grounds", such as sexual orientation, family status and so forth. It says that the religion or belief of the employee must be a genuine occupational requirement. This amendment seeks to clarify that preferential treatment cannot be used to smuggle in discrimination on another ground. This change in the law is a good one.

It is subsection (ii) that is problematic. Senator Power referred to this as well. This states that religious bodies are allowed to "take action" which is reasonably necessary to prevent an employee or prospective employee from undermining the organisation's ethos. This is too

broad, and employees would still have something to fear. While the action taken by the religious body against the employee must be proportionate, this amendment means that a lesbian pregnant through assisted reproductive technology or an unmarried mother living with her children could still be discriminated against. While it may now be harder to invoke a sanction against an employee on the basis of her or his identity, it is still possible. My real concern is that the protection of religious ethos can extend beyond the ground of religion into an employee's private life and is not confined to what she or he says or does in the workplace. If I were teaching in a Catholic school, for example, and I always wore my wedding ring, and if one day one of my students asked me what the ring was for and I answered that it is my wedding ring to another woman, does this proposed amendment protect me from being discriminated against? Could the school authorities still legitimately take action against me? Married lesbians go against the Catholic religious ethos. Does my presence inside or outside the school as a married lesbian undermine the ethos? Does the test of proportionality protect me sufficiently, or is it still a little like the policy of "don't ask; don't tell"?

The addition of the proportionality test does not offer enough protection in practice. Somebody's private life is still relevant to whether he or she is a good employee or not but, as others have indicated, perhaps these are matters we can discuss at another point.

Senator Sean D. Barrett: I welcome the Bill and thank Senators Bacik, Moran and Power for blazing the trail on this, as well as Deputies Ó Ríordáin, Lyons, Conway and Hannigan who are promoting it in the other House.

We are making progress in dismantling the apparatus of discrimination, not least in the North where the society seemed to be built on discrimination. The progress that has been made there is a model for all of us. A society without prejudice and discrimination is much more interesting, creative and developmental than one in which there are the barriers which we have tried to break down. One thinks of the County Mayo librarian case and the Fethard-on-Sea boycotts, and the New Ross school case was described earlier. The contrast with how we are progressing now could be seen last Sunday when I heard Senator Bacik preach at a Church of Ireland service on the virtues of atheism, and she was extremely well received. In fact, the dean pointed out how much the congregation and our visiting preacher had in common. That was wonderful. We can learn from each other and from the values about which she spoke. Senator Zappone will preach from the same pulpit next week in reparation for the damage caused by homophobia. That is a church community welcoming views of much greater diversity than were heard traditionally and getting away from the immense harm that was caused to people at all levels of society.

Respect for diversity and tolerance is also an ethos we would like to promote in this country, and I believe we are making progress. This morning, Deputy Tom Hayes's committee on communications and transport was discussing cyberbullying and the committee's report will be produced soon. One can take it that the committee will not be found lacking in dealing with the problem of homophobic bullying in society and particularly in schools.

This is legislation from which a new Ireland will emerge. Of course, one must pay tribute to our colleague, Senator Norris, for the immense work he did over so many decades. Society is enriched by embracing the gay, lesbian and transgender communities. We can only try to see if there was any rationale for discrimination against unmarried mothers. I do not know whom they were supposed to be threatening, but we did develop a very strange type of society, as the Taoiseach has said several times recently in the Dáil, with very strange prejudices underpinning

all sorts of conduct, which we now deplore.

I wish this Bill well. I will attentively study the amendments which Senator Zappone has mentioned, should she feel the need to table them to strengthen the Bill. However, this is a good day for the Seanad and for the liberalisation of Irish society in encompassing the richness of diversity. It will, we hope, make this country a better place in the future and will continue its recovery. A much more humane society in this country, both North and South, has much to commend it.

