



DÍOSPÓIREACHTAÍ PARLAIMINTE  
PARLIAMENTARY DEBATES

**SEANAD ÉIREANN**

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

Business of Seanad . . . . .	156
Commencement Matters . . . . .	157
Constituency Boundaries . . . . .	157
Ambulance Service Provision . . . . .	160
Judicial Council . . . . .	163
Order of Business . . . . .	166
Flood Risk Management: Statements . . . . .	176
Heritage Bill 2016: Order for Second Stage . . . . .	203
Heritage Bill 2016: Second Stage . . . . .	204
Competition (Amendment) Bill 2016: Order for Second Stage . . . . .	223
Competition (Amendment) Bill 2016: Second Stage . . . . .	223

## SEANAD ÉIREANN

*Dé Céadaoin, 20 Eanáir 2016*

*Wednesday, 20 January 2016*

Chuaigh an Cathaoirleach i gceannas ar 10.30 a.m.

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*Machnamh agus Paidir.  
Reflection and Prayer.*

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### **Business of Seanad**

**An Cathaoirleach:** I have received notice from Senator Terry Leyden that, on the motion for the Commencement of the House today, he intends to raise the following matter:

The need for the Minister for the Environment, Community and Local Government to discuss the Government's proposal to partition County Roscommon and dispose of the boundary review commission.

I have also received notice from Senator John Whelan of the following matter:

The need for the Minister for Health to outline his plans to provide sufficient staffing and resources for the safe and effective operation of the National Ambulance Service, with particular reference to the ambulance base at the Midland Regional Hospital, Portlaoise.

I have also received notice from Senator Jim Walsh of the following matter:

The need for the Minister for Justice and Equality to make a statement on the reasons the judicial council has not yet been established and, in the absence of the judicial council, to outline the safeguards she has put in place to avoid bank creditors being brought to court where the Bangalore Principles may not have been complied with.

I have also received notice from Senator Lorraine Higgins of the following matter:

The need for the Minister for Transport, Tourism and Sport to intervene with Fáilte Ireland to ensure Woodford, County Galway is reinstated on the signage for the Lough Derg lakelands drive.

I regard the matters raised by Senators Terry Leyden, John Whelan and Jim Walsh as suitable for discussion and they will be taken now. I regret that I have had to rule out of order the matter raised by Senator Lorraine Higgins on the grounds that the Minister has no official responsibility in the matter.

20 January 2016

## Commencement Matters

### Constituency Boundaries

**An Cathaoirleach:** I welcome the Minister of State, Deputy Kathleen Lynch.

**Senator Terry Leyden:** I thank the Cathaoirleach for allowing this Commencement matter to be taken today. I welcome the Minister of State.

The situation for the people of County Roscommon is very grave and serious. A three-person commission, under the chairmanship of Mr. Jack Keyes, has been established to review the boundaries of County Roscommon for the purposes of a possible amalgamation with County Westmeath. The commission is based in the civic offices in Mullingar. It may be an indication of a certain bias that the boundary review secretary is based on Mount Street.

A serious campaign has been established. Last week 1,600 people attended a meeting in South Roscommon, chaired by Councillor Tony Ward and attended by other councillors, including Paddy Kilduff, John Naughten, John Keogh, Ivan Connaghton and Lawrence Fallon, the councillors elected for the south Roscommon area and the municipal area of Athlone, which is in County Roscommon.

I compliment the Save Roscommon campaign on its work in opposing the proposals of the boundary commission and the councillors who are very much involved in the campaign, not only in south Roscommon but also throughout the county of Roscommon. All 18 councillors are unanimous in their opposition to the proposal being made. It is important that the Government get a clear message that the people of County Roscommon will not permit the annexation of part of the county. It is important that all public representatives, especially those running in the general election, are unequivocal in their opposition to this land grab. The Fianna Fáil candidate, Councillor Eugene Murphy, has made his support for the Save Roscommon campaign quite clear.

What is the rationale for the boundary commission? Who initiated it? Why was it initiated? At whose request was it initiated? The panel consists of three not particularly wise men from the east; it does not even have the gender balance required for electoral purposes.

Will the Minister of State quantify the loss of income or potential income to Roscommon County Council of this proposal? Has she considered the additional investment required in Roscommon if the proposal goes ahead such as building new area offices and all of the other requirements? The Connacht side of Athlone was annexed years ago, in the early part of the last century. If any amalgamation is to take place, the more logical step would be that the area of Athlone west of the River Shannon in Connaught, where the diocese of Elphin reaches the edge of the bridge in Athlone, would be a natural boundary with the new area of Monksland and give it a stronger identity.

Whatever happens, we are where we are. We would be satisfied if we were to retain what we have. Monksland has been prioritised by Roscommon County Council for investment. In 1975 Don Panoz brought the Élan Corporation, now trading as Alkermes Pharma Ireland limited, to the area. In the 40 years since a vast tract of land has been transformed and investment has taken place in industrial infrastructure, roads, paths and social housing in the

south Roscommon area. There is also a primary care centre. The area has been developed for industry and has attracted Jazz Pharmaceuticals. It has ready access to the motorway. County Roscommon is a gateway for job creation.

We are making this case and I know that the Minister of State is acting for the Minister for the Environment, Heritage and Local Government, Deputy Alan Kelly, today. I propose that the boundary commission be disbanded and we develop the county as it is. In the 1920s the country was divided into two areas, one comprising 26 counties and the other six. Can the Minister of State who is from Cork imagine how I, as somebody born and bred in County Roscommon, feel about the idea that a large portion of the county be transferred to another, thereby depriving the people of County Roscommon of their identity?

It is a very serious issue. I appeal to the Minister of State and the Government to transfer the matter elsewhere. The decision will not be made until March, which is, of course, very convenient because the general election will be over. Whoever comes in to the Office of the Minister for the Environment, Community and Local Government, I am making the appeal in this House. I put it genuinely and seriously that the people of County Roscommon are united 100% in their opposition to the possible proposal to annex an area of the county into another. I hope the Minister of State will convey this message to the Minister for the Environment, Community and Local Government and the Taoiseach. The message is: "Hands off Roscommon."

**Minister of State at the Department of Health (Deputy Kathleen Lynch):** I thank the Senator for raising the issue. As he will probably know, we are going through the same process in Cork, but it is within one county as opposed to two. There are views on either side of that question also. The Senator should know that it is not only County Roscommon where this applies. As he rightly pointed out, I am taking the matter on behalf of my colleague, the Minister for the Environment, Community and Local Government, Deputy Alan Kelly, who is keen for me to update the House on the matter. As Members are aware, he announced the establishment of statutory committees to review local government boundaries in Athlone, Carlow, Drogheda and Waterford on 19 June last. In the case of Athlone, the committee has been asked to carry out a review of the boundary between County Westmeath and County Roscommon and make recommendations with respect to that boundary which it considers to be necessary in the interests of effective local government.

The main rationale for undertaking the review of boundaries in Athlone is that the 2011 census showed a significant Athlone environs population in County Roscommon. The question that arises is the proportional relationship between administrative jurisdictions and the current settlement and development position. I imagine the Senator is well aware of all these arguments. Bringing an entire town or city within a single local authority area can eliminate or prevent anomalies and distortions of divided administration, service provision, regulatory and enforcement responsibility and electoral representation. Potential problems can also include differing policies and practices between authorities in respect of matters such as planning, rating and other changes that can impact negatively on town centres. Possible differences in standards of service delivery can also be avoided. Consolidation of administrative responsibility can also strengthen the economic performance of a town by ensuring a single authority working on its behalf.

Athlone is now an important economic hub for a wide hinterland and has the potential to act as a major economic growth and employment centre at the heart of the country. That can benefit the people of all the surrounding counties, irrespective of what side of an administrative

boundary they reside. The Athlone boundary committee has been established under section 28 of the Local Government Act 1991 and, in accordance with section 28(3), it is independent in the performance of its functions. While it would be inappropriate, therefore, for me to comment on the substantive matter under examination, I take the opportunity to address some misconceptions that have been reported recently on this issue.

First, neither the Government, as the wording of the Commencement matter seems to suggest, nor the Minister is proposing that the boundary be changed. The task of examining and analysing the issue has been entrusted to the independent boundary committee and it is that group which will consider and report on the matter. At that stage, it will be open to the Minister of the day to suggest the alteration of a boundary by order, having regard to the report in question. In this context, it is clear the matter will not be decided finally by the Minister for the Environment, Community and Local Government but by the Oireachtas. In accordance with the 1991 Act, a draft of any order made by the Minister providing for a boundary alteration must be laid before each House of the Oireachtas. The order cannot be made until a resolution approving the draft has been passed by each House. This would normally follow a submission to the Government and be unlikely to arise unless the independent statutory committee proposed a boundary alteration. The Members in this House, as well as their colleagues in Dáil Éireann, will, therefore, have an opportunity to examine any draft order that might come before them and it will not proceed unless approved by a positive resolution of both Houses. Moreover, any boundary alteration proposal would apply purely to the local government administrative jurisdiction. Contrary to an impression that has been given by a degree of publicity, a boundary alteration, were it to take place, would have no effect whatsoever on sporting affiliations, such as, for example, how GAA clubs are organised. There are notable examples in the North and the South of where GAA club affiliations depart from local government boundaries and where clubs located in one county compete in a neighbouring county.

The establishment of independent statutory committees to review local government boundaries in counties Westmeath and Roscommon and elsewhere is a natural development, building on the measures announced in the action plan for effective local government in 2012 and subsequently provided for in the Local Government Reform Act 2014. I hope this is of some benefit to the Senator.

Feedback thus far suggests the revised structures and measures implemented by this Government are generally operating well and I imagine the Minister for the Environment, Community and Local Government will look forward to studying the various reports, including the report relating to counties Westmeath and Roscommon, to assess whether further adjustment is necessary. No decision has yet been taken.

**Senator Terry Leyden:** I thank the Minister of State for her comprehensive reply. If County Roscommon is deprived of the rates that are generated in the Monksland area, it will put the funding of the county in serious jeopardy. There is no question about this. If that area is annexed from Roscommon, the rates will be collected and spent in that area. By the way, the Connacht side of Athlone is one of the most deprived areas in the country. Indeed it is no great credit to the county council in Westmeath that the area has been neglected. The people there would be far better off if the area was transferred under the responsibility of Roscommon County Council. It would be more logical; to Connacht for Connacht, not “to hell or to Connacht”.

I am unsure whether the Minister of State is aware of the deep feeling on the matter - perhaps she is aware of it in Cork. I appeal to all the candidates of all the parties, including Fine

Gael, the Labour Party, Renua and Fianna Fáil, to come together, unite and make this one of the issues, with the hospital and other issues, of the general election campaign. No candidate can go before the people without committing to support the retention of our beloved County Roscommon.

**Deputy Kathleen Lynch:** Since the same process is under way in Cork, I am conscious that the rates area, the adjustment of valuations and all of those matters are critical points to be considered in the event that the independent commission decides on whether there should be an adjustment. However, no one can be certain that this will happen. I imagine the arguments made by public representatives and the public in general will be taken into consideration. In the event, that is one of the elements that will have to be considered. As I have said, no decision has been made. There has been no definitive instruction in terms of a “Yes” or “No”. It is simply an overview to take a look at what is best in terms of effectiveness in respect of local government and what is best for the county in terms of economic development. As the Senator rightly pointed out, there are areas in every county which have an abundance of wealth and other areas which are greatly deprived. This type of adjustment has to be taken into consideration also.

### **Ambulance Service Provision**

**Senator John Whelan:** I am pleased that it is the Minister State, Deputy Kathleen Lynch, who is in the House to take this matter because I have found in the past that not only is she aware of what is going on but she also has a great knowledge of and insight into the actual situation. Equally important, I have found her to be a listening Minister of State who persists and perseveres, sometimes against the head, as she did in the case of community nursing homes. I am keen to say this. The nursing homes in Abbeyleix and Shaen in Portlaoise were earmarked for closure, but, thanks to the intervention of the Minister State, she was able to secure the funding to invest in these important community nursing homes. This ensured they were upgraded and brought up the HIQA standard and rules. I acknowledge that she saved the day for the elderly and the communities of County Laois.

I have a bleak warning for the Minister of State. The National Ambulance Service is overstretched, under-resourced and understaffed to the point of lives being put at risk. I make no bones about saying this. It is a difficult job at the best of times and a stressful one on a good day. It is intense work. The service is often the lifeline between the community and life-saving medical intervention at a hospital, including surgery.

The service cannot cope with the demands being placed on it. I do not raise this matter lightly and have witnessed what is happening at first hand. How is it possible that a hospital as large as the one in Portlaoise which serves a large catchment area that includes south Kildare, north Tipperary and the entire midlands is often left without any ambulance cover whatsoever? That is the reality. In the past fortnight ambulances from Portlaoise were dispatched to places as far away as Enniscorthy to pick up the slack resulting from a lack of ambulances covering Kilkenny, Carlow and Waterford. How can this be possible? Ambulances from Portlaoise have been dispatched to Carrick-on-Suir in south Tipperary, leaving the midlands without ambulance cover for hours on end. This is not acceptable or sustainable.

Ambulance drivers and paramedics are at their wits' end and being stretched beyond belief. I witnessed this before Christmas at a commemoration of UN veterans in Portlaoise. A man collapsed at the event within a mile of Portlaoise hospital but there was still no ambulance after 45



20 January 2016

minutes because the vehicles had been dispatched to elsewhere. However, paramedics who had been attending the commemoration - it was an Army and Air Corps event - had the skills and training necessary to resuscitate and save him. He had to be brought to hospital in a car after they deemed him fit to be moved. No ambulance was available. I am not making up stories or crying wolf. The ambulance service cannot operate at its current staffing and resourcing levels.

This issue is feeding into doubts about the future of and safety and staffing levels at Portlaoise hospital. There are question marks over the 24/7 emergency department. In an unprecedented move this week, Laois general practitioners, GPs, raised questions about why the HSE had not come forward with a plan to commit to the hospital's future status, including a 24/7 emergency service of which the ambulance service would be a core part. That announcement was supposed to be made in September but the issue has been fudged and long-fingered until after the general election. This is not acceptable and I will not countenance any situation in which the ambulance service in Portlaoise is diminished or under-resourced further or where there is any question of a threat of undermining the hospital's status, its 24/7 emergency service and the proper resourcing and staffing of same.

**Deputy Kathleen Lynch:** I thank the Senator for his kind remarks, although I am never certain that remarks of that type can get one a reward, seeing as how people usually believe one will do something great the next time around also.

**Acting Chairman (Senator Terry Brennan):** Well done.

**Deputy Kathleen Lynch:** Sometimes, it is not possible to resolve every issue. In my personal experience and that of a close family member, however, the ambulance or pre-hospital care was fascinating and incredible. The Senator is right about staff ensuring people are stabilised by the time they reach hospital instead of facing into the awful dash that is usually the case following a serious incident.

I am pleased to be able to outline to the House current developments in pre-hospital emergency care services in the midlands and nationally. The National Ambulance Service is working to ensure the provision of high-quality and timely pre-hospital emergency care services, using all available resources as effectively and efficiently as possible.

As with any complex modern health service, development and modernisation form an ongoing process as technology and clinical standards change. A significant and ongoing reform programme has been under way in recent years. Funding of €7.2 million has been provided this year to ensure response times are maintained, including €2 million to recruit and train extra staff and expand the community first responder scheme which trains local volunteer groups to respond to cardiac emergencies. Last year saw the opening of the national emergency operations centre, NEOC, in Tallaght and the establishment of a single national control system. This project is delivering improved technology to improve response times. Developments such as national digital radio, national computer-aided dispatch, mobile data and electronic patient care reporting will allow the National Ambulance Service to deploy resources more effectively and efficiently.

The emergency aeromedical support, EAS, service was permanently established in 2015. It ensures that seriously ill or injured people in remote areas have timely access to appropriate clinical care. While targeted mainly in the west where road networks may not allow for timely transport to hospital, the emergency aeromedical support service can be tasked anywhere in the

State. More than 1,200 EAS missions have been completed since June 2012. The intermediate care service which was set up to provide transfer for non-emergency patients between hospitals allows emergency vehicles to focus on emergency calls. In October 2015, 88% of the inter-hospital transfers previously carried out by ambulances were handled by the intermediate care service.

It is important to note that the model of service delivery for the ambulance service has changed. It is no longer considered appropriate for an ambulance station to provide services only to its own area. For this reason, the ambulance service is moving to dynamic deployment, whereby all resources in a region are deployed across that region as a single fleet in response to demand. This means that, in the midlands, services are provided across the region from Tullamore to Edenderry, Longford, Mullingar, Athlone, Birr and Portlaoise. Services in the region have been enhanced with additional staff based at Edenderry ambulance station in order to provide additional cover. The introduction of a rapid response vehicle in Tullamore further augments services. New rostering arrangements for the region have been agreed between the National Ambulance Service and trade unions and will lead to greater efficiencies in the service.

The Senator can rest assured that the Government intends to drive further improvements in pre-hospital emergency care that will benefit the people of the midlands and the rest of the country. From personal experience, I know those involved to be an incredible group of people who deserve our support. I hope that, with the finances improving, we will be able to invest in the service further.

**Senator John Whelan:** I accept the Minister of State's assertion that there must be reforms and that, with radical improvements through the use of new technology and flexibilities, we must have a modern ambulance service that can be dispatched. I also second her sentiments about the professionalism, commitment and hard and vital work of ambulance crews. However, I have first-hand knowledge of the crews in Portlaoise being understaffed and overstretched. I understand them operating within a region or catchment area, but I cannot understand how Enniscorthy and Carrick-on-Suir fall into Portlaoise's area. It does not make sense, either in terms of safety or the useful deployment of resources and services.

In the case that I mentioned, a man collapsed - almost fatally - within one mile of the hospital on a Sunday morning but no ambulance was available. That makes no sense. There are issues with resourcing and staffing. While a central hub in Tallaght may work efficiently and effectively from an accounting point of view, we must consider whether it is effective from the point of view of patient safety and patient care, with particular regard to the status of Portlaoise hospital and the demands placed on it by the size of the population that it serves.

**Deputy Kathleen Lynch:** Portlaoise was in the news again this morning following the publication of the report on a tragic incident that occurred six years ago. Our thoughts should be with the two parents in question, as well as others. The concentration on Portlaoise and the midlands area must be continued. It will include the ambulance service.

The Senator is right to raise this issue, as additional investment is required. With the economy improving, I hope this investment will be made available.



*11 o'clock*

### **Judicial Council**

**Senator Jim Walsh:** Cuirim fáilte roimh an Aire. I preface my remarks by stating that, in general, the State has been well served by the Judiciary since its foundation. I am aware there are issues such as, for example, whether we would be better served by having the continental inquisitorial system rather than blindly following the very costly adversarial system we have, which is a throwback to our colonial occupation. There is also an issue around appointing multimillionaire barristers to the Judiciary. There should be a debate on a system whereby people, on foot of education and appropriate qualifications, would see the Judiciary as a career in itself and enter it through those educational qualifications.