Senator Colm Burke: I welcome the Minister and this Bill. I thank Senators Bacik and Power for the work they have done in this area. Some people get frustrated at times with how long it takes to get legislation passed. I remember starting the campaign to abolish the status of illegitimacy back in 1980, which is before many of the people here this evening were born and even the Minister, Deputy Kathleen Lynch, would not remember that far back. I recall organising and being involved in that campaign, including collecting signatures on the street. In that case the child of parents who were not married did not have any rights to the father's estate. We believed it would take us ten years to change the law in that area, but we got it through in seven years. It still took seven years, so the fact that Senator Power and Senator Bacik have got to this Stage and have put the legislation on the books for the Government to deal with in a period of 18 months is an achievement. I hope it will not be long before this legislation is enacted.

It is a welcome Bill. It is about balance. My colleague referred to speech by the Minister for Justice and Equality, Deputy Shatter, on the last occasion. It is interesting to refer back to that speech and look at a quote from the court on that matter. The Minister referred to the McGrath and O Ruairc case in 1979 and quoted Judge Henchy who said:

Far from eschewing the internal disabilities and discriminations which flow from the tenets of a particular religion, the State must on occasion recognise and buttress them. For such disabilities and discrimination do not derive from the State; it cannot be said that it is the State that imposed or made them; they are part of the texture and essence of the particular religion; so the State, in order to comply with the spirit and purpose inherent in this constitutional guarantee, may justifiably lend its weight to what may be thought to be disabilities and discriminations deriving from within a particular religion.

That was the thinking in the courts in 1979. We have moved a long way from that, but we must also bring people with us in bringing about change.

This legislation is about bringing people with us. I agree with the Minister of State and I know people involved in this process may be disappointed that the Minister for Justice and Equality and the Minister for Education and Skills are anxious that the new authority, the Irish human rights and equality commission, should be involved in moving this forward. Public consultation is important in bringing people along and having them accept the necessary change. The changes set out in the Bill are necessary and important but it is also important for people to come with us in making that change, accepting that we have moved on as a society and that this is for the betterment of everybody.

The State has a compelling human rights interest in eradicating discrimination based on social prejudice, which is what this Bill does. We must move forward and give the necessary guarantees which do not yet exist. I thank Senator Bacik for bringing forward this legislation and I thank the people who have worked with her on the Bill. I thank the Minister of State for

her contribution today. She has gone back 17 years in raising these issues.

It is time for change and the Bill is setting out the required changes, while at the same time providing balance, which is also important. I support the Bill and I hope it will not be too long before we go to the next Stage and deliver it to the Dáil and then to the President for signature. All the contributors have made very constructive comments and I am fully supportive of this piece of legislation.

Senator Trevor Ó Clochartaigh: Cuirim céad fáilte roimh an Aire Stáit agus ba mhaith liom fáilte an-mhór a chur roimh an mBille iontach tábhachtach seo agus comhghairdeachas a dhéanamh le duine ar bith a raibh baint nó pairt acu, ní hamháin leis an mBille ach leis an bhfeachtas a chuaigh roimhe, nó a chuir leis an ndíospóireacht seo ar bhealach ar bith.

In a previous life I was a television producer and director, and I worked on the soap “Ros na Rún” in the opening days. One of the best publicity experiences we had came when we introduced to the show a gay couple called Tom and Jack, who had the first gay kiss on an Irish soap. A local principal told all the children at the school to stop watching that smut on TG4, which was Teilifís na Gaeilge at the time, and our ratings went through the roof. I am very proud of the time we spent on “Ros na Rún” as we did much work on having the gay couple of Tom and Jack as a normal couple within a soap scenario, which did not always have to go on about gay issues. They were a normal couple and their inclusion was a significant step forward for Irish television. I am very proud of my involvement in that.

This Bill is very important and on behalf of the Sinn Féin Seanad team, I commend Senators Bacik and Moran for bringing it forward, as well as all the Deputies in the Labour Party who were involved in its development. I recognise the role of Senator Power in pioneering this area. My party colleague, Deputy Jonathan O’Brien, brought forward a similar Bill in the Dáil. I also recognise the work done by individuals and organisations for many years in trying to get this type of Bill brought forward. I am happy to say the Bill has Sinn Féin’s full and enthusiastic support.

It is a testament to how much Irish society has changed that Senators are queuing up to out-do each other in publishing anti-discrimination Bills. That is good, and long may it be that all political parties, whether in the Government or in the Opposition, see it as a duty to change the law to ensure that no person is denied any aspect of rights because of race, class, colour, creed, gender or sexual orientation. Sinn Féin is a party with a profound belief in the importance of equality, not only in opportunity but in condition. I echo the comments of Senator Barrett about how much has been done in the Six Counties with regard to equality, with this type of legislation being introduced there for many years. The right to work and secure employment free from discrimination is fundamental to equality of condition because without work one is left without the financial means to vindicate so many other rights.

Speaking specifically to Senator Bacik’s Bill, I echo the Labour leader’s comments on the need to remove those aspects of section 37 of the Employment Act 1988 that facilitate discrimination, particularly against lesbian, gay, bisexual and transgendered, LGBT, people in working in religious-run institutions such as schools and hospitals. The Senator is right that the existing legislation allows for discrimination against members of the LGBT community and against lone parents or others on the spurious grounds that the employers want to protect the religious ethos of the schools. The days for this kind of discrimination are over and this Bill must become law.

Senator Sean D. Barrett: Hear, hear.

Senator Trevor Ó Clochartaigh: I am also very pleased to see the Minister of the State in the Chamber today and I hope that this is an indication that the passing of the Bill before us today will be speedily followed by its passage through the Dail and its passing into law.

The Bill introduced by Deputy O'Brien three weeks ago not only sets out to end the possibility of discrimination by amending Section 37 of the Employment Equality Act and it updates and extends the general definition of discrimination to include gender identity, as defined under the Yogyakarta principles that have been applied under international human rights law to address human rights abuses of people who are lesbian, gay, bisexual, or transgender, LGBT. In considering how best to amend the Employment Equality Act, the definition relating to LGBT contained in the Bill introduced by Sinn Féin should be given serious consideration. It is incumbent on the Government to address section 37, a clause that has reinforced fears of discrimination against LGBT workers in religious-run institutions, particularly those employed in schools and hospitals. Its retention on the Statute Book makes it even more difficult for employees to be open about their sexuality and this is reflected in research published jointly by the Equality Authority and the Equality Commission for Northern Ireland in 2007, which found the fear associated with section 37(1) has a significant negative impact on lesbian, gay and bisexual teachers.

The presence of this provision effectively forces teachers either to avoid seeking employment in given sectors or to take up employment in conditions where they are compelled to conceal their sexuality. Removing this provision will help to create a culture in schools in which homophobic bullying of teachers and students is no longer tolerated and if we are serious about combating homophobic bullying then we need address section 37 and ensure no loophole remains in existing legislation that will allow discrimination in any shape or form.

The legislation is important but the culture we have in this country that has brought about the need for this legislation must also be tackled. There was a demonstration today outside the gates of Leinster House by members of the Travelling community because of the sense of discrimination they feel. I commend those outside for the demonstration. We have also noted on a number of occasions the need for us as a Legislature to consider the possibility of equality-proofing legislation, and we should return to that issue. That would mean every piece of legislation coming through these Houses could be equality-proofed.

It is timely for us to have this debate as the white smoke has risen above the Sistine Chapel. As a practising Catholic, I hope the new Pope will bring forward a sense of more inclusiveness and openness in many areas of practice in the Catholic Church. Many Members of these Houses purport to speak on behalf of Catholics in Ireland but in many cases they speak on behalf of a minority of Catholics in Ireland who have a relatively fundamentalist approach. They do not speak on behalf of me as a Catholic, and I hope the new Pope will bring that sense of openness and inclusiveness not just for the LGBT community but for people whose marriage has broken down irreparably, lone parents, etc. That would be a much more Christian way of dealing with matters, and if Jesus Christ was walking the land today, it would be his approach rather than that put forward by some of the fundamentalist stances we hear in these Houses from time to time.

Ba mhaith liom comhghairdeachas a dhéanamh leis na Seanadóirí as ucht an mBille seo a thabhairt chun cinn. Tá sé iontach tábhachtach. Tá súil agam go dtógfar ar bord cuid des na smaointí a bhí luaite ag mo chomhghleacaí an Teachta Jonathan O'Brien agus ba mhaith liom

tréaslú leis na heagraíochtaí atá anseo, go háirid ó thaobh an obair iontach atá siad ag déanamh ar feadh an ama ó thaobh na cúiseanna seo a thabhairt chun cinn. Ba mhaith liom ár dtacaíocht don mBille a léiriú.