My purpose is to inquire about the position on the judicial council. It is over ten years since a group of members of the Oireachtas justice committee visited the United States to look at the Judicial Council of Massachusetts. We returned quite enthused about it. We met the supreme court justice there who told us how the state's judiciary was accountable to its peers through the judicial council system. Subsequently, I inquired about it on a number of occasions, as it was a decision of the Government to pursue that course. However, it was opposed by some elements within the Judiciary. Is it still being stalled or opposed by vested interests? I heard the comments of the Supreme Court Chief Justice in this regard and she appears to be quite supportive of the idea. In particular, I am anxious to know what precautions have been put in place in the absence of a judicial council.

The economic downturn affected people rather badly because of the large amount of liquidity they had financially. Many were heavily borrowed and lost a great deal through investments. There were questions as to whether some would be bankrupt or become insolvent, although I have not seen much evidence of this. There is no reason to believe the Judiciary would have been immune from the effects of the downturn. The Bangalore Principles of Judicial Conduct are clear. Under principle 2.5, a judge shall disqualify himself or herself if it may appear to a reasonable observer that the judge is unable to decide the matter impartially. This includes, for example, where the judge or a member of the judge's family has an economic interest in the outcome of the matter in controversy. There have been suggestions, which might be untrue, that some judges, like people throughout society, were heavily borrowed and if they were adjudicating on bank creditors appearing before them there would appear to be an element, perhaps, of conflict of interest. I am sure the judge would disqualify himself or herself from hearing such cases but in the absence of a judicial council we cannot rely on this. Given the severity with which the downturn has affected people, it is important that the Government should have taken some initiatives, but, given how slow it was to deal with the bankruptcy and insolvency issue, I am not confident that it has done so. Principle 4.7 of the Bangalore Principles of Judicial Conduct is very interesting. It states that a judge shall inform himself or herself about the judge's personal and fiduciary financial interests and shall make reasonable efforts to be informed about the financial interests of members of the judge's family.

In a republic everybody is equal before the law. There should be no unaccountable elites anywhere in our society. I am seeking an accountability system in this area. We saw what happened with Justice Hugh O'Flaherty who resigned, very honourably, in circumstances where most people said that what he did was perhaps wrong but was not a resigning matter. Another

judge, Judge Brian Curtin, did not resign and received a considerable amount of money from the State in circumstances where it appeared that there should have been no hesitation in a resignation. The independence of the Judiciary is fundamental, but that independence is not just independence from the Executive but also from other influence. Will the Minister outline to the House the precautions the Government has taken to ensure nothing untoward might have happened during the course of this difficult economic climate, in which many people found themselves in straitened financial circumstances before the courts?

**Deputy Kathleen Lynch:** I thank the Senator for his interesting contribution. I am not certain that much of it has anything to do with the question in hand, but I take his point. I am never certain about the equality before the law either. If there was true equality before the law, those who are called as witnesses would not have their title disclosed when they are called. It has an undue influence from time to time, as if somehow their evidence is more pertinent than that of the rest of us old sops who do not have any title. With regard to the American system, while this might be a good idea, I am not sure we would take on many of its other practices.

I thank the Senator for raising this issue and, on behalf of the Minister for Justice and Equality who cannot be here, I acknowledge the importance of the matters to which the Senator refers. We are very lucky in this country that the Judiciary is independent and acts with great integrity. We can all agree that an independent Judiciary, the integrity of which is beyond question, is fundamental to the working of our democracy and essential in terms of upholding the rule of law on which all citizens rely. The Senator will be aware that Article 35.4.1o of the Constitution states a judge of the Supreme Court or the High Court shall not be removed from office except for stated misbehaviour or incapacity, and then only on resolutions passed by Dáil Éireann and Seanad Éireann calling for his or her removal. This constitutional process has been extended by statute to the question of removal and dismissal of Circuit and District Court judges. That is an improvement. Otherwise, with the exception of statutory provisions dealing with investigating and reprimanding judges of the District Court, there is no means of investigating or dealing with allegations which are not sufficiently serious to merit the invocation of the constitutional provisions. Both this and previous Governments have been conscious of the fact that there is a need for an alternative structure to be put in place to deal with allegations of this nature and the development of such a structure is a key driver behind the Judicial Council Bill.

The current draft of the Bill provides for the establishment of a judicial council and board that will promote excellence and high standards of conduct by judges. It will also provide a means of investigating allegations of judicial misconduct. In this context, a judicial conduct committee which will have lay representation will be established. It will facilitate the ongoing support and education of judges through a judicial studies committee and through the establishment of judicial support committees. I assure the Senator that there is no hidden agenda behind the fact that the Bill has yet to be published. It is a regrettable reality that the finalisation of the Bill has had to give way to other pressing priorities in the legislative area, but the Government remains firmly of the view that it is of the utmost importance that this legislation be advanced within a speedy timeframe. I should add that the various drafts of the Bill have benefited from review by the Judiciary who have considered it as part of the work of the interim judicial council which has been established pending the Bill's enactment.

With specific reference to the Bangalore Principles of Judicial Conduct, these principles enshrine key values relating to independence, impartiality, integrity, propriety, equality, competence and diligence which, in many ways, are self-evident characteristics of a properly functioning judicial system. It is to be anticipated that any future guidelines concerning judicial

20 January 2016

conduct and ethics will be reflective of these principles. This would not be surprising since the Government would have every confidence that judicial conduct accords with these principles and it would not support any implication that values such as independence and integrity are not intrinsic to the way in which the courts operate. I believe the Senator would agree with this.

**Senator Jim Walsh:** The Minister of State clearly signalled at the start that her response would be unsatisfactory. Obviously, it is. The Bill will fall with the fall of the Government and, therefore, will not be enacted during this term. That is appalling, given the fact that we have been waiting for over ten years. The Minister of State was silent on whether it had been stalled by vested interests. That silence tells its own story and we can draw the obvious conclusions.

**Deputy Kathleen Lynch:** The Senator may draw an inference. I do not.

**Senator Jim Walsh:** I did not interrupt the Minister of State. She will get her chance to speak. It is obvious to any objective observer why she did not address that in her reply. She mentioned no timeframe. We know that it is going to fall; therefore, in fact, it has been long-fingered. It is reminiscent of the dereliction of this and the last Government in failing to implement the recommendations of the report from the Competition Authority in 2006 which specified that increased competition was needed for consumers of legal services. The troika and others emphasised this and I know that the members of the troika were still pressing it at their most recent meeting here. This is evidence of a failure to recognise what the priorities should be. The Minister of State's reply rings very hollow. She stated it was "of the utmost importance that the legislation be advanced within a speedy timeframe," but we have been bloody well waiting ten years for it. Whoever writes this kind of gobbledegook should be brought to heel. If someone in the House takes the matter seriously, it is not good enough to come back with a reply like this. It does the Minister of State no justice. I know that it is not her fault, as she is in the Department of Health, but it reflects badly on the Department of Justice and Equality. We are very well aware from the report last year that we have a dysfunctional Department of Justice and Equality.

**Deputy Kathleen Lynch:** Whoever wrote the speech is a good civil servant. We should be very conscious of this. We are fortunate with the people who work in the administration of democracy in this country. There are other countries we could name, of which the Senator will know a few, that are not as fortunate with their civil and public servants as we are. I was reared with the ethos that one should never judge others by one's own standards. No one sitting on the Bench every day of the week to administer justice operates only in his or her own self-interest.

**Senator Jim Walsh:** I never said that. I certainly have not said it. That is poor sophistry in which the Minister of State is engaging.

**Deputy Kathleen Lynch:** They operate on the basis of the administration of justice-----

**Senator Jim Walsh:** As I acknowledged at the start.

**Deputy Kathleen Lynch:** -----and none of us is above the law. To imply, as the Senator does, that somehow or other-----

**Senator Jim Walsh:** I have not implied it. I said "clearly". The Minister of State should look at my introductory remarks.

**Acting Chairman (Senator Terry Brennan):** The Minister of State, le do thoil.

**Senator Jim Walsh:** I cannot allow that kind of thing to go unchallenged. The Minister of State knows exactly what she is at. She is deflecting from the dereliction of duty of her ministerial colleagues in the Department of Justice and Equality.

**Acting Chairman (Senator Terry Brennan):** Bhí an seans agat, a Sheanadóir.

**Deputy Kathleen Lynch:** To imply, as the Senator is doing, that somehow or other the judicial system has a vested interest in preventing this from proceeding is unfair and, in this instance, unjust.

*Sitting suspended at 11.05 a.m. and resumed at 11.40 a.m.*

### **Order of Business**

**An Cathaoirleach:** I welcome Councillor Thomas Welby to the Visitors Gallery.

**Senator Maurice Cummins:** The Order of Business is No. 1, statements on flooding, to be taken at 12.45 p.m. and conclude not later than 2.45 p.m., with the contributions of group spokespersons not to exceed eight minutes and those of all other Senators not to exceed five minutes and the Minister to be called on to reply to the debate not later than 2.37 p.m.; No. 2, Heritage Bill 2016 - Order for Second Stage and Second Stage, to be taken at 2.45 p.m. and conclude not later than 5 p.m., with the contributions of group spokespersons not to exceed eight minutes and those of all other Senators not to exceed five minutes; and No. 3, Private Members' business, Competition (Amendment) Bill 2016 - Order for Second Stage and Second Stage, to be taken at 5 p.m., with the time allocated for the debate not to exceed two hours.

**Senator Terry Leyden:** It is now 11.45 a.m. With respect to all our colleagues, we should try to commence the business of the House on time. It is only right and proper that the second Chamber of the Irish Parliament meet on time. I ask the Leader, the Whips and everybody else to try to do better.

**Senator Paul Coghlan:** The Senator should talk to his colleagues. I do not see anybody behind him.

**Senator Terry Leyden:** I remind the Chief Whip that we have no responsibility as far as that matter is concerned. It is one for the Government parties.

**Senator Paul Coghlan:** The Chief Whip does not need reminding.

**Senator Terry Leyden:** I thank the Senator. I hope he will learn in the future.

**Senator Gerard P. Craughwell:** Well said.

**Senator Terry Leyden:** Perhaps the Leader will consider in the next term reverting to taking the Order of Business at the start of the day, with the Commencement debate taking place after it. It was more efficient and effective. I am not speaking on behalf of Fianna Fáil. The Leader might consider it in the light of the current situation and the fact that a general election is pending, which makes it more difficult to keep the House going than in normal times.

Regarding the review of the powers of the Garda Síochána Ombudsman Commission, GSOC, the appointment of the former Chief Justice and Attorney General, Mr. John Murray,

20 January 2016

will bring great experience to the field. However, the scope of the review has been restricted to access to the telephone records of journalists and does not include politicians. Why would a politician's telephone be tapped? Why has the matter been left in doubt? I ask the Leader to ask the Minister to extend the scope of the review. It has been brought to my attention that some legal firms are very concerned about client confidentiality. A solicitor who believes his telephone is being tapped has contacted me. I ask the Minister to extend the remit of the review to politicians and members of the legal profession, whether barristers or solicitors. Confining it to journalists is an inadequate response. Approximately 6,000 telephones were tapped in 2014. It is a terrible infringement of human rights that confidential telephone calls can be interfered with and listened to and the information distributed around GSOC and whoever else is involved. The Minister has taken the issue seriously by appointing the former Chief Justice. The remit of the review could be extended further to allow for the concerns expressed to me by members of the legal profession to be dealt with. The relationship between a solicitor or barrister and a client is very special. It is like a confessional and should not be infringed by the State, GSOC or any other agency of the State.

**Senator Ivana Bacik:** As promised, I have circulated to all group leaders and Senator Gerard P. Craughwell, as per his request, an alternative text of a motion seeking access by cystic fibrosis patients to particular medications. I look forward to replies from colleagues. I hope that by the end of the week, if I have agreement from all group leaders, we can table an all-party motion from all Senators on this very important and pressing issue for so many people across Ireland.

It is welcome that the former Chief Justice, Mr. John Murray, is to conduct a review of the legislation allowing access to journalists' telephone records. I note that the review is somewhat circumscribed and limited in its remit and that there is a time limit of three months on it. It is important that we have a tight timeframe. It might be difficult to expand its remit and still expect a report within three months. Clearly, there are concerns that are broader than the issue of access by GSOC to journalists' telephone records. I note the revelations in *The Irish Times* today that 62,000 requests or applications were made, mostly by members of the Garda, for access to telephone and Internet data in five years to the end of 2012. Clearly, there is a bigger issue. The impact of the Communications (Retention of Data) Act 2011 needs to be considered in more detail and it is welcome that the Data Protection Commissioner has announced an audit of Garda and GSOC access to telephone data. There are other reviews ongoing or which will be put in train apart from the review announced yesterday. I welcome the assurance of the Minister, Deputy Frances Fitzgerald, that she has not personally authorised tapping of journalists' telephone calls. It is important we know this. I also welcome the news that the new chairperson of the GSOC, the eminent former High Court judge, Ms Justice Mary Ellen Ring, has said the ombudsman acted within the law at all times. A number of issues are being brought to light around surveillance, access to telephone records and Internet data which deserve further consideration.

I also welcome the approval for publication of the statute law revision Bill 2016 which the Minister for Public Expenditure and Reform, Deputy Brendan Howlin, announced yesterday. The Bill will repeal 300 pieces of outdated legislation and is an important tidying up or codification of the statute law, which is an issue about which I have spoken many times.

Tonight in the House I look forward to introducing a very important Private Members' Bill in Labour Party Private Members' time which I will be proposing and Senator Aileen Hayden will be seconding, namely, the Competition (Amendment) Bill 2016 which seeks to expand the



rights of collective bargaining for workers. It is a Bill that has been sought by trade unions for some years. I have been working on it for some time and know that its introduction is being welcomed by SIPTU, the NUJ and Irish Equity, among others. Colleagues will be aware that the operation of the Competition Act 2002, in particular, restricts the capacity of unions to negotiate on behalf of freelance members such as freelance actors or journalists in setting pay rates. The Bill seeks to exempt certain groups of workers from the prohibition in competition law against price fixing. We are trying to take the middle ground to ensure there is no detriment to the consumer because the Competition Act is concerned with consumer protection. I am happy to provide a briefing on the Bill for any Member who wishes to have one in advance of its introduction at 5 p.m. Members of the unions affected will be present in the Visitors Gallery tonight to see the Bill debated on Second Stage. It is an important plank of the Labour Party policy and it should receive a general welcome from across the House, as well as from the Minister.

**Senator Gerard P. Craughwell:** We see Members of this House make representations regularly on behalf of their constituents or those of Dáil geographic areas. I will make one for my constituency which is also that of the Cathaoirleach and those in this House. No. 75 on the Clár, motions Nos. 7 and 10, Private Members' business, deal specifically with the terms and conditions of employment of city and county councillors. We will all be out on the hustings in the next couple of weeks or months seeking the support of city and county councillors to re-elect us to this House and we cannot face them without at least doing them the courtesy of pursuing one of these motions. I suggest motion No. 10, tabled by the Government and with an amendment by me and Senators Sean D. Barrett, Feargal Quinn and David Norris. It is the very least we can do and if we are not going to do it, I ask the Leader to explain why. I have no fear of facing the country and standing up for the people I represent and who represent their localities. I have no fear whatsoever about fighting their corner for them. If we are not going to have the debate before the general election, I need to know why and I would like to be able to tell them why.

**An Cathaoirleach:** Is the Senator proposing an amendment?

**Senator Gerard P. Craughwell:** I am not. I want to know if we are going to have that debate before the general election.

**Senator Terry Brennan:** I welcome the recent Government announcement of €40 million in grant funding for gateway and hub towns in Ireland. It is from the European Regional Development Fund and the scheme will enable investment in sustainable transport and urban regeneration projects. The main aim of the ERDF programme is to improve urban environments and revitalise many urban areas throughout the country. I am very pleased to welcome the allocation of €2 million which will be used to enhance Clanbrassil Street and the area of St. Nicholas's in Dundalk. It will enhance the main street of the town and the church area and is to be welcomed.

**Senator Jillian van Turnhout:** I welcome the news this morning from the Minister for Education and Skills that she plans to write to all schools telling them to cease allowing the drinks industry or Drinkaware to come into them, an issue I raised as a Commencement matter last May and which I am delighted to see come to fruition. It came as a result of a meeting with the Alcohol Health Alliance, which is spearheaded by the Royal College of Physicians of Ireland and Alcohol Action Ireland. If anybody wishes to look at the lobbying register, it will be very clear that the meeting was about Drinkaware, although in the newspapers this morning, Drinkaware was trying to distance itself from the drinks industry. Drinkaware is 100% funded



20 January 2016

by the drinks industry and is the drinks industry in costume. The announcement by the Minister for Education and Skills is on the work of any guise or costume the drinks industry chooses to wear. Will the Leader convey our thanks and appreciation to the Minister for Education and Skills and make this point clear?

Will the Leader also ask the Minister for Transport, Tourism and Sport if he would consider talking to the Road Safety Authority to ask it to cease its relationship with the drinks industry because it is absurd that it has any relationship with the drinks industry, given the road safety issues we were discussing in the House yesterday? There is no place for the drinks industry to be using the bodies of the State to state it is doing their work, while, on the other hand, blocking the essential work that is happening on the Public Health (Alcohol) Bill which is progressing through the House. Will the Leader take his example from the HSE, something we do not hear every day in this House? The HSE came out with a policy last year on ceasing all relationships with the drinks industry. It has a role which is to make money for its shareholders and it should go ahead and do that, but it should not be involved in public health or public awareness campaigns as it has no role to play in them.

**Senator Paschal Mooney:** If there is one criticism that could be legitimately levelled at the Fianna Fáil-Progressive Democrats Administration up to 2007 it is that it significantly narrowed the tax base by significant reductions in taxation and hugely significant increases in social welfare payments. Narrowing the tax base and taking so many people out of it, even at a time of boom, came back to haunt that Government. The current Government has been putting forward the view, particularly in recent months, that it is going to manage the national finances prudently, but that seems to have been blown out of the water by the IMF report that is in the newspapers today raising serious concerns which apply to all parties going into the general election about further reductions in or erosion of the tax base. Deputy Michael McGrath, when launching the Fianna Fáil position on finance last week, made it clear that we were not going to engage in auction politics but would ensure we would act in the national interest in the matter of the financing of the State. Despite the fact we put forward proposals on easing the tax burden on those experiencing financial adversity through USC, we believe we have taken a very prudent course. I do not believe the people will take well to the attempts by the Labour Party and Fine Gael to buy votes in the forthcoming general election by further eroding the tax base. Who is going to pay for services? Without a sufficiently coherent and viable tax base, who will pay for more schools, better hospital services and better services generally to help those with a disability and those who are unable to fend for themselves? I am mentioning this because after the general election - please God, I will be back in this House - I hope I will not be saying "I told you so" in the context of a downturn in economic performance. We are on a knife edge economically. We rely on a weak euro and dynamic UK and US economies, but international economic commentators are pointing out that the world is heading into a downturn.