7 o'clock

Senator Susan O’Keeffe: I am proud to be present with my Labour Party colleagues to support this Bill. We often thank people as a tradition of the House but this is a day to say “Thank you” to many people. I thank the Minister for Education and Skills for his efforts and his support in this area and Neil Ward in his office for helping to draft the legislation. I also thank Senators Bacik and Moran for leading the debate on our behalf and to my Labour Party colleagues in the other House for coming together to bring this Bill before us. I thank the Minister of State for her efforts 17 years ago and in the interim and her promise of white smoke whereby the Bill will not only be accepted in spirit but will become a Government Bill. I hope we can look forward to Committee Stage sooner rather than later. I would finally like to thank those in the Visitors Gallery, the groups they represent and the many people who have expressed concern about these difficulties for such a long time and who were voices by themselves, very often taking unpopular stands, for persevering and for being with us this evening.

When we legislate, we show we are leading because we are laying down a marker for the kind of society we want and I hope we can keep building and changing. We cannot, as a Legislature, stamp out discrimination but we can show that this is what we want and that we are here saying discrimination is not something we support anymore. The notion that workers, particularly teachers and those working in hospitals, who are different from their colleagues are not equal is clearly something we do not want in this society. We are leading today. To those who often say as they sit in bars or in taxis that nothing has changed in Ireland and the Government has not done anything in office, I have pointed out several times in the House over the past year that we are changing and we are recognising issues and moving on them. We are beginning to grow up and we are saying we will not accept discrimination anymore. At one time, female civil servants gave up their jobs when they married while other women were locked up for having children who were then taken from them because they were not married. We have experienced this discrimination but we have moved on and we are moving on again this evening.

I am delighted other Members have said provisions in the legislation should be debated on Committee Stage and the Bill needs to be strengthened in some regards. I share a number of the concerns eloquently raised by Senator Zappone but this is a good day because we are marking the start of that process. Others referred to the chilling effect but we are beginning to feel the warmth and to understand that, together, we can address that and take away the coldness that has been there. I thank Senator Power for her work last year and I am delighted that she has contributed to the debate and will continue to do so because it is an issue she holds dear. In memory of Eileen Flynn and all the others who were never named, we are here to change and I look forward to further debate on this legislation on Committee Stage.

Senator Ivana Bacik: I thank all Senators for their kind works and for the unanimous support expressed for this Bill. I also thank Senator Moran for seconding it so eloquently and my other Labour Party colleague, Senator O’Keeffe, for her eloquent words. I thank Senator Barrett for outing me as an atheist preacher. That was a one off event in the Trinity College chapel.

I would particularly like to thank the Minister of State for expressing Government acceptance for the Bill. I am delighted the Government will take this forward as a Government Bill,

which is a great result for the Labour Party group in the Seanad and for the Seanad as an institution. It is appropriate that Deputy Kathleen Lynch is the Minister to express that given her strong record on this issue. It shows the value of the Seanad and the potential for all of us as legislators. I am proud that this is the third Bill I have had the privilege of introducing that has been adopted as a Government Bill by two different Governments and I am glad that has happened. As the Minister of State reiterated, there is a need to maintain momentum on this. We do not want the Bill to disappear into a vacuum and we do not want unnecessary delays. It is a year since Senator Power introduced her Bill and I pay tribute to her for keeping the issue alive. While I accept the need to take the advice of the Attorney General and to have some consultation, it is not unreasonable that we would move to Committee Stage before the summer recess.

Senator Susan O’Keeffe: Hear, hear.

Senator Ivana Bacik: That would be a good way of moving on and it would not be unduly rushed. There were critiques of aspects of the Bill despite the overall welcome, particularly from Senator Zappone. There is a constraint not only in domestic law but also under EU Framework Directive 78/2000. Article 4 of the directive places constraints on how we can move forward on this, particularly the reference to ensuring “national practice as existing as the date of adoption of the directive”. However, we were perhaps over-cautious in the drafting of the Bill, particularly section 37(1), which refers to action taken to prevent undermining of the ethos. I am happy with the overall structure, as we have included all nine grounds, we have made the distinction for State funded institutions, which is fair and reasonable, and we have taken a balanced approach to the issue of favourable treatment on the grounds of religious ethos. However, in section 37(1)(b)(ii) it would be better to include a specific reference such that the action of the type referred to should not constitute discrimination on any of the other grounds. That might be a way of addressing the issues raised by Senator Zappone while staying within the terms of the directive and ensuring balance. I welcome a debate and the views of the Minister and the Attorney General on that.

The Bill can be improved, strengthened and made more robust. It is in keeping with the Labour Party’s commitment in government to make progress on discrimination, particularly against LGBT people. The Minister for Education and Skills action plan on bullying was referred to by a number of Members. It is the first time the Department has funded a campaign to raise awareness of homophobic and transphobic bullying. The Minister for Social Protection is also working on the commitment in the programme for Government to legal recognition and extension of protection of transgender people, an issue raised by Senator Ó Clochartaigh and others. Next month, the Constitutional Convention, of which I am proud to be a member, will discuss the issue of marriage equality, which the Tánaiste has described as the civil rights issue of our generation. There are a number of other fronts, therefore, on which equality issues are being progressed.

This is an important part of that jigsaw. The Bill can be improved but it is key that it passes Second Stage to keep the momentum up and to ensure we can move forward swiftly to secure its passage. I again thank all those who contributed for their support. I also thank the following: the Minister for Education and Skills, whose support for the Bill has been immense; Neil Ward in his office, who input has been tremendous; the Deputies who worked with me on it, particularly Deputy Aodhán Ó Ríordáin who was present for most of the debate; and the Labour Party group who introduced the Bill in the House.

I finally thank those in the Visitors Gallery who stayed for the debate. It is important for

13 March 2013

us that people follow our proceedings. I acknowledge many people are watching online but it is particularly important to have people in the Chamber who have worked for so long to improve the protection of equality, the position of those in the LGBT community and to conduct a campaign against discrimination generally. There has been a great deal of discussion, on the evening white smoke has risen, of religious dominance, particularly in our school system and generally in the history of the State in the provision of social services. The legislation is one small way in which to tackle this undue dominance and to ensure better protection for the rights of individuals as opposed to religious institutions. For too long, the rights of these institutions have prevailed to the terrible detriment of many individuals, particularly women and children, over many generations in this country. It is time we tackled that and the Bill will tackle the issue in a small way. I welcome the fact it has cross party support and that it will move forward as a Government Bill without delay. We will continue to press the Government on both sides of the House to ensure it becomes law quickly.

Acting Chairman (Senator Terry Brennan): I am honoured to be Chairman here on such a momentous occasion to congratulate everyone, chun comhghairdeachas a dhéanamh le gach duine a labhair. The Minister of State has great patience.

Question put and agreed to.

Acting Chairman (Senator Terry Brennan): When is it proposed to take Committee Stage?

Senator Ivana Bacik: Next Tuesday.

Acting Chairman (Senator Terry Brennan): When is it proposed to sit again?

Senator Ivana Bacik: Tomorrow at 10.30 a.m.

Adjournment Matters

Health Service Staffing

Senator Colm Burke: The matter I wish to raise is a new agreement I discovered by accident which has been reached between the HSE and the universities in Pakistan. There is a need to bring the information into the public domain as we got no indication that this was happening. I raise the issue given that more than 200 people were brought in here in 2011 from India and Pakistan under the supervised division created for medical practice. We gave them two-year contracts either from July 2011 to June 2013 or from December-January 2011-12 up to 2014. Those two-year contracts will begin to expire at the end of June 2013. As I understand it, they will not be offered new posts.