*12 o'clock*

In fact, some economists, particularly those attached to the Royal Bank of Scotland in the past few weeks, have advised investors to sell everything, including shares and bonds. They have put forward an apocalyptic scenario. I do not subscribe to that view but, then again, perhaps I am something of an optimist and hoping things will work out. I would be interested in the Leader's response.

**Senator Aideen Hayden:** I refer to the news coverage on Monday and the programme by RTE on Monday night on emergency homeless accommodation to highlight one matter. It re-

lates to the 123 complaints made about emergency accommodation. These complaints and their outcome were made available to RTE under an FOI request. What perhaps was not brought into the public domain was the acknowledgement by all concerned that the complaints had been fully investigated and resolved in a timely fashion. It is important to acknowledge the professional role played by the Dublin Region Homeless Executive which acts on behalf of all four Dublin local authorities in what have been difficult circumstances in the past two years in the area of homelessness and to say the 123 complaints related not solely to private accommodation but also to accommodation provided by statutory providers and NGOs. These were 123 complaints out of approximately 9,000 unique placements in the Dublin region for homeless emergency accommodation and the Dublin Region Homeless Executive is playing a valuable role in dealing with homelessness in the city of Dublin.

I welcome a recent announcement by the Department of the Environment, Community and Local Government that mediation between landlords and tenants conducted through the Private Residential Tenancies Board, PRTB, will now be free. This is an important step forward in the landlord and tenant relationship. It encourages a non-aggressive approach in an effort to bring understanding between the parties which, quite often, is most needed between landlords and tenants when there are conflicts. It is important to bear in mind that most landlord and tenant relationships are happy and never end up in conflict. Encouraging the use of mediation is important because one is dealing with a home and ensuring the relationship between the landlord and tenant goes forward in an amicable manner is best achieved by mediation.

I also welcome another measure that went slightly unnoticed. Mortgage interest relief has been increased to 100% for landlords who rent their properties to tenants who are in receipt of social welfare, whether it be rent supplement, housing assistance payment, HAP, or rental accommodation scheme, RAS, payments. As far back as 2002, fewer than 50% of landlords were willing to rent to tenants on social welfare payments. We really need to address that issue. The bottom line is it is difficult for tenants in receipt of social welfare supports to obtain housing and anything that can be done to encourage landlords in that direction is to be welcomed.

**Senator Jim Walsh:** There is a real need for a new Government to tackle, honestly and upfront, all of these issues, not only housing but also the waiting lists in hospitals. It is interesting to hear Senators from the other side talk about issues surrounding homelessness. What did they expect when the Government built no houses during its lifetime? I refer to five years where the housing stock throughout every local authority has been allowed to decline and does not meet the demand. The Government was bound to end up with this crisis; it was foreseen and the Government has not dealt with it. The same may be said of hospitals. In Wexford General Hospital, for example, I have experience recently of where young children looking for an appointment for routine issues with a paediatrician are waiting eight months.

Some issues are not so routine. I refer to girls who had the HPV vaccine where the HSE is in denial of the consequences, with many suffering chronic fatigue and other issues and having to wait eight months when they are having difficulty in attending school. It may well be past the start of the following school year, in September, before they will be seen by a consultant to receive treatment for their condition. It simply is not good enough.

We have seen issues in the bankruptcy area and the banks, where those with mortgages are at the mercy of the Judiciary. On the banks, it is simply not good enough. The Government has failed to stand by the ordinary person, whether he or she is in need of housing, of fairness from the system with regard to his or her borrowings, or needs medical attention. It is a source

of dereliction over five years.

I will comment on the point made by Senator Terry Leyden about GSOC. We all realise that we are living in times when our security and safety were never more challenged. This applies right across the western world but particularly in Africa and the Arab world. The Garda must be equipped to carry out surveillance within a defined area to protect people's safety and there should be no exclusions from this for politicians, journalists or anybody else. That matter should be prioritised. It will be too late if we have a number of people killed because of a failure of intelligence services to be able to introduce precautions or protect us against this. Given the times in which we live, we need to circumscribe where telephones can be tapped and the type of information that can be obtained and then ensure it applies evenhandedly and fairly and is subject subsequently to review.

**Senator Paul Coghlan:** I, too, welcome the €40 million European Regional Development Fund grant for gateway and hub towns. No doubt this will further enhance the improvement of the urban environment and further revitalisation. This sustainable development recognises that towns are the engine of the regional economy and very important for our further growth. When there was a scheme for urban backlands regeneration 20 years or more ago, it did considerable good, but it was not fully taken up in many towns. It is important at this time that this grant aid is coming from the European Regional Development Fund and I greatly welcome it.

As regards the electorate, the Leader will be aware that my views and perhaps his own and those of others' are very well known to the Minister. Now that so many have found that matters are improving for them and that they have greatly assisted in many ways, it may be past time that segment of the electorate saw improvements, too, given the cutbacks, etc., that they suffered in recent years when we were going through such a recession. They continue to make a valuable contribution. I urge the Leader to deal next week with the all-party motion, No. 75, motion No. 10, on the Order Paper.

**Senator Gerard P. Craughwell:** Well said.

**Senator Mary Moran:** Tomorrow I will launch a report that I wrote for the Oireachtas Joint Committee on Education and Social Protection based on the role of the special needs assistants, SNAs, in schools. I have been working on this issue for the past year and a half. I consulted comprehensively with SNAs, trade unions, principals, school boards of management, the Department of Education and Skills, disability groups, children's groups, students and parents. I was delighted that more than 2,500 SNAs responded to an online survey I undertook. In all, I make 13 recommendations in the report. The first point that struck me was that the minimum qualifications required to be an SNA in school were a mere three Ds in the junior certificate examinations. In fact, when I looked at the survey, 99% of SNAs in schools had far in excess of secondary education qualifications. Some have degrees, others have master's degrees, while a few who responded have PhDs. The level of qualification obtained is far higher. One of my main recommendations is that we apply standardisation and demand a level of qualifications to be an SNA in a school. It is striking that throughout the whole survey and report there is evidence of different standards and expectations for SNAs in schools throughout the State. Many SNAs report that they do feel respected in their work, but there were some who had concerns which will need to be addressed. I will be asking the Department of Education and Skills to take stock immediately of the recommendations in the report. One matter of particular concern is the primary role of the SNA and the care needs of children. In some cases SNAs are being asked to supervise children when the teachers are out, to take the classroom and undertake du-

ties that are not part of the SNA role. Other concerns are SNAs reporting that they are carrying out medical procedures, including catheterisation, for which they have received no training. This is an urgent measure which will need to be addressed.

I welcome to the House the civic, social and political education, CSPE students and their teachers from St. Louis secondary school in Dundalk. I praise the ushers also for the excellent work they do in facilitating tours and ensuring people get in to the Houses of the Oireachtas to see its excellent work. I give a warm welcome to the CSPE class from St. Louis secondary school.

**Senator Michael Mullins:** Will the Leader indicate if, in the remaining weeks of this Seanad, it would be possible to have a wrap-up meeting with the Minister for Jobs, Enterprise and Innovation, Deputy Richard Bruton, on the Action Plan for Jobs in the light of the plan's launch on Monday, 18 January? When the country was on its knees in 2012 and haemorrhaging jobs, the first Action Plan for Jobs was launched, with a target of helping to foster an environment in which to create 100,000 jobs between then and 2016. Thankfully, the target was reached and surpassed and we are seeing the growth of 135,000 jobs created since 2012. The ambitious targets which have been set in the fifth annual plan, the first phase of the new action plan for 2016 to 2020, are for 200,000 extra jobs by 2020. There are some interesting concepts within the plan which are to be welcomed, including a commitment that by 2017 all Government transactions with businesses will be available online. This will impact on 370 Government transactions with 185,000 businesses throughout the State. Following the roll-out of the regional plans, further actions to support regional growth will be supported by €530 million in funding. Despite all the good news and the 1,200 new jobs announced today by various companies in the State, there are still problems in parts of the State and we need to accelerate measures to spread the recovery into the regions and the more peripheral towns and villages. In this context, it would be appropriate to invite the Minister to the House for a final debate during the lifetime of the Seanad to discuss the €150 million in new funding to be made available for research and development. The debate might also give us all more guidance on how we can assist and help companies in our regions to draw down and leverage these funds.

**Senator Feargal Quinn:** Some years ago I introduced the topic of how Europe could arrange to have a fixed date for Easter. When I approached Mr. Barroso, he said "No," that he was going to stay away from that issue. However, an interesting development occurred during the past week. The disadvantage of Easter falling on a date which could change in range by 35 days from one year to the next has resulted in the Archbishop of Canterbury calling on the different European churches to get together on the matter. This year in particular, from Ireland's perspective, with St. Patrick's Day and Easter falling so close together, the school holidays are stretching to three weeks. I understand it cannot be dealt with in this House, but it is a matter on which the Department of Foreign Affairs and Trade could approach the European Union, or the Minister of State with responsibility for European affairs could initiate the discussion. It could be asked if there is a future on the subject and if something could be done. Engagement would be needed with churches such as the Coptic Church and the Church of England, among others, and the Pope. There would be many benefits to fixing the date of Easter and it would be a shame to just ignore it and not do anything about it.

I turn now to the ban in the United States of America on soap body washes and toothpastes which contain microbeads. I did not know a lot about microbeads, but they are not filtered by wastewater treatment plants. The beads are discharged directly into rivers, lakes and the oceans. Microbeads are highly damaging to the natural environment and its wildlife. Natural

20 January 2016

alternatives exist and banning the use of microbeads in personal care products makes sense. The Wildlife Conservation Society has called for this and we should also consider a ban. The United States of America has banned their use, but we still allow microbeads and should consider what might be done about the matter.

**Senator Jim D’Arcy:** I am pleased to see that, following a meeting with Traveller community representatives, Louth County Council has come to some solutions to the Woodland Park problem and what has been called an illegal halting site. The matter is very complex and, after the Carrickmines tragedy, there are serious health and safety issues relating to Traveller accommodation which must be addressed. Louth County Council, of which I was a member for many years, has an excellent record on Traveller issues. The director of services, Mr. Joe McGuinness, is an excellent liaison officer. It is almost 40 years since I worked on Traveller education schemes with my brother and the late, great Bill Cantwell.

**An Cathaoirleach:** I remind the Senator not to name people in the House.

**Senator Jim D’Arcy:** There are others in other Houses getting a lot more time to talk about this.

**An Cathaoirleach:** The people the Senator names are not here to defend themselves.

**Senator Jim D’Arcy:** I am praising them.

**An Cathaoirleach:** It does not matter.

**Senator Jim D’Arcy:** Louth County Council will resolve this issue in the best interests of the Travellers and we do not need ghost politicians floating in and out to seek photo opportunities. The Tara Education Centre has educated many Travellers in recent years. I met the centre’s former director, Ms Mary Connolly, who performed Trojan work-----

**An Cathaoirleach:** I again point out to the Senator that-----

**Senator Jim D’Arcy:** I repeat that we do not need ghost politicians-----

**An Cathaoirleach:** The Senator should resume his seat.

**Senator Jim D’Arcy:** -----coming in to seek photo opportunities and make political capital out of the issue.

**Senator Mary Moran:** Well said.

**Senator Maurice Cummins:** The acting Leader of the Opposition, Senator Terry Leyden, raised a question about the procedure for Commencement debates. That is certainly an issue for consideration by the next Seanad. I would agree to reverting to the former arrangement whereby we had Adjournment rather than Commencement debates, but that is something for the next Seanad to consider. Perhaps some of us might be back, but that is in the lap of the gods.

Senator Terry Ledyen also mentioned, as did Senators Diarmuid Walsh and Ivana Bacik, the review of GSOC’s access to telephone records. There is genuine concern about the balance in the law between the important freedom of journalists to pursue legitimate matters of public interest and the basic right of persons not to have their personal information improperly disclosed. While bodies investigating crime need to have the appropriate statutory powers available to them to carry out their duties, we need to examine the balance struck in respect of the integrity



or the legitimacy of the journalistic activity being carried out in the public interest. Like all other Senators, Senator Terry Leyden welcomed the appointment of the judge to look into this matter and carry out a review. It needs to be reviewed and I hope the judge will have sufficient time to come back with a report that will be acceptable to all.

Senator Ivana Bacik mentioned the motion on cystic fibrosis to be tabled next week, I hope with the support of all parties. That is the right way to deal with the issue.

**Senator Ivana Bacik:** Hear, hear.

**Senator Maurice Cummins:** The Senator also welcomed the announcement of a statute law revision Bill. We have had a number of such Bills during the years. Always, when we deal with a statute law revision Bill, we come across legislation dating back hundreds of years.

**Senator Marie Moloney:** Yes.

**Senator Maurice Cummins:** It is very interesting to look back on such Acts. The Bill will, therefore, be welcomed.

Senators Gerard P. Craughwell and Paul Coghlan alluded to non-Government motions Nos. 7 and 10 on the Order Paper. As the Senators know, the all-party committee has had several meetings with the Minister for the Environment, Community and Local Government, Deputy Alan Kelly, and other Ministers on the pay and conditions of councillors, but progress has been very slow. If I believe it is necessary - possibly, it is now - we will try to arrange a debate on the issue next week, if at all possible, and to get the Minister to attend.

**Senator Gerard P. Craughwell:** That would be much appreciated.

**Senator Maurice Cummins:** There is no question that the extra duties councillors undertake, with the larger constituencies and so on, have not been recognised by the Government. This is a matter that needs to be addressed.

**Senator Paul Coghlan:** Absolutely.

**Senator Gerard P. Craughwell:** Well said.

**Senator Maurice Cummins:** Senators Terry Brennan and Paul Coghlan raised the issue of gateway funding for cities and towns. It was raised by a number of Senators on the Order of Business yesterday when they welcomed the allocations made. I certainly welcome the €4 million allocated from the fund for my city of Waterford.

Senator Jiillian van Turnhout mentioned the drinks industry and the Drinkaware campaign. She welcomed the decision made by the Minister for Education and Skills to refuse access for Drinkaware to schools. The Senator pointed out that there was no room for the drinks industry in schools, particularly when it came to the issue of road safety.

Senator Paschal Mooney mentioned the narrowing of the tax base. Of course, we look at what the European institutions advise, but it is the Government's policy to create more and better jobs. The more people we have at work, the more money we will have for the services about which the Senator talked and for all public services. There is no question that the recovery is fragile, as the Senator said. In this regard, we need stability to make progress, rather than instability and chaos, which is what we would have if some parties were in power. In this context, I



20 January 2016

note what the Senator said about the tax base.

Senator Aideen Hayden referred to the need to provide accommodation for homeless persons. She outlined many relevant facts and commended the Dublin Region Homeless Executive for its excellent work in this regard.

Senator Jim Walsh who is not present called for a new Government. That is a decision for the people to make and will happen soon. I remind the Senator that his party is still a party of high taxes and spending. The people will decide on whether they should return the Government to power or have a new one, as he suggests they should.

Senator Mary Moran mentioned the report on special needs assistants. We look forward to reading it and the recommendations made in it. I do not know whether it will be possible to have a debate on the issue before the end of term, but I recommend that everyone read the report when it is published.

Senator Michael Mullins called for a debate on the Action Plan for Jobs and welcomed the new funding of €150 million for research and development.

There have been requests for a number of debates to be held in the House. As we will have a full legislative schedule next week, it will be difficult to slot in statements on various issues, but I will do my best to see how we can facilitate the requests made.

Senator Feargal Quinn mentioned the possibility of having a fixed date for Easter. It is an issue about which I have read and it was raised by the Archbishop of Canterbury. It is right that discussions should be initiated in Europe on it. I will bring it to the attention of the relevant Minister.

The Senator also mentioned the use in toothpaste and soap of microbeads, which have recently been banned in America, particularly because of their effects on wildlife. The Senator has raised the matter at an opportune time because later today we will debate the Heritage Bill, during which debate he will have an opportunity to mention the issue to the Minister.

**Senator Feargal Quinn:** I thank the Leader.

**Senator Maurice Cummins:** Senator Jim D'Arcy referred to the difficulties at a halting site at Woodland Park in Dundalk. He expressed his confidence in the ability of Louth County Council to resolve the issue. I am unaware of the local issues involved. However, I note the point he made about people using them to seek photo opportunities. One will have this, irrespective of where a problem arises. Obviously, such opportunists are not welcome so far as Senator Jim D'Arcy and other Senators from County Louth are concerned.

Earlier I stated the debate on the Heritage Bill would conclude at 5 p.m., but I wish to change that proposal to state it will be adjourned at 5 p.m., if not previously concluded.

**An Cathaoirleach:** What Stage of the Competition (Amendment) Bill is being taken today?

**Senator Maurice Cummins:** Second Stage.

Order of Business agreed to.

*Sitting suspended at 12.30 p.m. and resumed at 12.45 p.m.*

## **Flood Risk Management: Statements**

**Minister of State at the Department of Finance (Deputy Simon Harris) (Deputy Simon Harris):** I am grateful for the opportunity to address the Seanad on the subject of flooding and flood risk management. I look forward to a constructive discussion and debate which will inform the Government's approach to managing flood risk in the future.

As we all know, flooding is a natural phenomenon and in recent weeks we have all seen the devastating impact it can have on communities. At the start of this debate, my first thoughts and words must be with those who have suffered because of the dreadful storms and floods of the last month. I refer, in particular, to those families whose homes have been flooded, marooned or evacuated, those whose livelihoods have been threatened and those who have spent long, anxious days and nights, over a holiday period during what should have been a joyous period for many families, waiting and assessing the possible impact of the latest weather forecast.

The Taoiseach, the Tánaiste, Ministers and I have visited many of those affected, witnessing at first hand the devastation to their peace of mind and, unfortunately, in many cases their property. The impacts of flooding do not discriminate and all parts of society were affected. The Taoiseach has made it clear that the Government stands with the people and communities affected and will give them every support and assistance possible as they set about rebuilding their lives but will also go further in considering the long-term measures we can take to, where possible, protect communities and mitigate against the impact of flooding. From the outset the Government's priority has been to protect life and then infrastructure, property and businesses. The national co-ordination group has met over 30 times since 3 December. I pay tribute to all of those officials who gave up significant amounts of holiday time to meet on an almost daily basis for a very sustained period. A high level of community resilience was visible, where communities and individuals worked successfully, over a sustained period in many cases, with local authorities and other bodies to defend homes and properties at risk of flooding. People came to the assistance of their neighbours and helped to ensure that normal life continued, as much as possible, in flood affected areas.