I gave the example at the Joint Committee on Health and Children that of the six registrars in anaesthetics, five are employed by the HSE and the sixth is employed by an agency and has refused to take a post as a locum, in the knowledge that nobody else is prepared to accept the post as a locum. Therefore, the HSE is paying substantial money to employ through an agency. There are two senior house officers, SHOs, under the supervised division. I understand that when their two-year contract expires they cannot apply for the post of registrar, even though the

people in the hospital have informed me they are suitably qualified. I am concerned at the lack of joined-up thinking in the HSE and the Department on the issue given that up to 250 people who have had the experience of working here for two years will be sent home.

I am concerned at the lack of consultation with the medical colleges and the HSE, in particular the Royal College of Surgeons and University of Limerick. The University of Limerick has many people from Canada who spend four years here doing their medical degree. They get the experience of working in Irish hospitals during the course of those four years and we are not prepared to offer them intern posts. Likewise, I understand the Royal College of Surgeons is not offering intern posts, although the students have been in the education process in Ireland for five years and have the experience of being students in Irish hospitals and are familiar with the way the system works. The HSE and the Department are not talking to those two institutions yet they are prepared to travel to Pakistan and employ people on two-year contracts. I seek clarification on the issue.

I put down a specific question to the HSE six months ago seeking the number of junior doctors who are on six-month contracts, the number on 12-month contracts, the number on two-year contracts and the number on three-year contracts and I cannot get that information. We need to look at this whole area which will be a disaster from June onwards unless the issue is tackled in a planned way. I am not convinced by the answers I got at the Joint Committee on Health and Children on Tuesday, 5 March 2013. I am concerned from the Department and the HSE points of view that we are not dealing with the issue in a proper manner.

Minister of State at the Department of Health (Deputy Kathleen Lynch): I am taking this Adjournment matter on behalf of the Minister for Health, Deputy James Reilly.

I thank the Senator for raising this important issue. A memorandum of understanding for a pilot exchange programme between the HSE and the College of Physicians and Surgeons of Pakistan was signed in November 2011. The programme is due to commence in July this year. Doctors who are currently enrolled in CPSP's postgraduate training programmes will spend two years gaining experience and training in Ireland. Participants will have their time accredited for training purposes by the CPSP and this will contribute to their career progression on return to Pakistan. This programme fulfils Ireland's obligations under the WHO Global Code for the Recruitment of Healthcare Workers. It will enable the up-skilling of doctors from Pakistan to the benefit of the health service there. The Senator has also raised non-consultant hospital doctors' employment contracts. There are approximately 4,900 NCHDs employed at any one time. Some 80% of these are training posts and the remainder are non-training or service posts. The duration of the contract held by an individual doctor is determined by factors which include the nature of training or service arrangements and whether the post involves rotation between sites.

I acknowledge that NCHDs fulfil a very important role in providing front-line care and wish to express my appreciation and that of the Minister for Health for the commitment and dedication of these doctors. However, for the most part these are doctors in training and we must ensure an appropriate balance between the provision of care by hospital consultants and NCHDs. It is important to state also that the issue of NCHDs' working-hours is one which the Minister is taking very seriously and plans are in hand to achieve substantial reductions in the number of hours these doctors must work. Entry to postgraduate training and continued participation in a multi-annual training scheme is determined by postgraduate training bodies. While an NCHD may have secured a place on a multi-annual scheme, the length of time that a doctor works in a particular site as part of that scheme may vary and he or she may choose to move between

13 March 2013

a range of different employers in the course of training. The contracts for training posts vary from a one-year contract for an intern to a contract of four to six years for a senior-specialist registrar. Senior house officers who participate in structured two or three-year training schemes may hold consecutive six-month or annual contracts, depending on whether they move location or change employer.

For a number of reasons, largely historical, the HSE operates several payrolls. Where an NCHD moves from one HSE payroll area to another or from the HSE to a voluntary provider, he or she must enter into a new employment contract. I accept that this is not ideal. The move to a shared services model in the coming years should address this issue and enable accurate data to be provided on the number of doctors who hold two-year contracts. I would like again to place on record the Government's appreciation of the major contribution which NCHDs make to the delivery of front-line care and our commitment to the achievement of compliance with the European working time directive by 2014.

Senator Colm Burke: I very much appreciate the reply. It is specifically the Minister, Deputy Reilly's, area. I am still at a loss as to how we can offer two-year contracts to persons outside this country and we cannot get information about what two-year contracts are in existence with Irish graduates. I am at a loss as to how we can offer two-year contracts in this way when we cannot do the same with junior doctors.

On the 80% who are on training courses, I accept they are on training programmes but their contracts are still only six-months or 12-month contracts where it is not structured. They are on training programmes under the various different training colleges, but it is not structured. The specialist registrar programme is structured, but for those who are SHOs it is not structured. This is the reason we will lose a significant number of junior doctors over the next 12 months to two years. We must change the system.

We now face a situation where there is an added problem in that the number of those applying for consultant posts in Ireland has dropped, from an average of eight applicants per job to an average of two applicants per job, and this is a contributing factor. I ask that the Department would deal with this as a priority. I do not accept the answers being given to us by the HSE.

Deputy Kathleen Lynch: The course on which the Minister is set is about changing the system. It is a big unwieldy system and it will take time to change.

On the information Senator Colm Burke is seeking, it is estimated there are on six-month contracts, approximately 2,000 senior house officers and registrars and some specialist registrars; on one-year contracts, 570 interns, approximately 300 senior house officers and registrars, and approximately 900 specialist registrars; on two-year contracts, some specialist registrars, 230 senior house officers and registrars on supervised divisions; on four-year contracts, 156 GP registrars; and on contracts of indefinite duration, approximately 600. As the Senator can see, it is an incredible amount of staff. I agree it is not ideal. The gaps, in terms of employment and delivery, are a significant issue for us and something about which we need far more certainty.

Senator Colm Burke: I thank the Minister of State.

Youth Services

Senator Trevor Ó Clochartaigh: Gabhaim buíochas leis an Aire Stáit as ucht fanacht le haghaidh na ceiste seo.

I raise an issue on behalf of Youth Work Ireland in Galway. The voluntary board of Youth Work Ireland Galway met on Wednesday, 27 February, and the directors were deeply shocked that the allocations from the Department of Children and Youth Affairs were being cut retrospectively by 10% to 1 January 2013. They had based their budgets on a 6.5% cut. Maintaining service provision on a cut of 6.5%, it was already proving difficult for them to implement without funding raising, but the direct result was having a compounded effect.

In addition, they also want to find out the rationale for removing the administration of their funding from Youth Work Ireland national office to a local Dublin VEC organisation, the City of Dublin Youth Service Board. This, according to them, is the same organisation responsible for administering student grants through SUSI - we know what SUSI has got up to over the past couple of months. Throughout most of 2012, they were led to believe that if a transfer from Youth Work Ireland were to happen it would be to the local VEC, the Galway city or county VEC.

The impact of the 10% cut in funding in Youth Work Ireland Galway will be at least one addition to the dole queue, according to themselves. While one more unemployed person may not seem significant, the loss to the service would be the removal of supports to 12 voluntary youth clubs, 153 youth leaders, 464 young people as well as the only child protection awareness trainer in Youth Work Ireland Galway. The provision of youth club supports is core to the service Youth Work Ireland Galway gives and the Minister of State can imagine how strongly the board feels that it is no longer in a position to deliver this service. In addition, given the abolition of the redundancy rebate on 1 January 2013, it is a significant cost to a charitable organisation such as this. The Minister of State will understand their sense of frustration.

I note that, apparently, the cut of 10% had been known previously but it was not communicated to Youth Work Ireland Galway by the City of Dublin Youth Service Board. They want to know why this was not communicated previously. If, for example, the funding mechanism had transferred to a local VEC, the method of making cuts might have been quite different and might have been made in a manner more suitable to the type of work done by this important organisation.

Youth Work Ireland Galway is a voluntary organisation that works with young people in Galway city and county and has done so since the 1970s. It grew out of the youth club movement. We just had a debate on LGBT rights and I note that one of the organisations that Youth Work Ireland Galway supports is the shOUT! LGBT youth group. It also supports many other important youth groups.

It is a most important question. My party would like to see continued support for these youth groups. We would be concerned, not only that this cut been brought in a retrospective manner which makes it difficult for such organisations to budget but that there are also threats that perhaps more cuts are coming down the line. Perhaps the Minister of State can allay our fears here tonight and explain why this change has happened in such a manner.