I mention, in particular, the local volunteers who gave up their own comfort and time with their families over the Christmas period to give practical and emotional support to their neighbours and communities. The true strength of people sometimes shines in its best light during the worst of circumstances. We all saw this from people helping with sandbagging, providing clothes, drinks, meals and accommodation. There is no doubt that, without that support, the impact of the floods would have been more serious.

The Government's response has involved almost every arm of the State. In particular, I acknowledge the outstanding work and dedication of the staff of the local authorities, Met Éireann, the Office of Public Works, OPW, members of the Defence Forces, Civil Defence, the Irish Coast Guard and the Irish Red Cross, which worked endlessly and tirelessly throughout Christmas in the most difficult of circumstances.

Of particular note has been the extent of the inter-agency co-operation which includes the Defence Forces. There have been approximately 2,700 Defence Forces deployments throughout the period of severe weather to assist local authorities. In addition, local authorities continue to work together to share resources, staff, plant and equipment, including pumps and sandbags. The floods led to almost 600 households being evacuated. It is no comfort to those waiting to reoccupy their homes that the co-ordinated response by communities and Government pre-

20 January 2016

vented even greater damage from being inflicted. The floods arose from unprecedented levels of rainfall in the past month, coupled with back-to-back storms. November saw average rainfall levels of between 130% and 190% across Met Éireann's network of weather stations. In December, we had an entire winter's rain in just one month, making it the wettest December on record, according to Met Éireann's records. The rainfall was also exceptional in its persistence and force. In addition to flooding, the storms had a major impact on essential services, including supplies of power and water.

Since the start of December, ESB Networks has reconnected over 350,000 customers, often in very poor weather conditions. Irish Water responded to 200 incidents where there was a risk to the delivery of drinking water and wastewater services. The storms resulted in 15,000 calls for assistance to local authority helplines. From the start of these storms, the Government made clear it would and, indeed, did provide all necessary help and support to the communities affected not alone in terms of the immediate practical and physical help I referred to but also the practical financial assistance that was required. For example, the Department of Social Protection was available in affected areas to advise on the vital financial help available through the humanitarian assistance scheme. At the start of this week, emergency payments have been made to some 360 households, with expenditure of over €344,000 to date. The Department of Agriculture, Food and the Marine has introduced several critical measures to address the impact of the storms and flooding on farms. These include relaxing the rules around the movement of livestock, guidance on flooded slurry tanks, the deferral of inspections and the provision of emergency feed. In view of the likely long-term damage to fodder supplies, a fodder aid scheme for flooded areas has also been introduced by my colleague, the Minister for Agriculture, Food and the Marine, Deputy Simon Coveney.

As Senators on both sides of the House will know, small businesses were badly hit, particularly those that could not access flood insurance. The Government targeted those businesses with a simple but effective scheme operated by the Irish Red Cross. I, again, reiterate my thanks to it for facilitating the scheme. The Government initially made €5 million available to that scheme for businesses, and has now extended it to include community, voluntary and sporting organisations which suffered flood damage. At the start of this week, the Irish Red Cross indicated that a total of 219 applications have been received and €530,000 has been disbursed so far under the first stage of the scheme. Getting immediate payments to people, albeit relatively small payments, without having to jump through too many bureaucratic hoops was the Government's priority, which could not have been facilitated without the co-operation of local authorities and the Irish Red Cross.

Dealing with a flooding event requires resources during the event and after for the associated clean-up. Undoubtedly, the greatest burden and responsibility for the clean-up will fall on local authorities. In addition to the €18 million already allocated, the Government has asked local authorities to estimate the damage caused to public infrastructure. Many roads and bridges were damaged or, in some instances, swept away. Once compiled, the Government has made it clear that this will be addressed in terms of the funding required by local authorities. Since 1995, the OPW, in co-operation with local authorities, has constructed 36 major flood defence schemes at a cost of almost €500 million. Some five further schemes are under construction, with 26 more at the stage of planning and design. Of the 7,000 properties protected by the OPW's completed major urban schemes, fewer than 20 were affected by flooding. It is worth dwelling on that point. Where we have developed flood defence schemes, they have worked, even during the period when we had rainfall that we have never before experienced in this coun-

try. That is a tribute to the work done by the OPW, local authorities and communities which provided input to ensure the schemes were appropriate for the community's concerns. In fact, despite record river levels, towns that were previously vulnerable such as Clonmel, Mallow and Fermoy, avoided any significant flooding.

Under the Government's new capital investment plan, the programme of investment will be stepped up considerably, with over €430 million earmarked for flood defences by 2021. I want to be very clear about this because some people have sought to make political gain out of the crisis. We will spend more on flood defences in the next five years than we, as a country, have spent in the past 20. For what it is worth, that includes the entire period of the Celtic tiger. We are investing in flood defences and there is no shortfall of money. People should stop scaring the public. It would be nice if some were here to listen to us. In the next six years the Government will invest more in flood defences than has been invested by Governments in the past 20. That is our record in government. The Government has already committed to schemes in Bandon and Crossmolina, two areas that were significantly impacted on by flooding in recent weeks. As a country, we have to prepare ourselves for extreme weather and become more resilient to the impacts of climate change. We cannot hide from its reality.

Considerable progress has been made by the OPW on the CFRAM programme, Ireland's first national flood management plan. This includes over 300 locations where the OPW is assessing whether flood defensive measures are required and feasible.

*1 o'clock*

This programme is central to the assessment of flood risk, planning for flood risk management and the subsequent implementation of feasible flood mitigation measures.

Following extensive public consultation, the CFRAM flood risk management plans will be finalised by the end of the year. People have mentioned how these are required by the EU floods directive. While we are happy to move towards compliance, we are going further by factoring in climate change and carrying out more consultation with communities than is required by the directive to ensure we get the schemes right.

The CFRAM programme involves six study areas, one being the Shannon catchment, and has involved the OPW modelling 2,075 km of river. The River Shannon co-ordination group, established by the Taoiseach in recent weeks, will draw on the full technical expertise of the OPW and co-ordinate the flood risk-related work of relevant bodies from local level to Departments and other State agencies. The group's terms of reference will be published in the coming days. It will have the necessary powers. Its primary function will be to get on with the job of delivering flood relief plans in the 66 areas of the River Shannon that have been identified as being at risk of flooding. It will also ensure each of the agencies involved publishes its work plans. We will publish the minutes of the group's meetings, with those meetings occurring on a quarterly basis at least. Furthermore, we will give the group the power and authority to make recommendations to the Government on legislative or regulatory changes.

Work on the CFRAM programme will contribute to the new flood forecasting and warning service. It is vital that we have a long-term forecasting system, which we currently do not. On 5 January the Government decision to proceed with this service was announced. We must also ensure our planning system gives sufficient consideration to flood risk. I have engaged with Senators on this matter in the past year and a half. We know about the legacy of bad planning.

20 January 2016

We must ensure our planning system gives sufficient consideration to flood risk. The OPW's CFRAM maps will be central to informing on the risks of flood plains and development. It means that more evidence and greater common sense will have to be applied to planning decisions, which entails complying with the flood risk planning guidelines published in 2009.

The State's investment in new flood defences and its reforming of planning will deliver benefits to local communities that were traditionally affected by flooding. Last week I joined the Taoiseach, the Tánaiste and other Ministers in meeting the CEOs of the insurance industry to communicate to them the benefits of the OPW's flood defence schemes. The meeting was constructive and the industry has agreed to provide additional data on the provision of cover and to consider further the particular issue of cover for areas protected where the State has invested in flood defences. The industry must examine the question of demountables again. Sometimes, they are the best or only viable solution. They worked in towns during the recent storms. It is not acceptable that insurance cover is not available where demountables have been installed and work. I hope the insurance industry will reflect on this, which it has undertaken to do.

A broader review by the Department of Finance of options for insurance for properties in flood areas is under way. This will examine international best practice. Whoever is in government this summer will have policy options, which I hope will be acted on. The Department's work in this regard, with the current phase of engagement with the industry, will provide us with these policy options.

In recent weeks I have visited many of the worst affected towns, from Bandon and Skibberreen to Crossmolina, Graiguenamanagh, Thomastown, Ballinasloe and, several times, Athlone. I also visited areas in my constituency. Besides showing me the devastation from flooding and the strength of people and communities, these visits highlighted how more than anything during these events people wanted an assurance that the Government could provide them with support in response to the flooding and that it was planning to mitigate the risk from flooding in the future. I want to offer people that assurance. The Government can provide it and has done so. It has responded with people and by supporting communities. It has provided the funding for prioritised investment of feasible flood defence schemes and other flood protection measures. This year it will complete the plans, through the CFRAM programme, that will inform the prioritised investment. I assure Senators on all sides of the House that the Government is working with those affected by flooding as they rebuild their lives, communities and businesses.

I thank the Senators who approached me - others will do so today - with examples of the practical actions that are required and feedback from their communities. I assure the House of my willingness to work with all Senators in the interests of getting this right. I, again, pay tribute to all of the agencies, volunteers and communities that worked so hard and gave so much support to one another in recent weeks. Their efforts prevented even more devastating impacts from flooding. They are the real heroes of what has been a national crisis. I look forward to a constructive and informative debate.

**Senator Mary M. White:** Over many nights, I saw the Minister of State visiting sites of extreme flooding. He was on the job quickly, for which I congratulate and thank him.

**Deputy Simon Harris:** I thank the Senator.

**Senator Mary M. White:** It gave hope to local people who were devastated by what had



happened. One cannot imagine how awful it has been for them unless one walks in their shoes. For many, their homes will never be the same again.

I will draw on the Minister of State's point about climate change. Globally, 2014 was the warmest year since records started. December 2015 was the wettest month ever recorded in Ireland. Climate change is happening under our noses. It has not gained traction with most people in Ireland, but we must face up to it and take action. Even though we are only 4.5 million people, we should be able to give the world leadership in reducing CO2 submissions and stopping the use of fossil fuels as quickly as possible.

Turning to my personal experience, there was serious flooding in 2014 in Nutgrove Avenue close to where I live. I heard about it on the 8 a.m. news. I went there immediately. Nutgrove Avenue and the roads leading from it were completely flooded. People's homes were devastated. Six or seven little businesses were flooded and could no longer operate. As a business person, I had empathy for them. It was shocking to see. I called Dún Laoghaire-Rathdown County Council immediately. An engineer and another gentleman came out to the site. Fortunately, I had trained in building construction and understood what had happened. The culvert's screen for scrub and branches on the Little Dargle river in Loreto Park had become blocked, preventing water from flowing freely.

From then on, I worked closely with Mr. Paul Faughnan, the senior executive engineer for the council. In the following months, he undertook a study of the area's flooding. He concurred with me that a new screen was required. I am delighted to say that, three months ago, a state-of-the-art screen was installed on the culvert on the Little Dargle river in Loreto Park. The Minister of State referred to bad planning and so on, but defence mechanisms must be put in place immediately. I knew that the old screen was not up to scratch to prevent flooding. Manholes had also been blocked. Keeping those clear is a case of simple housekeeping. Porous covers have now been put on them. That will allow water to drain away more freely. The new screen for the culvert is of a high quality and was not cheap. It is magnificent to look at, a work of art and modern. Anyone could see that it was well designed and that there would be no further flooding.

During the floods across Ireland a Nutgrove Avenue resident, Mrs. Honora Fitzsimons, rang to thank me for my help in getting the new culvert screen installed. She stated she could now rest easy at night. Mr. Robbie Campbell of Campbell Motors and Mr. Peter Phelan, whose livelihoods were put in jeopardy by the 2014 flooding, have thanked me for fighting their corner. It is not about brain surgery; it is about action. While the planners knew the area was a possible flood plain, the apartments in Athlone are a perfect example of it. I compliment Dún Laoghaire-Rathdown County Council and Mr. Paul Faughnan on the energy and passion they put into making sure it will never happen again. I am confident there will be no more flooding on Loreto Avenue because of what has been installed on the Little Dargle river. I thank them sincerely. The people can now sleep and rest at night.

**Senator Cáit Keane:** I welcome the Minister of State. This is one of the most important debates we have had given that many communities have suffered much due to the flood event. My two colleagues, Senators Michael Mullen and Hildegard Naughten who will contribute after me are in the middle of it on the River Shannon and in Galway, in particular. Like Senator Mary White, I compliment the Minister of State on the work done recently on the River Dargle. This issue is so serious that party politics does not come into it when looking for somebody to blame, apart perhaps from the Lord above.



20 January 2016

Climate change is very important. COP21 and the agreement signed in Paris by all the various countries and our climate change Bill will have a major role to play. That puts the onus on the Minister right down to the people in the community. The Minister of State thanked the people in the community. People are helping each other and farmers are looking after one another's stock which has been moved from farm to farm. Neighbours, local authorities and the Defence Forces are all pulling together. Having said that, there is an onus on each of us to look at climate change and the climate change Bill. The plan is being drawn up with all of the sectors and all the Departments coming together to ensure we do our best because prevention is better than the cure. I acknowledge the work that has been done. As the Minister of State said, more will be invested in five years than has been invested for the past 20. It is not as if rain does not happen, because it does. We have to ensure we look to work with the climate and work with the rivers.

In the Netherlands, the people work with rivers. A particular project there, the exact name of which does not come to mind, is room for the river. That is a very important project being undertaken by the Dutch people. It was developed in conjunction with the local community and local knowledge. We have seen people standing on places that have not flooded for 20 years. The cause of that flooding is climate change and we have to ensure we take the issue seriously.

Responding to the flooding caused by Storm Desmond, the Government announced the provision of €5 million in emergency funding and that €8 million was being made available to local authorities. One of the other speakers complimented the Minister of State on how fast he had reacted to ensure funding was made available quickly to the people on the ground. Last year the Government started the final part of its proactive planning programme to develop feasible flood risk management solutions for 300 areas across the country at most significant risk from flooding. The Minister of State mentioned the CFRAM programme. In all my time in local government, the CFRAM programme is one of the most important that has been initiated. There is the CFRAM programme, the core implementation strategy and the Government flood risk policy which is being implemented by the various steering groups. This has involved the surveying and modelling of a 6,700 km watercourse and the production of approximately 40,000 individual flood maps, including those required by EU directive, as the Minister of State said. All of these are available online and people can go into them and check their local areas.

Extensive public consultation, including local knowledge, is very important as is communities working together. This includes meeting with the local representatives and local authority councillors to ensure implementation of the CFRAM programme and exhibiting and proactively discussing draft flood maps to gain additional knowledge which informs that development. I am aware the Minister of State is actively engaged in doing that with the flood risk management plans and 300 areas are on target to be completed by 2016. The €430 million provided in the six-year programme for flood defences is welcome. Coming from Galway, I have heard people say the Government is working on it. Many people have asked if money is being made available. I said €430 million is being made available over five years and it is welcome. The European Investment Bank has agreed to provide €200 million in investment to Ireland to tackle flood prevention. The Minister is in Brussels today meeting officials about flood risk management because of the suffering Ireland has endured.

The Minister of State mentioned the meeting with the insurance industry. I listened to them on radio. Not providing insurance cover where flood defence schemes are working is a cop-out. It is asking people to pay money for nothing. Such schemes have worked in other European countries. The demountables work and the insurance companies should be made to insure

people who have them. It is a cop-out and they should go by international best practice. I hope they will come back to the Minister of State with that message; otherwise, legislation will have to be introduced to make them do it. If one cannot use the carrot, the stick will have to be used.

The River Shannon basin management co-ordination group was mentioned by the Minister of State. My colleagues will probably mention it, too. This week it was tasked with overseeing the River Shannon. We are being given powers to recommend legislative changes to Government. That is important. Setting up talking shops is one thing, but the Minister of State has ensured the River Shannon co-ordination group has teeth. It will oversee the roll-out of the flood defence measures in areas highlighted by his office and the works done by the CFRAM. It will meet on a quarterly basis and publish its work and will be tasked with overseeing the delivery of 66 flood plans. The Minister of State has done much work in his short period in office. He has a lot more to do and I hope he will be here again to do it in the years to come. I thank the Opposition for acknowledging the work he has done since coming into office.

**Senator Kathryn Reilly:** I welcome the Minister of State. Like many other Senators, I start by offering my sympathy to those who were affected by flooding across the country in recent weeks. I commend all those who worked relentlessly to help defend homes, to help bring supplies, to rescue people and animals and all those involved in the clean-up as the flood waters recede.

The devastation visited on people has been colossal. We have seen it on the news every day. Politicians of all political persuasions and none have been wellie deep with these communities. It is nice that we are using our wellies other than for the National Ploughing Championships and Electric Picnic and that we are getting down and dirty and seeing the effects. People appreciate that because they need to see that we, as legislators, understand what is happening in their real lives.

It is important to realise that this is not the first time there has been flooding. It has happened on many occasions and it is not likely to be the last time it happens. I agree with other Senators that it cannot be an issue we make politics out of because people living with the effects of flooding do not want to see this issue as a political ping-pong ball or used as a battering ram back and forth. At the same time, it is important that we remember that the political decisions we make in this House and which have been made in the past have effects in terms of what has happened and what will happen in the future. It has been thrashed out in the media, political houses, council chambers and at dinner tables across the State that under planning laws developers were allowed to build on flood plains. For example, in 2003, a proposal to introduce a ban on building on flood plains was rejected by the Government. We must be serious about these issues. Last month the Joint Committee on the Environment, Culture and the Gaeltacht urged a ban on future building on flood plains. Now the onus is on the Government and legislators to respond and act. As other Senators mentioned, it is to our great shame that insurance companies are not providing flood insurance for home owners and businesses. In parts of Dublin, where major flood defences were constructed, the fact that insurance companies are not providing insurance or are only doing so at a prohibitive cost is unacceptable. I agree with Senator Cáit Keane that it is a cop-out. This is an important issue.

Earlier this month it was reported in the national press that progress reports from the OPW had revealed that almost 20 major flood defence schemes that were necessary to protect built-up areas were behind schedule. The Minister of State mentioned them. The national press reported that some schemes across several counties were up to two years overdue because of

delays in completing detailed designs or failure to appoint consultants to oversee the projects. Will the Minister of State provide an update? It is very important that we inform the public if anything has happened since in order that the correct information is available, particularly for the relevant communities. Can we be given information on the completion of designs, appointment of consultants and the current position of these projects in view of the delays reported?

With regard to agriculture, will the Minister of State refer briefly to the effects of flooding on farming and, for example, on grass quality, although he might not be totally *au fait* with this issue? Flooding and wet weather are costly for agriculture because they cause delays in, and a reduction of, the crop harvest and can cause significant damage to grassland. The type of sward, degree of weed infestation, the duration of flooding, soil type, amount of silt and debris and the flow rate of water determine the effects flooding will have in terms of pasture damage and the subsequent recovery. Teagasc has warned, for example, that what will result in many flooded areas is a reduction in the quality of silage. The onslaught of flooding over a prolonged period is especially worrying because of the effects that will become evident in the months later in the year. That is when it will hit home for many farmers.

The Minister of State mentioned some of this in his opening statement, but what interactions have taken place with farming organisations? Coupled with the work that has been done with homes and small businesses, what impact analysis is taking place on the effects on farmers? The terrible effects of the flooding that will become apparent later in the year in terms of crop yields, harvests and livestock must be assessed. Will there be an income plunge for farmers due to the increased costs associated with dealing with the flooding and the effects on grass or crop quality? My local newspaper reports today that a Teagasc adviser, Mr. David Colbourne, warned that the level of flooding in recent weeks means that we might not get the return of high-quality productive grasses. There are also the effects on the silage yield later in the year. I welcome the schemes that have been put in place by the Minister for Agriculture, Food and the Marine, Deputy Simon Coveney. That will help in some way to compensate farmers. However, like those homes that are in danger of repeat flooding, these issues are likely to recur and the farming community which often has difficulty accessing bank credit, particularly in times of need, requires some reassurance and guidance, especially when it takes months for the effects to be felt. This issue might fall off the political radar or there might be something else happening; therefore, farmers must ensure their voices will be heard and that the effects of the flooding will be offset.

I have given my observations and posed a few questions to the Minister of State. As other Senators have said, it is important we do not play political ping-pong with this issue. This affects people's lives. While we are out canvassing, many people might forget about this issue, but it is still the daily reality for many. We must ensure we carry out future planning and that the issue is consistently on the radar. We are legislators and that is our job, first and foremost.

**Senator Denis Landy:** I am from Carrick-on-Suir in Tipperary. In 1912 my grandfather moved from Mill Street having been flooded for three years in a row. He moved 300 yards into the town. Critically, it was a house that was 50 ft. higher above sea level. On 29 December last, 103 years later, Mill Street flooded again.

First, I commend the Minister of State for everything he has done. He was out in the middle of it all, seeing what the problems were when they were happening. He did not send officials out. He went out himself and that is very important because when I spoke to the Minister of State - I will do so again - he understood what we were talking about. This is critical in terms

of trying to solve a problem that will face us every year from now on. There is no question about this.

I also recognise and express my sorrow for the misery that has been visited on people throughout the country. The flooding has been ongoing for nearly two months in some areas. Senator Kathryn Reilly is right that we tend to forget about it. The debate in my council last Monday was about whether it had enough salt for the rest of the year, as the council had used 100 tonnes of salt each night in recent nights. The debate moves on very quickly. However, what is left behind must be picked up by the people who are in the houses that have been flooded and who must deal with the aftermath.

I also commend all of the services that were out working. The Minister of State referred to them. Many local authority staff were looking forward to a break at Christmas. The holidays of most local authority staff finish on 31 December and many of them were taking their remaining leave days over the Christmas period. That all stopped once this problem started and to a man and woman they got involved. The Minister for the Environment, Community and Local Government, Deputy Alan Kelly, was in my home town and in Clonmel on New Year's Day. Staff who had not been to bed at all the previous night were out with him to show him what had happened and to explain the situation. I commend the people concerned, with the voluntary agencies such as the Irish Red Cross. There is a great group in my area called Carrick-on-Suir River Rescue. It did tremendous work getting people out of their houses. Its own premises was flooded and it lost much of its equipment. It must be borne in mind that on 29 December 2015, a total of 81 mm of rain fell in Carrick-on-Suir. It was the highest amount of rainfall in the country. It equates to a month's rain for a winter month and it fell in one night. It was going to be difficult for the system to deal with it. I also commend the national co-ordination team and, more particularly, the county co-ordinating teams. They met around the clock and, in my county, the team issued information every three hours.

The work being done by the Government to tackle this issue is important and essential. The Minister of State outlined the amount of money being invested in it. The River Shannon did not flood for the first time in 2015. It has been flooding since before the foundation of the State. Many people have made promises about it, but the Government is putting money into it. I know most about my home town. In 1996 I stood in houses along the quays in Carrick-on-Suir with the late Hugh Coveney. We were wearing waders. On that day the late former Minister gave a commitment that we would have a flood scheme. We have such a scheme and it has worked very well. However, on the night of 29 December 2015 it did not work. That was because 81 mm of rain fell. A culvert that is not as wide as the reporter's desk in front of us turned into a 3.5 ft river flowing down the N24 from the Clonmel side of the town into the town. It went in behind the walls and flowed not for an hour or two but for 15. It flowed behind the walls and flooded all the houses we thought were safe. There was another problem. There are subterranean pumps, but they tripped out and failed. They were supposed to take the surface water that came normally and naturally from the flow-off. They failed and the water rose and flooded houses. That was our problem.

The other issue, specifically in my town but also generally, is that Irish Water now has responsibility for dealing with storm water and sewage. In some towns - I know this because I was present at the start when we installed the sewage treatment plant the last time the Labour Party and Fine Gael were in government - some of the network is mixed up. I will go no further than that, but it is mixed up and must be sorted out. That is a fact. If it is happening in my town, it is happening in others.

20 January 2016

The road network has been badly damaged. Springs have come up through roads that never had springs before. I travelled a road not two miles from my house and what I saw was like a geyser coming up. The spring came up almost 3 ft. into the air from the road. Extensive damage has been done and it must be rectified.

I wish to discuss the financial supports available. I commend the Government for the work done to provide support and the fact that €18 million has been made available to local authorities.

We had to take people out of their houses. People in local authority houses were offered accommodation, as were others. Everyone was sorted out in terms of when they had to leave their houses. The local authority houses will be repaired. The Minister for the Environment, Community and Local Government, Deputy Alan Kelly, assured people in my town that the funding would be available and the houses would be repaired. The private houses under insurance will be repaired, but they will not get insurance again.

I was in the house of a 71 year old widow. The worst flood ever in Carrick-on-Suir and in the country was in 1947. I only know the story of the great snow of 1947 from my late father. He told me how it all melted in three days. In Graiguenamanagh - it may have been the day the Minister of State was there - a 90-year-old man featured in the media. He said the last time he had seen water like it was in 1947. At the time it moved through quickly, because the ground was not waterlogged. In 1947 the highest water level ever was recorded in my town of Carrick-on-Suir.

Senator Cáit Keane mentioned local knowledge. In 1957 a woman's father-in-law brought a fisherman to the plot where her family intended to build a house and asked him what level he would advise for building the house. They built the house above the level the fishermen advised and it never flooded. It did not flood in 1996, when the two houses next to it were flooded. However, on 29 December 2015 it was flooded. The woman's flood insurance was removed by her company in 2012 for no reason. She had no flood insurance. The flood insurance cover of the two houses next to her which were flooded in 2009 was restored and the people there can now claim against their insurance, but she cannot claim anything. The Minister of State met representatives of the insurance companies. I call on him to tell them that story the next time they meet, because that is absolutely disgraceful. This woman was left with nothing. Most of her family have gone from the town, there is no insurance and her house was destroyed.

I have some practical suggestions. We can never fill enough sandbags. They are not going to decay or go away. They can be ready in the depots. Every place needed more sandbags. The Minister of State should ensure this happens. When we had a crisis with freezing weather in 2010 there was not enough salt in the country. Some of us began to find out about places in Russia that we had never heard of. We brought in salt, built depots and put the salt in them. Now, we have enough salt for a freeze lasting up to three weeks in Tipperary without bringing in another load of salt. We need pumps on stand-by in every area where there is flooding and they should be stored in the depots. We should not have to go looking for them when a pump fails, as happened in my town; they should be on stand-by. We need to put the finance into these areas. It does not represent a large outlay and we need to do it.

We also need to look at a proper separation between storm drains and the sewerage system in every town. Above all, we need to go back to what happened. I am referring to tidal water and I realise the Minister of State understands this. I also realise that in some parts of the



country, no matter what we do, some fields will flood. In 1997, the late former Minister Noel Davern came to our town when we had the provisions to start the flood relief scheme. I put it to him at a town council meeting that the natural flood plains of the River Suir which start three miles south of the town should be put into a set-aside scheme for farmers. Under such a scheme farmers would be allowed to use the land in the summer for grazing and would be paid to allow the water in when the river could not hold it. That would prevent the river from flooding the streets in the town. His response was to laugh at me. I put it to the Minister of State that this is one of the solutions for the River Suir. Such a scheme should be established there, as it has been for many other rivers. I have spoken to other Ministers about the matter.

**Acting Chairman (Senator Terry Leyden):** The Senator is way over time.

**Senator Denis Landy:** This is my last point. We need to bring the insurance companies to heel. What they are doing is unacceptable. On the way up to Dublin yesterday I listened to a consumer rights agent speaking about car insurance. They are doing it in that sector also. In the case to which I referred a company withdrew insurance from a woman who had lived in a house from 1957 to 2012 without being flooded and she was left, on 29 December 2015, with her house under three feet of water and no insurance. That is unacceptable in any man's book. I call on the Minister of State to take up that issue.

**Senator Paschal Mooney:** I welcome the Minister of State. I acknowledge the assistance of my friend and colleague Deputy Michael Fitzmaurice who is in the Visitors Gallery with a representative of the Carrick-on-Shannon Chamber of Commerce and Mr. John Dunne who has corresponded with the Minister of State on behalf of the Carrick-on-Shannon Chamber of Commerce. I will read some of the relevant sections of the letter received by the Minister of State and I would be grateful if he responded to them.

I received a briefing from Fianna Fáil which I will not read because it is not overly complimentary to the Minister of State, with whom I get along well on a personal basis, although those involved are simply making political points. They call on the Minister of State to see to it that the Government supports affected property owners by ensuring adequate information transfer between the Office of Public Works and the insurance industry. This would help homeowners to access home insurance after flooding issues have been rectified. We suggest the €15 million humanitarian relief package is unlikely to be enough, given the scale of the catastrophe.

There is another question for the Minister of State to address in the document. Has any progress been made in progressing major flood defence systems throughout the country? I have in mind the repair of flood defences in Cork, Galway, Waterford and the Shannon region which were damaged during the last storms in 2014. Again, the Minister of State can clarify the matter, but I understand the relevant budget has been underspent this year by some €14.5 million. At least, that is what those involved tell me. I imagine the Minister of State will be able to answer these questions adequately.

We must not forget the upper Shannon. All of the discussions until now have been about what has happened on the lower Shannon from Athlone into the two lakes, Lough Ree and Lough Derg, and down into Limerick. However, there has been serious flooding in my capital town of Carrick-on-Shannon, as well as Leitrim village, some four miles from Drumshanbo. Much of this was outlined in the letter sent to the Minister of State on 18 January. A number of proposals were put forward, but I will single out one or two, in particular. The ESB has been given responsibility for the maintenance of Lough Allen. The ESB maintains the level at 48.15

20 January 2016

m between 1 October and 1 April. Normally the level is 48.15 m, but the proposal is that Lough Allen would be closed for navigation purposes between 1 October and 1 April. This would allow for any flooding to be absorbed by the lough. From October through to December - it happened again in January - the level in Lough Allen increased by 6 ft. It went from 48.15 m to 51.5 m or 51.8 m. As a direct result of the water being allowed to go over the sluice gates - the sluice gates were shut - Leitrim village and Carrick-on-Shannon, in particular, were severely affected. Mr. Dunne has pointed out in the letter that the town of Carrick-on-Shannon has lost approximately €1.5 million in business. That is a vast amount of money by any standard, but particularly for a county such as Leitrim with a relatively low population - Carrick-on-Shannon is the least populated county town in the country. The Minister of State will understand the devastation that it has created, especially for small businesses.

I would be grateful if the Minister of State got his officials to deal with this letter as a matter of urgency. The chamber has put forward seven points covering what can be done to alleviate flooding in future in the Carrick-on-Shannon and Roosky areas. There is a very specific proposal which the chamber made to the ESB. Given that the ESB has responsibility for it, I am not sure whether the Minister of State and the OPW are able to direct the company or whether they are in negotiations with it. One of the ways the Minister of State could help alleviate flooding in the future - I understand, from a meeting held with it earlier today, that the ESB is not against the proposal - would be to provide what is called "sheet piling" along the route from the sluice gate at Ballintra in Drumshanbo which has been in place since the beginning of the hydroelectric scheme of 1926. The gate was provided to regulate the flow of water out of Lough Allen which was originally to be used as a reservoir for the generation of electricity at Ardnacrusha. As a result of the development in tourism in the past 20 years, local lobbying resulted in the reopening of the Lough Allen canal which, as the Minister of State will know, links up with the Shannon-Erne waterway at Leitrim village. What was done opened up the entire north Shannon area for boating. I understand that some 150 boats go through the locks into Lough Allen between April and October each year. From October onward, there is very little boat traffic on the canal. It would go a long way towards alleviating any future flooding problems if Lough Allen were closed to navigation between October and April and if the levels were allowed to rise. In fact, the levels would probably be lowered as a result. Specifically, if sheet piling were placed between the lock at Ballintra and the Galley Bridge, a stretch of water that runs for a mile to a mile and a half after the Shannon leaves Lough Allen, it would go a long way towards alleviating the flooding further down in Leitrim village and Carrick-on-Shannon.

The ESB is stating it wants to maintain the levels at 48.5 m because it is afraid the embankments will burst if too much water is allowed out of Lough Allen into the River Shannon at that point. Mr. Dunne and Deputy Michael Fitzmaurice have highlighted the fact that if the ESB puts in the interlocking sheet piling system it has put in place in other parts of the country, this would alleviate, to a considerable degree, any threat of the embankments bursting because permanent structures would be in place. It is not a very long stretch but it is a significant one. If one thinks about it, 6 ft. of water has gone over the sluice gates between October and December. At one point, that water had nowhere else to go but down into Leitrim village and Carrick-on-Shannon. There is no doubt that along with the other proposals in the letter, into which I will not go now as they are very technical, this is a manageable, low-cost approach. It includes, for example, clearance of trees from channels in the vicinity of Jamestown Weir. Jamestown is the next village after Carrick-on-Shannon. The letter also suggests the use of the Albert Canal for flood conveyance by bypassing the restrictions at Jamestown Weir and Charlestown. This would require the installation of simple penstocks at the lock gates, which would only be used

once the 12 sluices at Jamestown Weir were open. That means it would be used to truncate peak flows only and would not increase the likelihood of siltation in the canal. That is just one example of the detail into which the group has gone. It also talks about widening the channel at the Leitrim bank opposite Charlestown by 10 m and suggests this would be carried out above summer water levels. As a result, it would not impact on normal levels or spawning areas and could minimise the risk of siltation.

I compliment Deputy Michael Fitzmaurice, my colleague, Deputy Barry Cowen, and others who attended a widely publicised meeting with the European Commission. It addressed this perception that habitat directives are more important than people and that fish, endangered species and insects are of more concern. That has been knocked on the head now. That was the word that came back. There is a flexibility within the habitats directive and I would be grateful if the Minister of State would address that issue. Certainly, that was the message that came back from the meeting. The flexibility is there to allow drainage in particular areas. I am thinking, in particular, of the initiative at Kinvara to open a channel to the Atlantic which would allow the water to flow out. I have attended the ESB briefings and I recall talking to its representatives about this entire problem. It reminded me of an old cliché my late father used. When I was a child he used to say that he met a woman who used to say “Let us kneel down and say a decade of the rosary for de Valera and the draining of the Shannon.” That saying dates back to the foundation of the State. It is not a simple matter of drainage as the Minister of State knows. However, there is a problem with the Shannon. It is like a saucer. If the water pours in, it has nowhere to go and the surrounding area floods. There are ancillary works which, as the Minister of State knows well, can be carried out.

My final plea to the Minister of State is the most important. Mr. Dunne made sure I would say this to the Minister of State and I agree that I should. The Minister of State has visited every town and locale throughout the country except Carrick-on-Shannon. At the time of the flooding, he was not in Carrick-on-Shannon. In fact, there was no representative there.

**Senator Cáit Keane:** The Minister of State does not have the gift of bilocation.

**Senator Paschal Mooney:** While Tip O’Neill said that all politics was local, I am not suggesting the Minister of State deliberately neglected or ignored the town. He has been to places all over the country. We are asking him, however, to take the time to meet the local flood committee and the chamber of commerce in Carrick-on-Shannon in the light of the proposals they have put forward to him and in order that he might be able to implement some or all of them. I am grateful to the Minister of State for his input. I acknowledge that he was out doing the best he could in difficult and unprecedented circumstances. I ask him to please come and visit lovely Leitrim at his earliest convenience.

**Senator Sean D. Barrett:** I welcome the Minister of State. I express my appreciation of the energy he has brought to dealing with problem by visiting as many places as possible. There were unnatural expectations that Ministers could act the part of King Canute by appearing wherever there were floods to wave them back. However, the problem has much deeper roots. There is a case detailed in the *Irish Examiner* today of a supermarket in Cork where the claimants for the planning permission had contradictory advice as to whether the area where it is to be built is located on a flood plain. This happens all the time. Regarding turloughs in south Galway, it has been known for many decades that water goes underground and one does not know where it is going to rise again. That must be something people note when they plan their buildings.

20 January 2016

We have to examine the question of hydroelectric power. There were statements that the Shannon meets only 2% of our electricity needs at this stage. If there are environmental consequences of the kind we have seen, should it be switched off during the winter? Is it a piece of industrial archaeology? What do current energy prices tell us about the viability of hydroelectricity? If we add in the social costs we have seen, it might change the balance. There are other ways to generate electricity which do not involve the flooding of people's houses. There was an irony when the Minister of State was addressing how we would cope with these problems. When there were ESB announcements of how much water it intended to release downstream, RTE was then going straight to people downstream who said they might get by that night. There has to be some co-ordination there. The legal case is the one between UCC and the ESB where the ESB was judged to be 70% responsible for the flooding in Cork city in 2009. What is the future of hydro? Should the reservoirs be emptied to cater for the winter floods rather than to wait for the crisis where a dam might burst and water has to be let through following which a telephone call is made to people who are downstream to see how they cope?

The leading economic research on this matter which has stood the test of time was carried out by the US Army Corps of Engineers, at the invitation of the Government of the day, following the flooding caused by the River Shannon in the 1950s. I think the project was led by a Lt. Colonel Rydell. He said the case then was to move people's residences to higher ground. At that stage in the 1950s not much happened in agriculture in the winter and there was no great economic loss. While the pattern of agriculture may have changed, the report is still authoritative.