Deputy Kathleen Lynch: I am taking the debate on behalf of the Minister for Children and Youth Affairs, Deputy Fitzgerald, and I thank the Senator for raising it.

We are conscious of the considerable benefits that can accrue to young people from in-

volvement in youth work, and the benefits for society as a whole. Youth projects and youth organisations present valuable opportunities for the social and personal development of young people. In 2013, the Department of Children and Youth Affairs will provide some €53.2 million to support the delivery of a range of youth work programmes and youth services, delivered to some 400,000 young people by over 1,400 youth work personnel, who, in turn, support a large volunteer base of 40,000. The focus of this financial support in 2013, as in previous years, is on the consolidation of existing youth work provision and on the safeguarding in so far as possible of front-line programmes and services, including those provided to young people in disadvantaged communities.

The comprehensive review of expenditure, CRE, published in December 2011, set out the savings required from the Department of Children and Youth Affairs in each of 2012, 2013 and 2014. The CRE contains a detailed seven-page chapter outlining savings required from youth work funding. The CRE clearly indicated a 10% saving requirement in 2013, with a lesser saving in 2014. Notwithstanding these savings, I understand that funding of €129,481 is being allocated to Youth Work Ireland projects in Tuam, Loughrea and east Galway in 2013 under the special projects for youth scheme with a further €49,001 being provided for the Youth Information Centre in Ballinasloe.

The Department of Children and Youth Affairs has been examining the scope for improving administrative arrangements for the financial management of the funding for projects to achieve greater efficiency and standardisation. This includes, from this year, affording grant-administering bodies the flexibility to manage and reallocate funding across the various existing separate funding streams so as to better manage savings locally and to facilitate youth service providers to refocus provision to ensure it meets local needs.

In addition, the Department has sought to rationalise the number of grant-administering bodies. As part of this, the City of Dublin Youth Service Board, CDYSB, was appointed to carry out financial management tasks related to the administering of allocated funding for a number of projects whose funding has previously been administered directly by six national organisations, including Youth Work Ireland.

It should also be noted that under the comprehensive review of expenditure, there has been no cut to the funding being provided to support local voluntary youth clubs. This modest funding, in excess of €1 million, plays an important role in supporting volunteer-led youth groups and in promoting and leveraging valuable voluntary activity in youth work. With respect to future funding provision, the Department of Children and Youth Affairs has commenced a formal and comprehensive value for money review of youth funding and this is expected to report later this year. In addition, the Minister, Deputy Fitzgerald, yesterday announced the opening of applications for a new €1 million youth cafe funding scheme. This follows on from funding of €500,000 which was provided in 2012 for the development of a number of youth cafes which had applied for previous youth cafe funding schemes.

Senator Trevor Ó Clochartaigh: In the correspondence I received, Youth Work Ireland Galway disputes the figure of a 10% cut indicated in the comprehensive review of expenditure. Youth Work Ireland Galway stated it had worked out the figure was 6.5% figure. It was stated that discretion is given to the City of Dublin Youth Service Board, which allocates the funding, but it has chosen to apply a 10% cut across the board, which may not be the best for the Galway-based organisation. I ask the Minister of State to bring back to the Minister that there should be some form of consultation with the Galway organisation to see whether the cuts can

be implemented in another way which would not put the job or services in jeopardy.

Deputy Kathleen Lynch: Sometimes what happens - the Senator probably realises this himself - and I find it particularly with regard to disability services, is that somehow or other organisations come to a notional view themselves what a cut will be. It seems very obvious to me that the background information clearly states a flat 10% saving requirement would be applied across all funding lines in 2013. The comprehensive review of expenditure nowhere references a 6.5% saving. As the Senator correctly pointed out, in 2012 savings of either 5% or 10% were required from various schemes. This would subsequently average out at 6.5% and perhaps this is from where the misinformation came. This can sometimes happen. I will most definitely bring the Senator's remarks to the Minister.

The Seanad adjourned at 7.30 p.m. until 10.30 a.m. on Thursday, 14 March 2013.