Like the Minister of State and the Taoiseach, I am disappointed at the response of the insurance industry. As the Minister of State said, we have put money into Kilkenny, Fermoy and Clonmel. Is the insurance industry seriously saying that there was no statistical reduction in the probability of flooding? Insurance is about risk. We had discussions with the Minister of State's ministerial colleague on safety on the roads yesterday. The insurance industry must bring itself up to date in the context of the assessment of risk. It has not been particularly good at doing this. It discounted the portable defences against flooding, even though the Minister of State has shown they have been extremely effective where they have been tried. The UK evidence is that they are better than sandbags because the latter leak and these portable defences against flooding do not. Let us have the insurance industry carry out proper actuarial work and reward the OPW, other agencies and the taxpayer who has put a great deal of investment into flood prevention programmes which, apparently, are not resulting in any reduction in people's insurance liabilities in the case of flooding. In some cases, they are not preventing companies from refusing to insure properties. It seems strange in view of recent events, but there are places where the investment programmes relating to flood defences are highly unpopular. I am thinking of the Clontarf and the James Larkin causeway in this regard. It appears a level of construction was taking place to prevent floods that are impossible to predict. Perhaps more resources should be allocated where they are needed.

A final point that arose in our recent debates on climate change was related to the advisory committee. The committee's chairman, Professor John Fitzgerald, said earlier today that it would be independent. However, the criticism in this House was that the climate change advisory committee is overloaded with economists and short on experts who have studied climate change. It also needs to be independent of the Environmental Protection Agency. We want independent advice. One of the issues that arose during the banking inquiry was that when the Department of Finance did not like the advice from the ESRI, its officials telephoned the latter



to complain. We do not want this. We want all views, including contrarian ones, to be brought to bear on this problem.

I compliment the Minister of State on mentioning the two schemes that are up and running, with €344,000 made available to the 360 households and €530,000 for small business. In the period of despair people experienced, they did not think that money was going to arrive and they felt almost alone in coping with the problem. I am glad that those numbers are now known and that those facilities are still open to compensate people. It is an area in which we will have to do a great deal of planning regarding where we build and how we protect against floods. Even though it was, as the Minister of State said, an exceptional December in terms of rain, lessons have been learned. The legal judgment in the *ESB v. UCC* case, which was the biggest case of flooding, will be extremely important to explore. I gather it runs to over 300 pages. The university was judged to be 30% responsible and the ESB 70% responsible for that flood. If we do not do work like that, the moral hazard problem will assert itself. We will have these emergencies and everyone will want to know why the Minister is not there. We have to take measures to anticipate flooding and deal with it and to apportion the blame appropriately when that is necessary.

**Senator Hildegarde Naughton:** I welcome the Minister of State and congratulate him on his excellent work in recent weeks. I have been in regular contact with him about flooding and commend him for the Trojan work he is doing. I also welcome the opportunity to debate this issue in the Seanad.

Where certain well known areas of the country were subject to occasional flooding in the past, it now seems that there are larger areas that are not immune. There are two issues which the Minister of State has highlighted, namely, global warming and planning. Global warming is a fact; we can now see its effects. We have seen commentary from experts in recent weeks on what it holds in store and areas that were previously unaffected by flooding may now be prone to it. Experts warn that Ireland and the United Kingdom will be the most affected in Europe by river flooding and it is important that we make the necessary preparations. In that light, I welcome the €430 million committed by Government in the next five years for flood alleviation measures. That is more than was spent in the past 20 years, for the better part of which Fianna Fáil was in government. It is important to note the work of the Government. I also welcome planning guidelines that will make it more difficult to build in areas prone to flooding. I commend the Minister for the Environment, Community and Local Government for his consideration of a blanket ban on building on flood plains. I also commend the Minister of State for the flood-mapping exercise and consultation his Department is carrying out. When complete, this will enable the Department to devise a plan for much-needed flood defences across the country.

The area in which I live, Claregalway, was particularly affected by flooding caused by the River Clare and local turloughs. It is now just past the anniversary of the flooding that occurred in 2009 and that decimated parts of the area. I pay tribute to all the council workers, volunteers and people from Civil Defence who came out and gave of their time and energy, day and night, to help people in the local community. I visited families in Claregalway during the recent flooding and their properties were nearly under water again. The Minister of State has been excellent in following up on the planned flood relief works on the Clare river. The latest information is that it will commence in the first quarter of the year. However, the residents are seeking a date when people will be on site carrying out the final phase of these works, which are sorely needed.

I also want to raise the issue of the lack of insurance cover, which has also been raised by my



20 January 2016

colleagues. I will again use Claregalway as an example. Parts of that area were flooded in 2009 and the properties there have been uninsurable since. While it is vital that the Clare river flood works commence as soon as possible, it is also vital that when they are complete, these people will get insurance. Many of the houses I visited were bought during the so-called boom. They are very expensive, the mortgages on them are enormous and many properties are, to all intents and purposes, worthless. I welcome the meeting the Taoiseach and the Minister of State held with the insurance industry. It was a very worthwhile exercise. One cannot expect an insurer to insure a house that is prone to flooding. Insurance is an estimation of risk and some of these homes are always at risk and uninsurable. We should, however, expect the insurance industry to insure houses that have been subject to proper flood alleviation works. I distinctly remember having a similar discussion two years ago. I know the Minister of State understands that there is little point in works being carried out if the insurance industry is not happy with these works. Conversely, the insurance industry cannot dictate unreasonable or unreachable standards.

There are too many Departments involved in and regulations relating to flood management at various levels. For example, the recent EU directive stipulates that any flood relief work permitted by the Office of Public Works must be reviewed by another Department. In Ireland's case, that Department is the Department of Public Expenditure and Reform. This has slowed down the process of approval for the Clare river works, for example. The Minister of State has assured me that these works will proceed with due haste. I was interested to hear in recent weeks that the Commission said it is not in any way responsible for any delay in approving flood alleviation works. In respect of any work that might impact on the natural environment, which is nearly everything, a plethora of EU directives must be considered or obeyed. That is a simple fact. EU regulations slowed down approval for the Clare river project. That is just one example of the delays we have been experiencing.

I commend the Minister of State for his great work to date and look forward to the roll-out of these major flood alleviation projects.

**Senator Fidelma Healy Eames:** The Minister of State is very welcome. I also commend him for his prompt response on the ground. On 27 December, two days after Christmas, I had to text him about a very urgent problem in Labane in Galway, just south of my home, where a woman feared for her life as the floods were rising. She also had depression, which made the situation worse. My purpose in standing here today is to talk to the Minister of State about what works well. He knows there is a serious problem across the country. Half of Ireland has been under water. With climate change now a reality, one that is not going to go away, we must look afresh at the country. I am delighted the Minister of State is present for this debate. One lesson we must learn is that anyone whose property was flooded in 2009 and again in 2015 was, let us face it, let down by the State. Any works that rely on the election cycle will fail the people. The State must assume responsibility for the work that needs to be done, regardless of which Government is in power.

*2 o'clock*

In 2009 we had a Fianna Fáil-led Government and in 2015 we have a Fine Gael-led Government and, between the two, people fell.

We have some good news stories. I can talk about homes in Moneymore and Oranmore in my own parish that were flooded and in terrible shape in 2009. They did not re-flood because the works were done by the OPW and this is how it happened. I called a public meeting of all

the farmers and homeowners in that area, which was also attended by the OPW, the National Parks and Wildlife Service and the county council. The OPW agreed to lead. The National Parks and Wildlife Service could see the misery they people were in, but the local river needed to be dredged and the National Parks and Wildlife Service obliged in this respect. One wonderful farmer, Mr. John Brennan, led the farmers and worked with the OPW. Over a series of years those drainage works were carried out and the water was taken to the sea. It worked and the people concerned are deeply grateful. There were some successful works in Claregalway, but others were not successful and some works were not finished. I am delighted to hear that the final phase is under way, but it was a miss.

I am very concerned about the humanitarian fund and that it might be means-tested. This happened after 2009, when people failed to get the support they needed. There was one loss of life - through suicide - as a result of the very slow relocation process and this is well known locally. It really saddened me that, although every public representative in Galway represented that family for three years, as soon as the loss of life happened the family got the home.

The good news which I gave last week is that replanting native trees in upland areas and incentivising farmers to be flood protectors are working in other countries. In Wales there is a project called the Pontbren project, led by Bangor University and farmers. By planting only 5% of their uplands and hilly areas with broadleaf native species of tree they have improved the situation as regards flooding by 29%. We need to look very seriously at doing that here. The woodland league has brought the information to me that native trees, with their deep roots, can absorb water 67 times faster than grasslands. South Galway is ruined. I am the chair of the Yeats Thoor Ballylee society and the water is now up to the thatch in Coole Park. I brought in pictures of when we brought in Sir Bob Geldof recently to help us. He is fronting a documentary on Yeats, but the only way we could show Yeats's home to him was in a boat. Coole Park, the former home of Lady Gregory, is absolutely ruined and the water is up on the autograph tree where all the famous poets and literary figures to whom she was a patron have signed their names. If Derrybrien and Slieve Aughty were replanted with native trees they would soak the water before it flowed downhill. Even saplings of only two years old act as natural flooding absorbers.

We need to incentivise farmers to be flood protectors because the farmers own the land and there is a lot of goodwill to improve things. I listened to Senators Denis Landy and Paschal Mooney and they all have mountains and hilly areas in their environs; therefore, let us plant these trees. We must get Coillte on side; the Minister has a problem in this regard. Coillte owns 1.2 acres of our forest areas but they are planting conifers for the timber crop. They do not have deep roots and are not a native species. The Minister has to mix it.

A report of COFORD and UCD states we want 30% broadleaf criteria; therefore, the Minister of State should be planting native varieties such as oak, mountain ash and willow by afforestation and new planting on virgin ground and reforestation after clear felling or harvesting a tree crop. As there are other native varieties, I ask the Minister of State to seriously look at these criteria. Coillte is a semi-State agency. It owes the State, as well as its shareholders. As climate change is upon us and not going away, the State needs to look at sustainable solutions. We know drainage works by bringing the water to the sea and that flood defences help but now we must work with the environment. The Minister of State is the best man before whom to place this information because he has vision. He is a worker and he is not afraid to take the lead. How can we ignore the importance of this evidence? It is also working in Norway and they have 50% less flooding because they are heeding the evidence for planting trees with deep

roots in upland areas. They are our native species and we were traditionally a woodland people.

**Senator John Whelan:** I am glad the Minister of State, Deputy Simon Harris, is in the House to discuss this important issue. Flooding may have abated for the moment, but it certainly has not gone away and it will be back. A hard rain has fallen and it will keep coming back until we deal with it with some purpose, some vision and serious sustainable and long-term strategies. Present company excluded, I am surprised we have not been drowned and flooded for a second time with the amount of crocodile tears that have flowed in the past six weeks from people talking out of both sides of their mouths and being dishonest by telling people there can be quick-fix solutions and it can all be sorted with flood defences, dredging and drainage. In some instances the drainage works of the past have caused flooding on neighbours' land and adjacent properties in towns and villages. The flood defences worked in Carrick-on-Suir, as Senator Denis Landy outlined, and in other towns such as Clonmel and Fermoy, but they also certainly caused flooding further downstream. We see on an ongoing basis with the River Shannon that we solve a problem in one spot by opening up the sluice, the weir or the dam but we flood Cork or Athlone or towns further down. We have to stop being selfish and pretending that this will do and that this is the answer. There are people playing to the gallery on this and who just want to make an electoral and political football out of it but we cannot deal with it in this way. There have been very good ideas today and Senators Fidelma Healy Eames, Denis Landy and others have come forward with some good suggestions. I am glad that the Minister of State is here as he is a listening Minister and someone who will take these suggestions up and try to implement some of them. However, we must have an holistic approach.

In some instances, I do not agree with the Minister of State that it is just a natural phenomenon and a matter of climate change. Some of it is man-made and we are causing some of the flooding ourselves. In some cases it is State agencies which are responsible. The ESB has a role and the OPW and Coillte have roles. The National Parks and Wildlife Service has a role, but it seems that, in some instances, they do not all sing from the same hymnsheet and they certainly do not co-operate with, assist and support each other. In some cases, some of their objectives and purposes are at odds and we must address this. This was clearly shown at the height of the flooding when Bord na Móna was draining bogs and pumping water into an already flooded Shannon basin. What is the sense in that? I propose that Bord na Móna take the water from the River Shannon and flood the cut-away midlands bogs as wetlands, as habitats and as reserves, as a safety valve for flooding when it occurs. Can the Minister of State address the issue of Garryhinch reservoir which we have pursued here for the past few years? Garryhinch reservoir is a feasible and live proposal. It is a valid and sustainable proposal, but Irish Water has rubbished it because it does not suit it. They want to build a pipeline from the River Shannon direct to Dublin. That is short-sighted and stupid in the extreme. We need a reservoir to have redundant capacity, to address problems such as flooding and to have an overflow capacity. What if, as has already proved to be the case, there was contamination at source during periods of flooding? With floods, often there is contamination as a result of the presence of debris and sewage. What then would be the position with the pipeline if the safety valve of a reservoir were not put in place?

On the other hand, in the light of the weather extremes we are experiencing, droughts will occur. We must build in capacity in order that we have redundant capacity for farming, families, factories and foreign direct investment. I am glad that *The Irish Times* has supported my campaign in this regard. It reported that it is a fallacy to consider building an €800 million water pipeline from the River Shannon without including the reservoir. I ask the Minister of State

to address that issue and to assure the public that it is a live prospect, is still under consideration and a matter that will be addressed by the next Government, not by Irish Water.

We must also be honest. When this project was first mooted, some of those who are now crying crocodile tears about the Shannon basin being flooded informed me that we would not get a drop of their water. Where is the sense in that? Can they not look beyond the end of their noses, political catchment areas and electoral constituencies in order to see what is best for the common good? We must take an holistic approach. I do not agree with the Taoiseach and the Government that there should not be a single Shannon authority. We must at least have everyone working to common purpose. We must have a catchment approach, from source to sea. I urge the Minister of State to actively pursue the reinstatement of agencies such as the Barrow Drainage Board. We need to re-establish such entities because in the past they facilitated co-operation among the local authorities along the expanse of the river, from County Laois down to Waterford, in counties Carlow, Kildare, Offaly and everywhere in between. As a result of such co-operation, the issues of bank maintenance and dredging used to be addressed. Outdoor staff from the local authorities maintained the culverts and drains and ensured shores remained unblocked. We have stopped all that kind of work in a rush to lay off local authority staff and move towards privatisation. Who now has responsibility to keep shores, culverts and tributaries clear? Flooding is often caused by man-made impediments, such as bridges and weirs not being maintained and culverts and shores not being kept open and cleaned. We all have a responsibility in this regard. We have got to stop pretending. One's heart goes out to the families which had to endure this all through Christmas and into the new year. How stressful it must have been. Only for the intervention of volunteers and great organisations such as the fire service and Civil Defence, people would certainly have been far worse off. That said, there is scope for improved co-operation between the local authorities. Some parts of the country were not affected at all or not as badly affected. I believe they could have deployed fire tenders, Civil Defence personnel and pumps to the areas worse affected. We must have a little more joined-up thinking.

This problem is here to stay unless we adopt a sustainable, long-term strategic response. Dredging, the erection of defences and drainage alone will not do. Climate change is here. We have proof of it. It is not all down to nature. Man has played a role in this and we can at least interfere positively. However, there is no point in Bord na Móna doing one thing, the ESB doing the opposite and Irish Water stating it has nothing to do with it.

**Senator John Kelly:** I welcome the Minister of State. Senator John Whelan has covered everything in a nutshell. I have visited areas in Ballinasloe, Athlone, Carrick-on-Shannon and Boyle that were flooded - these areas are always prone to flooding - and I am aware that there is no one solution in terms of solving this problem. I know one woman who has been a captive in her home for five or six weeks as a result of flooding. She has not been able to use her toilet for six weeks. She cannot use the dishwasher, the washing machine or anything else. The house is surrounded by sandbags and she is constantly having family members in to try to keep the seeping water away from her front door.

I raised this issue before the Seanad broke for the Christmas recess. I stated Athlone was a town prone to flooding and that it would be flooded. I highlighted the fact that there was a company based in Athlone called Global Flood Solutions but nobody from the Government made contact with the proprietor to see what could he do to solve the problem around the town. He is selling his product all over the world, yet the Government which was reactive rather than proactive would not do business with him. There are other companies in County Galway that



provide similar products that were in touch with me and nobody has been in contact with them. Last year, when Foynes in Limerick was under threat of flooding, the OPW went to Global Flood Solutions and invested in its product. That product worked and saved Foynes from flooding. We need to involve companies that have expertise and ensure they are part of the solution.

Senator Sean D. Barrett mentioned insurance, a matter to which I will also refer. Those whose properties were flooded will not get insurance unless the Government intervenes. I am aware of one business - a pub - in my locality that was flooded and to which €2,500 worth of damage was done. It is not a great deal but it is still €2,500. The insurance policy covers the business for fire, flooding and public liability, but if the owners make a claim for flooding, they will never get insurance again. They are in an awful predicament. What should they do?

Senator John Whelan mentioned the fire service - the emergency service. I have great faith in the fire service, but, unfortunately, during the flooding crisis throughout the country, some local authorities were refusing to let out the fire service which has expertise when it comes to flooding because of the cost involved. It is important that the Minister of State make a ministerial intervention on this matter and inform local authorities that the fire service should be deployed in all cases of emergency, including flooding.

**Senator Averil Power:** I welcome the Minister of State. Everybody was caught unprepared by the extent of the extreme weather over Christmas. The Minister of State was out doing his best to address it. Understandably, there is a great deal of anger throughout the country, particularly in areas that had previously been flooded. I refer, for example, to Athlone, which was also badly flooded in 2009.

What is important at this stage is that we focus on the future. We cannot control the weather. Unfortunately, the reality of life is that, with climate change, extreme weather events will become more frequent. As the flood waters have receded, it is important that we maintain our resolve. There has been a focus on this issue for the past two months because of the flooding that has taken place throughout the country. There was just as big a focus on it in 2009 and on other occasions when major flooding events occurred, but sometimes the problem is that the agenda moves on and the media and the politicians switch their focus to other issues. It is essential that does not happen in this instance because we are going to experience further extreme weather events in the coming years. It is essential to put the investment and preparation in place now in order to ensure we can help people cope. We cannot control the weather but we can certainly prepare and help people to protect their homes and businesses more effectively in the future.

Suggestions have been made across the House on various ways in which this can be done. The issue of insurance has been mentioned. There should be universal insurance cover for flooding. It is no different to community rating for health insurance purposes. I have heard some of the insurance companies state that, in the case of flooding, that they do not want to cover those at risk, they do not cover certainties and they only cover events that are unlikely or less likely to happen. That is not the case in the health insurance market. An insurer cannot state it is refusing health insurance because of one's medical history. Even if somebody has serious medical issues or a genetically inherited illness runs in his or her family, as a society we believe everybody should be entitled to health insurance. That means that the rest of us, those who are healthy, pay more but we believe this is a societal value worth upholding and that nobody should be left on his or her own when bad health hits. The same should apply in situations such as this. Of course, we need to ensure more effective planning in order that we do not build on flood plains. Some of the decisions made in the past were absolutely disgraceful. They are



not the fault of the unfortunate people living in houses now that should never have been built and perhaps there is a need to consider relocation, but we cannot to say to them that they are on their own. There is a need to step up to find a solution. The Government should force the insurance companies to cover everybody. The United Kingdom has a levy for this purpose and we should fight for that principle here. I urge the Minister of State to prioritise that issue.

Improved flood protection measures are required throughout the country. Major schemes should be undertaken to protect areas under threat such as Athlone. Individuals property owners should be helped. I have corresponded with the Minister of State's Department and the Office of Public Works in the past two years about householders in Sutton, Baldoyle and elsewhere. There are only two or three houses on the coast road from Baldoyle to Portmarnock. Fingal County Council and the OPW accept that they are at risk of flooding and they have been flooded several times, but the householders have been told there is no justification for a major flood protection scheme because there are only two or three houses on the road. As they have pointed out to me, if they want to insulate their homes, they can get a grant for that purpose but they cannot for flood protection. A mix of large flood protection schemes where they are justified in densely populated areas, towns and villages and smaller schemes for vulnerable homes, which are highlighted on OPW maps, is needed. Let us at least have a scheme that enables householders to do their best to protect their own homes. I have pushed this issue for the past two years and I hope the resolve is there to address it.

Most of the attention currently is on fluvial flooding, but protections against tidal flooding are also necessary. It must be ensured investment is put in place. There are great plans in the Department for flood protection measures throughout the country and it is essential the funding they require is provided. Major flood protection schemes should be undertaken in a way that both provides the necessary protection against flooding and preserves existing amenities. In this context, I refer to Clontarf. Everybody wants proper flood relief measures to protect homes and businesses, but the initial proposals that were brought forward, as Dublin City Council has admitted, took no account of the overall environment. It was proposed to build a large wall that would block off the sea. The promenade is full every day, from first thing in the morning to late at night with people jogging, walking and cycling, and it would not have been used because it would have been cut off from the road. Women, in particular, said they would not walk where they could not be seen. The schemes, therefore, need to be environmentally sensitive also. They should provide the necessary protection while also preserving amenities. There is another issue on a different stretch of that road between Clontarf and Raheny where there is significant community concern about the way flood protection measures have been undertaken. A crude, cheap concrete wall was erected which has blocked beautiful views of the sea that passers-by could enjoy. There is no longer any view and people are upset about that. There is no history of tidal flooding in the area. I conducted a site visit with the engineers involved last week and they admitted that the risk is from river flooding caused by water emerging from St. Anne's Park. The new scheme cannot deal with that and they said that people will have to live with that, yet a huge wall has been erected to protect against a low tidal risk. There is a tidal flooding risk elsewhere, but that particular stretch of coastline is protected by Dollymount and Bull Island and there is little wave action because of silting and so on. The height of the wall is not necessary. Officials need to be smart about these issues and not come up with a crude, one-size-fits-all approach. They should work with communities to arrive at solutions that will work.

I urge the Minister of State to take these issues on board. He has taken control of them in the past two months and I urge him to continue to work on them as the waters recede and maintain

20 January 2016

them as a priority in order that those who have been flooded for a second or third time recently do not have to go through that experience again.

**Senator Michael Mullins:** I welcome the Minister of State and join colleagues in complimenting him on the hands-on approach he has taken from the word go. He interacted well with communities to give them reassurance. It is appropriate that we have this discussion in order that the members of the public who were badly impacted during Christmas and whose lives were made miserable by the awful floods can see the Government is taking this issue seriously. This is the first Government in the history of the State to tackle the issue head on and to deal with it in a proactive way. It will invest money such as the €450 million that has been allocated in the next few years for a variety of solutions. It is evident from previous contributions that one size does not fit all and there is no easy solution to all the problems, but joined-up thinking is needed with communities and experts working together to reduce the impact of flooding, because global warming is here to stay and we will have to deal with flooding on an ongoing basis.

County Galway was seriously impacted because of a diverse range of issues. Senator Sean D. Barrett alluded to the turloughs in south Galway and Deputies from the area have been in touch with the Minister of State with a variety of solutions and suggestions. Funding will be made available for the Dunkellin river project, which is welcome, and I hope An Bord Pleanála will approve it by the end of February. I have been hearing about that project since I was a small boy and that was not today or yesterday. I hope there will be action on that in the coming year.

The Minister of State was correct to pay tribute to all the people who had helped during the recent crisis, including the staff of local authorities, Civil Defence, other organisations and, in particular, local volunteers who demonstrated their concern for their fellow citizens and helped to make their lives a little more bearable.

South-east Galway, Athlone and County Roscommon were heavily impacted by the flooding caused by the River Shannon. I will not go into this because it has been referred to, but I welcome the establishment of the River Shannon co-ordination group by the Taoiseach. I am not concerned about who heads it up or whether the OPW is the lead agency as long as all the groups that have a direct involvement and interest in the river are on board to work in the public interest and to ensure the work that needs to be done and the decisions that need to be made are made in the public interest to ensure the livelihoods and homes of people in this area. As well as drawing on the technical expertise of the various groups, I urge them to draw on local knowledge and experience. There is nobody better than those on the ground who have experienced flooding through the decades to provide valuable information.

I thank the Minister of State for visiting Ballinasloe on 23 December 2015 and meeting the people who had been impacted on. The visit was much appreciated, as was the announcement for funding for work on the Deer Park river. The county council applied for funding and he immediately approved that. That will have an impact. Ballinasloe is an interesting case. The flooding in 2009 impacted approximately 160 homes and businesses. The floods on this occasion were worse, but the number of premises impacted reduced to approximately 20 because of the investment made in 2012 to build a defence wall, which protects the homes in Derrymullen. It saved 120 houses from being impacted on this time. Work done on the East Bridge also helped. That was a positive investment by the State, but more needs to be done. Mr. Michael Tully of the Ballinasloe Flood Alleviation Group made a fine presentation during the Minister of State's visit. I had them here in Leinster House to meet the Minister of State some months previously. Their proposals and suggestions very much mirror the proposals and solutions be-

ing put forward under the catchment flood risk assessment and management, CFRAM, project. Last Monday week approximately 100 local people attended a meeting in Ballinasloe and proposed a number of solutions.

**Acting Chairman (Senator Terry Leyden):** The Senator is over time. We are trying to allow Senator Lorraine Higgins to speak.

**Senator Michael Mullins:** Yes. I need to flesh this out a little more. I will bring a number of matters to the Minister of State's attention on their behalf. The CFRAM proposals are closely aligned to what the Ballinasloe Flood Alleviation Group has put forward regarding the Station Road bund. The group proposes that it could be put in place for a cost of €480,000 and seeks funding under the small schemes project. It has a favourable cost-benefit analysis of 1.85. The work could be done immediately.

Two additional flood eyes on the east bridge need to be opened. However, there is a difficulty with the Department of Arts, Heritage and the Gaeltacht in that it is a protected structure. I ask that the Minister of State liaise with the Department to break the impasse.

On flood insurance, the group carried out a survey recently-----

**Acting Chairman (Senator Terry Leyden):** With respect to the Senator's colleagues, I want to allow them to speak before the Minister of State replies.

**Senator Denis Landy:** Can we allow the Minister of State to speak again?

**Acting Chairman (Senator Terry Leyden):** We are trying, but we are also trying to allow the Senators to speak.

**Senator Michael Mullins:** A recent survey showed that 60% of the homes protected by the flood wall could not get flood insurance. We ask the Minister of State to fast-track the application for temporary flood barriers.

**Acting Chairman (Senator Terry Leyden):** The Senator can present the document to the Minister of State afterwards. Will Senator Lorraine Higgins, please, share time with Senator Martin Conway?

**Senator Lorraine Higgins:** That is no problem at all.

I am delighted to have the opportunity to raise the issue of flooding with the Minister of State who has been to Galway and knows that south Galway was particularly badly affected. We badly need a resolution. Any proposal for flood relief measures in south Galway should be sensible and realistic and should provide a real assurance for local families, businesses, farmers and all the people who have lost their livelihoods that they will be protected from the onslaught of further flooding into the future. I have already raised the issue in the Seanad. The human rights of flood victims should come ahead of any environmental considerations.

While I have no interest in interfering in the planning process, more can and should be done to ensure peace of mind for victims across Galway and other flooded regions across the country. I propose, in the first instance, that time limits be introduced for An Bord Pleanála decisions regarding flood relief measures. The Minister of State has heard much about the Dunkellin river. Understandably, there is much anger and frustration on the part of people living along the river and the Aggard stream owing to the delay in decision making. The river was last dredged

20 January 2016

during the English occupation. My father said the last time he was aware that it was cleaned, they parked their vans in his father's garage in Athenry. It was some time ago. The fact that people are still awaiting a decision on whether the scheme can go ahead is ludicrous. To lose their homes and possessions on a regular basis is a terrible experience that nobody should have to endure. We should take all possible measures to alleviate the stress heaped upon the families and victims of such significant destruction as a result of flooding. Time limits for decisions of An Bord Pleanála would be a step in the right direction.

A local authority housing estate in my home town in Athenry, Caheroyan, was flooded as a result of the rainfall in December. It caused major stress to families. A cessation of rental payments for these people would be adequate to enable them to make any repairs they need to do in their gardens and compensate them for the turf they have lost from their sheds and all the damage that has been done. It would be a welcome goodwill gesture on the Minister of State's part if he could liaise with his Cabinet colleagues to see that it happens.

I raise the possibility of Transport Infrastructure Ireland, TII, contributing to compensation for the area most affected. I am particularly thinking of Labane, Cahermore, Ballinstague and all the way to Kinvara. A very eminent academic was quoted in *The Irish Times* this week as saying TII had picked the least suitable route for the M18. It is plausible to assume that TII exacerbated the floods in Labane, Ardrahan and Ballinstague, given the interference with the geology of the area and the fact that there has possibly been some re-engineering of the drainage in the area in order to allow the motorway to go ahead. Somebody mentioned to me that they were going through a succession of turloughs in the area.

**Acting Chairman (Senator Terry Leyden):** I must interrupt the Senator. I am trying to allow Senator Martin Conway to speak.

**Senator Lorraine Higgins:** I just need 30 seconds. They interfered with a number of turloughs in the area. Given that I would not build a house on a turlough, I do not expect the State to build motorways in turloughs without having any adverse effect on the local community. We are seeing this now.

We need to examine European directives. I propose that the State go to the European Union and seek a relaxation of laws on special areas of conservation where there have been identifiable human catastrophes such as those that took place in south Galway and around the country.

**Acting Chairman (Senator Terry Leyden):** I thank the Senator.

**Senator Lorraine Higgins:** I am nearly finished. This is a very important point to make for my constituency and I want to make it.

**Acting Chairman (Senator Terry Leyden):** The Senator has been nearly finished for the past three minutes.

**Senator Lorraine Higgins:** I only need 30 seconds. The people affected by flooding in south Galway need workable solutions. The time for talking is over. I would welcome any action that can be taken regarding my proposals. I commend the Minister of State for all he has done so far and the empathy he has shown to the families. They need workable solutions going into the future. I would appreciate it if he considered my suggestions.

**Acting Chairman (Senator Terry Leyden):** I ask Senator Martin Conway to be very

brief. I am supposed to have called the Minister of State by now.

**Senator Martin Conway:** I will not repeat all that has been said. Some very good points have been made. The Minister of State has been actively engaged in dealing with a situation in Clonahinch, County Clare and I fear that as a result of the trauma many of our colleagues around the country have suffered, the problems in Clonahinch will have a lower priority. The Minister of State very kindly visited the area which is near Quilty. He also met a delegation from Clonahinch and kindly supported a feasibility study to identify a resolution of the issues affecting the residents. I want him to give a commitment that he will not forget about it and that dealing with the problems in this area will not be put on the long finger. Perhaps he might indicate a timeframe in which he will study the recommendations of the feasibility study delivered to him in November.

**Acting Chairman (Senator Terry Leyden):** I thank the Minister of State for being here.

**Senator Cáit Keane:** Can we give him extra time?

**Acting Chairman (Senator Terry Leyden):** We cannot extend the time allocated. The Leader would have to do it. I thank the Minister of State for being so patient and listening attentively to the contributions, which the Seanad very much appreciates.

**Senator Denis Landy:** On a point of order, can the Acting Leader propose the change?

**Acting Chairman (Senator Terry Leyden):** No. The Leader would have to come into the House to extend the time allowed. The Minister of State will be well able to wrap up.

**Minister of State at the Department of Finance (Deputy Simon Harris) (Deputy Simon Harris):** I will be as quick as I can. I thank Senators from all sides of the House for what has been largely a constructive and informative debate. I will try to deal with as many of the issues as possible.

Senator Mary White and others raised the issue of climate change and I fully agree with her. We cannot ignore it and pretend it is not happening. That is why I am very proud that our national flood plan, CFRAM, goes beyond the EU floods directive which requires us to put in place a national flood plan and factors climate change forecasts into the model which will, one hopes, future-proof the country. It is a prudent and important measure. I am glad to hear of the improvements carried out by Dún Laoghaire-Rathdown County Council and hope this is of comfort to Senator Mary White's community.

Senator Cáit Keane strongly emphasised the point about climate change. I am proud that we have the Climate Action and Low Carbon Development Act 2015 which I see as more of a first step than a destination. My office has established a climate change adaptation plan and there is an onus on all of us in public bodies to implement it as quickly as possible.

Senator Cáit Keane referenced the Dutch. We are engaging with Dutch experts who have been here on an ongoing basis, examining what we are doing. We are learning from them and I am proud to say in some areas they are learning from us. There is good engagement.

A number of Senators raised the issue of insurance. The insurance industry needs to realise that demountable flood barriers which can be put up and taken down are not substandard short cuts that are used just because they are cheaper. They work. In some areas they are the only type of defence that will work. In Fermoy, for example, there is a demountable which, if it was



20 January 2016

left in place the whole time, would divide the town in two. One cannot build a wall across a main road or bridge and shut down the town. The demountable barrier worked in Fermoy and they work in other countries. However, in other countries insurance companies provide cover where demountables are used. One Senator made the suggestion people working in the insurance industry need to familiarise themselves with demountables. Certainly, anything that we can do in the OPW to help that happen, we are pleased to do. At our meeting last week the insurance companies undertook to review their position on demountables and they are due to report back at the end of this week. In addition, the Department of Finance is examining best international practice.

I take the point that Senator Averil Power made about the UK system. That system took about six years to be introduced, but it does not include business and a lot of businesses here were impacted on also. I think it is a model at which we should look. We should not rule anything out because we cannot spend nearly €500 million in the next five years and have the taxpayer, effectively, paying twice. I mean that they would have to pay through insurance premia and then through direct tax. Therefore, we have to get this right and I hope last week's meeting was a good start.

In terms of the Shannon group, it will have teeth. Senator Cáit Keane raised the same point. It will have an opportunity to make legislative and regulatory suggestions to Government. Its minutes will be published in order that people will know exactly what it is talking about. Its representatives can appear before Oireachtas committees, probably the relevant committee being the Oireachtas environment committee. It will meet on at least a quarterly basis. All of the agencies involved in the Shannon region will have to publish work plans for the next three, six and 12 months. The initiative will bring the missing piece of greater co-ordination and exchange of information. I again emphasise that point. We have published the flood plans for the 66 areas along the River Shannon. If there is a need for regulatory or legislative change and people have referenced the ESB and the likes, the group will have to look at such matters so it is not a talking shop. We are not ruling out a single Shannon authority, but we are not going to get bogged down now, when people need immediate solutions, in trying to set up something that could end up taking a number of years to do. We should let this group get on with its work and it can do so immediately.

Senator Kathryn Reilly raised the issue of scheme delays. Flood relief schemes take a long time.

Senator John Whelan made the point that we cannot have politicians going around promising people that flood relief schemes will happen tomorrow. I was at pains not to do this because the average lead-in time for a flood relief scheme to be identified as being needed to the time it is fully delivered is about five years. The work that has been done by the CFRAM process will reduce the period by two years so the average time should be about three years. These schemes are major capital schemes. They go on people's lands. They require planning and procurement, but we have to get on with them as quickly as possible. As we publish an updated list of where all of our schemes are on the OPW's website, I will not go through each and everyone of them now.

I take the points made about farming. I have met the IFA on a number of occasions, as has the Minister for Agriculture, Food and the Marine. We have tried to show flexibility in terms of inspections. We have tried to show support in terms of fodder. Obviously, the Minister has introduced a number of measures. He is keeping a watching brief on some of the issues that

Senator Kathryn Reilly raised that may become apparent as the flood waters continue to recede.

I take the point Senator Denis Landy made about Carrick-on-Suir very seriously. Obviously, he knows the area well and I agree with him that we cannot allow, as a number of Senators have said, for flooding to be forgotten as the agenda moves on. We, in the OPW, have worked on flooding for a hell of a long time and I have worked very hard on it in my time as Minister of State. It is very hard to grab headlines and get people to talk about the issue until a flood comes. I can assure the Senator that between now and the summer, the OPW will work on publishing the 300 flood plans for the entire country and all the areas affected. That will be our primary concern. I agree with him that after every storm there is a need for review which is now happening. I refer to things like making sure pumps and sandbags are available. The Senator made a point about storm water and sewage which is something at which we will look. I also take the point he made about a 71 year old widow. There is also a role for an ombudsman who could look at cases where people are being treated unfairly. That is something I will bring up in my ongoing engagement.

I assure Senator Paschal Mooney that I have not just not visited Carrick-on-Shannon. When more than half of the country is under water, one cannot visit everywhere. I have visited as many places as possible in as many disparate parts of the country as possible to get an overall feel for the issue. I am not against visiting Carrick-on-Shannon. Obviously, we know the cycle one is coming into, in terms of the Government nearing the end of its mandate. I am eager to examine in detail the letter that the Senator has told me I should have received about 48 hours ago. I have just received it and shall look at it. I know that Deputy Michael Fitzmaurice and the man from the Chamber of Commerce had to go elsewhere. I thank them for being here. I am sure they will follow this matter.

**Senator Paschal Mooney:** By the way, the invitation was meant in the best spirit.

**Deputy Simon Harris:** That is fine. It was said we needed to have a better exchange of information with the insurance companies, with which I agree. That is why we have made provision for a memorandum of understanding. Where we complete a scheme, we provide the information for Insurance Ireland in order that it can pass that on to the companies which can be factored into the commercial decision-making process.

I do not accept that the humanitarian scheme has been inadequately funded purely because of the figures that I have given. The Department of Social Protection's scheme has a budget of €10 million of which €344,000 has been drawn down. The Irish Red Cross has a budget of €5 million of which €530,000 has been drawn down. The councils have been given a clean-up budget of €18 million. The Government has made it clear that it will provide the funding that is necessary for the roads and infrastructure, as the damage becomes apparent. My office also runs a minor works scheme where local authorities and only local authorities can apply for up to €500,000 for relatively minor works that can make quite a substantial difference. I assure the Senator that I shall take the contents of the letter very seriously and my officials will revert to him.

**Senator Paschal Mooney:** In fact, a significant portion of it can be implemented by the local authority which has also received that correspondence.

**Deputy Simon Harris:** We will certainly look at that matter.

In terms of the underspend, I have been at pains not to be party political during this time.

20 January 2016

Anywhere I went I invited Oireachtas Members of all political hues to attend because I believe rain and floods are not party political issues. I am somewhat frustrated, at this stage, that there has been scaremongering about budgetary matters. Let us be very clear. We are spending more on flood relief in the next years as a country - €430 million - than we did in the past 20 years and right throughout the Celtic tiger period. Every year, as people know, there is a need for multi-annual budgets. One can say one will start a flood relief scheme now, but the bills might fall due next year. There has been an increase in flood relief spending this year compared with last year. I know that we are in an electoral cycle. There are loads of political issues that I look forward to debating with political parties, but I ask them not to make partisan political points about flood funding, particularly when they are factually incorrect.

**Acting Chairman (Senator Terry Leyden):** We are on time.

**Deputy Simon Harris:** Does the Acting Chairman want me to conclude?

**Acting Chairman (Senator Terry Leyden):** I am afraid that the Minister of State will have to conclude.

**Deputy Simon Harris:** I will revert to the Senators on the other issues raised. I agree with the point made by Senator John Whelan about the Garryhinch reservoir. He is right and I think it is an issue that should be considered. It will probably fall to the next Government to consider it.

Briefly, Senator Fidelma Healy Eames mentioned planting, which is a valid issue. We need to look at all of these suggestions. I will look at all of the constructive points raised. I thank the Ballinasloe group for its constructive approach. I always enjoy meeting the group because its members come with solutions. I will give serious consideration to the points raised by the Senator.

Senator Martin Conway mentioned Clonahinchy. I confirm that I have received the feasibility report. As he will know, the OPW has been deluged with queries about work rates. We will look at the matter as quickly as we possibly can.

Senators John Kelly and Averil Power raised issues that concern Sutton and Baldoyle which I will continue to examine. I will revert to Senators on individual issues.

I thank Senators for what has been a constructive debate. Let us continue to work together.

**Acting Chairman (Senator Terry Leyden):** I thank the Minister of State and his officials for coming. All Senators appreciate such attendance because it has enabled us to have an exchange of views on flooding.

### **Heritage Bill 2016: Order for Second Stage**

Bill entitled an Act to amend and extend the Wildlife Act 1976, the Canals Act 1986 and the Heritage Act 1995 and to provide for related matters.

**Senator Cáit Keane:** I move: "That Second Stage be taken now."

Question put and agreed to.

## **Heritage Bill 2016: Second Stage**

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

**Acting Chairman (Senator Terry Leyden):** I welcome the Minister for Arts, Heritage and the Gaeltacht, Deputy Heather Humphreys, and her officials.

**Minister for Arts, Heritage and the Gaeltacht (Deputy Heather Humphreys):** I thank the House for facilitating a Second Stage debate on the Heritage Bill 2016. Although it is called the Heritage Bill, it is not confined to dealing with heritage matters but introduces important changes across a range of areas.

By way of summary, Part 2 of the Bill deals with amendments to the Canals Act 1986 to ensure there is a robust framework for the making of by-laws to regulate the use of boats on canals and the management of canals and canal property. These changes will enhance the ability of Waterways Ireland to manage waterways for the benefit of all users.

Part 3 of the Bill introduces important changes to the cutting and burning of vegetation and provides clarification of the powers of authorised officers under the Wildlife Acts. As a result of the recommendations contained in the report of the critical review of the Heritage Council in 2012 which was approved by the Government, Part 4 of the Bill provides for the amendment of the Heritage Act 1995. The proposed changes refine the role of the Heritage Council, allowing for a more streamlined board structure and provide for greater engagement with local communities. I am happy to go through the Bill in more detail.

The amendments to the Canals Act 1986 are primarily enabling provisions to allow Waterways Ireland to make by-laws to regulate boating on canals and to manage the use of canals. Waterways Ireland was established in 1999 under the British-Irish Agreement Act 1999. It is charged with the management, maintenance, development and restoration of Ireland’s inland waterways, principally for recreation purposes. Waterways Ireland manages 1,000 km of waterways in Ireland and Northern Ireland, including the Shannon navigations, the Erne system, the lower Bann, the Royal Canal and the Grand Canal, the Barrow navigations and the Shannon-Erne waterway. Waterways are a wonderful public resource which make a vital contribution to tourism by attracting people from around Ireland and from abroad. There are over 14,000 registered boat owners on the seven waterways managed by Waterways Ireland. The proposed changes will allow Waterways Ireland to proactively manage the Royal and Grand canals and the Barrow navigations.

Sections 2, 5 and 6 are technical amendments which include updating ministerial titles and changing references to the Commissioner of Public Works to Waterways Ireland and codifying the changes made to the Canals Act 1986 by the Maritime Safety Act 2005 and other legislation. Section 3 substitutes section 5 of the Canals Act 1986 and restates the provisions of section 5 of the Canals Act 1986 defining the general duties of Waterways Ireland and of C oras Iompair  ireann. In this section, Waterways Ireland is being substituted for the Commissioner of Public Works.

Section 4 substitutes section 7 and section 7(a), inserted by section 56 of the Maritime Safety Act 2005, of the Canals Act 1986 and creates new provisions for the making of by-laws to regulate the use of boats on the canals and canal property. More specifically, section 7 provides for: the regulation of the type or class of boat which may be used on the canals; the issue

of permits and licences to regulate the use of boats on the canals and canal property; the closing to navigation of any part of the canals; the regulation of berths and moorings and the placing of buoys on the canals or other canal property; the regulation and care of animals on the canals and other canal property; and the charging and fixing of fees, tolls and charges.

New sections are created at sections 7B to 7E, inclusive. Section 7B provides for the appointment and powers of authorised officers for the regulation and management of the canals and canal property. Section 7C provides for the issuing of search warrants by a judge of the District Court in certain circumstances. Section 7D contains specific provisions on the service of directions. Section 7E provides that proceedings for an offence under the Canals Act may be prosecuted summarily by Waterways Ireland and may be instituted within 12 months from the date of offence.

Section 5 provides for a number of other miscellaneous amendments which are mostly of a technical nature, including updating the references to the titles of the various Ministers in the Act to reflect the current position; changing to Waterways Ireland those references to the Commissioner of Public Works in respect of functions transferred to Waterways Ireland under the British-Irish Agreement Acts 1999-2005; and providing for the deletion of section 13 which expired three years after the vesting day. Together, the former provide for a more modern, fit-for-purpose regulatory framework underpinned by legislation which will allow Waterways Ireland to manage the canals efficiently and effectively and in all of our interests.

Part 3 contains important changes to the Wildlife Acts. Specifically, section 8 relates to burning and hedge cutting. Section 40 of the Wildlife Acts currently prohibits the cutting, grubbing, burning or destruction of vegetation, with certain strict exemptions, during the closed period from 1 March to 31 August each year. Vegetation such as that found in hedgerows and scrub is an important wildlife habitat and needs to be managed in the interests of both farming and biodiversity. In that regard, I decided that there should be a review of the current legislative provisions to ensure they remained both effective and balanced.

Stakeholders had sought an opportunity to input their views on the operation of section 40. I announced a consultation process in November 2014 which provided that opportunity. I received almost 200 submissions from various representative and Government bodies, elected representatives and members of the public. The submissions received ranged from detailed papers from stakeholders to individuals expressing support for one outcome or another.

**Senator David Norris:** Mostly against.

**Deputy Heather Humphreys:** I established a working group-----

**Senator David Norris:** Rubbish.

**Deputy Heather Humphreys:** -----comprising officials from my Department, to consider the submissions received and report back to me with a range of proposals. The changes included in section 8 of the Bill to be introduced on a pilot two year basis will allow for a more managed approach to the vegetation management issues which regularly arise. The pilot measures include allowing managed hedge cutting, under strict criteria, during August to help ensure issues such as overgrown hedges impacting on roads can be tackled. Power will also be given to me, as Minister, to allow for controlled burning in certain areas around the country, to be specified by regulation, during March, should it be necessary, for example, owing to adverse weather conditions. These two measures are designed to introduce a limited amount of flexibility to help



with land management and to ensure a fair and balanced system is in place, while ensuring the protection of biodiversity.

It is important to underline to the House these provisions will operate on a pilot basis for two years. I am keenly aware that we must ensure these new provisions should not adversely impact on fauna and flora-----

**Senator David Norris:** But they will.

**Deputy Heather Humphreys:** For that reason, any burning or cutting will be subject to very strict conditions and restrictions which will be specified in statutory regulations to protect fauna and flora. In addition, my Department will monitor activity under these provisions and an assessment of the impacts will be carried out before any decision is taken on continuing these measures beyond the pilot phase. In that context, my Department will work towards gathering the data required to underpin such a decision. This will include data in regard to bird nesting and the level and impact of cutting and burning. I consider that these provisions provide a pragmatic approach which will help to address some of the challenges faced by those living in rural areas. I want to strike a balance. While hedgerows and upland areas are very important in terms of wildlife habitat, they also need to be managed in the interests of both farming and biodiversity. I also intend to launch a public awareness process in order that all stakeholders, including local authorities, landowners and members of the public are fully informed on the restrictions on hedge cutting and burning.

Following legal advice on the issue I have also taken the opportunity, in section 10 of the Bill, to clarify the powers of authorised officers of my Department and An Garda Síochána under the Wildlife Acts. National Parks and Wildlife Service officials of my Department and An Garda Síochána are authorised officers in respect of investigating breaches of the various provisions of the Wildlife Acts. These new provisions clarify their powers in this regard and bring them very much into line with how the powers of authorised persons under the more modern European Communities (Birds and Natural Habitats) Regulations 2011 are expressed and set out in the law.

Section 11 updates the penalties for offences under the Wildlife Acts and introduces fixed payment notices for certain offences under the Wildlife Acts. In section 9 there are some minor amendments to the wording of a subsection in section 40 of the Wildlife Acts updating the collective citation for fisheries legislation and replacing the references to the Central Fisheries Board which is now Inland Fisheries Ireland.

Part 4 deals with amendments to the Heritage Act 1995. The amendments proposed in Part 4 are based on the recommendations of the critical review of the Heritage Council which was carried out by my Department in the context of the public service reform plan. Section 12(1) (a) refocuses the activities and functions of the Heritage Council, with particular emphasis on engagement with communities and local authorities. Section 12(1)(b) introduces the non-remuneration of members of the board, while continuing their entitlement to expenses incurred in discharge of their duties as board members. Section 12(1)(c) provides for a reduction in the size of the board of the Heritage Council to between eight and ten members, excluding the chairperson.

*3 o'clock*

It ensures a gender balance by having a minimum requirement of four females and four

20 January 2016

male members and reduces the quorum necessary to five, including the chairperson, to reflect the smaller board. It removes the requirement for the Heritage Council to establish statutory standing committees on wildlife, archaeology, architectural heritage and inland waterways. In general, these changes will allow for a more effective and efficient operation of the Heritage Council and a more streamlined approach to how it carries out its primary functions.

I will reiterate that the changes proposed to the Canals Act are mainly enabling provisions to provide for a robust regulatory framework for the use of boats on canals. They are designed to bring clarity and enhance the management of the canals. I take the opportunity to acknowledge the work of Waterways Ireland, in particular the way it has responded in challenging conditions in recent months.

Regarding hedge cutting and the burning of vegetation, the changes are designed to introduce a limited amount of flexibility and to ensure a fair and balanced system is in place while protecting biodiversity. The co-operation of all stakeholders is essential in the successful protection and management of the natural environment.

I acknowledge the good work of the Heritage Council and its commitment to the review process which led to the proposed changes. I am pleased to have had the opportunity to outline the provisions of the Bill and look forward to hearing the Senators' views on its contents. I commend it to the House.

**Senator Brian Ó Domhnaill:** Tá fáilte mhór roimh an Aire, atá anseo inniu chun páirt a ghlacadh i ndíospóireacht ar an Bhille tábhachtach seo. Tá a fhios agam go bhfuil sí faoi bhrú i mbliana agus go bhfuil go leor oibre idir lámha aici le linn chomóradh 1916, agus guím gach rath uirthi san obair sin. I acknowledge the Minister's workload this year, given the commemorations, with which I wish her well.

The Bill is short but important for a number of reasons. A welcome review was conducted of the Heritage Council. Based on the 2011 Government plan to re-evaluate State agencies, the organisation's effectiveness and efficiencies were examined. Two options were on the table: merge the Heritage Council with another body or leave it as a stand-alone organisation. Opting for the latter was the right decision. It is an important organisation and can play a pivotal role. Perhaps this year is significant for a number of reasons, but the main one is the celebration of our heritage. The council will play a key role in that regard. I agree with the Minister that its role should knit more closely with local authorities' in particular. My local authority has a heritage officer who does excellent work. A closer knit between local authorities and the Heritage Council would be welcome. The council could also play a more active role in engaging with schools, in particular, primary schools. This suggestion could be taken on board, although budgetary constraints on the council may affect it.

The other legislation that is being tidied up includes the Canals Act 1986. Fianna Fáil will support the passage of the Bill through the Seanad. I have received correspondence, particularly in recent days, on the proposed changes to section 40 of the Wildlife Act 1976. Senator David Norris made one or two comments. People contacted me about this issue yesterday and today. I have read some of the submissions, including those made during the public consultation process. That process was the right approach to take, as the submissions evaluated by the Department of Arts, Heritage and the Gaeltacht highlighted other aspects for consideration, for example, road safety, including the safety of cyclists and runners. I run and walk up and down many country roads with overgrown hedges and so on. They pose dangers.

Another dimension is the agricultural one. A submission was made by the Department of Agriculture, Food and the Marine in this regard. Rural Ireland has many hedges and we need to protect the wildlife that live within them but a level of common sense must be adopted instead of rigid and strict guidelines. The Department's submission pointed out that, although an element of road safety legislation had put the onus for cutting hedges on landowners, this was not possible because of the constraints applied by the Wildlife Act. One Act was working against another. This has to be tidied up.

As I am unsure as to what level of consultation or what data will be used in forming the regulations, the Minister might explain today or during later Stages. Some submissions were made by rural councillors, for example, Mr. Séamus Cosáí Fitzgerald of the Minister's own party in County Kerry and Mr. Brendan Cronin, also in that county. Councillor Michael Gleeson made a good submission. Councillors Joe Fox, Martina Kinane and, in County Kerry, Johnny and Danny Healy-Rae made submissions, as did Councillor Paddy Meade. These were cross-party councillors from rural Ireland making submissions in support of extending the cutting season for hedgerows and so forth.

I come from a rural part of the country in County Donegal that has many farmers who are restricted from cutting back hedges. This is raising road safety concerns. The council is statutorily allowed to cut hedges, but the ultimate onus is on the landowner, not the local authority. Tidying up this legislation is important. Some of the organisations that have raised concerns have done so for valid reasons. We must protect our wildlife. I tried to find data on the impact of cutting hedges over a longer period - 1 March to 31 August - but was unable to do so. Flexibility and common sense are required. We will support that approach and will not impose constraints on the Bill's passage through the Seanad.

**Senator Eamonn Coghlan:** I welcome the Minister and I am delighted to have an opportunity to make a contribution on the Bill. It is a sensitive issue for many and I understand the concerns raised by people and interest groups. When Senator Brian Ó Domhnaill referred to the hedges on his many runs around the country, Senator John Whelan asked whether anyone had ever heard of a runner being damaged by a hedge.

**Senator Brian Ó Domhnaill:** I have gone into a few.

**Senator Eamonn Coghlan:** I have been damaged by many a hedge during the years. I nearly lost an eye once when a thorn got stuck in it.

**Senator David Norris:** Better to try to jump over it.

**Senator Eamonn Coghlan:** The Senator was the jumper. I was the runner.

I welcome the opportunity to contribute on the Bill which will implement the recommendations arising from the 2012 critical review of the Heritage Council. It provides for certain sensitive matters relating to waterways, wildlife and the Heritage Council. It amends the Canals Act 1986, creating provisions facilitating the making of by-laws for the regulation of the use of the canals and other canal property. That is welcome. It also provides for the regulation of cutting and burning of vegetation at certain times of the year and concerns the powers of the authorised officers under the Wildlife Acts. The Bill also concerns the function of the Heritage Council and the structure of the board in its current form.

The amendments to the Canal Act 1986 are contained in Part 2 of the Bill, as the Minister

mentioned. These concern the duties of Waterways Ireland which is taking over responsibility from the Commissioner of Public Works. All existing references to the Canals Act 1986 will change to references to Waterways Ireland. The Bill provides for the making of certain by-laws for the care, maintenance and control of the canals and the regulation of canal use. This is something we very much welcome, when one sees all sorts of boat or carriage going up and down the canals. We also welcome the amendments concerning the appointment and the powers of the authorised officers who will be able to take action. I do not wish to refer to all sections of the Heritage Bill because they will be replaced in this new Act and are only of a technical nature.

Part 3 of the Bill amends section 40 of the Wildlife Acts in relation to the cutting, digging up and burning of vegetation on uncultivated land. I can understand the wildlife people because when one travels around the country and even in the rural part of Dublin where I live it is lovely to see all the birds during the spring, through the autumn and even into the winter. Currently, there is a closed season from 1 March to 31 August for the burning of vegetation. This allows for the protection of bird life during the nesting season in early spring and the protection of vegetation and wildlife habitats during the summer months of growth and reproduction. In 2015 a review of burning and cutting controls was put to public consultation by the National Parks and Wildlife Service. In its report the importance of wildlife habitats, hedgerows and scrub was acknowledged. It was also said they needed to be managed in the interests of farming and biodiversity.

There are two sides to the story when it comes to hedgerows. Landowners and their representatives had often stated the closed period was too inflexible and should be amended to take account of land management issues, which we can understand. The Bill introduces a two-year pilot period. I am delighted that the Minister has taken that into consideration and she will make strict regulations permitting the burning of vegetation during this specified time or at times in March and in specified areas of the State. In addition, permission will be given to landowners to cut, grub or destroy vegetation in hedges or ditches during August subject to strict restrictions or conditions specified in the regulations. The Bill also clarifies the powers of authorised officers, updates penalties for offences under the Wildlife Acts and provides for the introduction of fixed payment notices and associated matters.

The Heritage Bill 2016 proposes to refocus certain functions and activities of the Heritage Council, including how it engages with communities and public authorities, and it deals with the size and composition of the board and its remuneration. In Part 4 of the Bill amendments are made to the 1995 Act, including the introduction of a stronger role for the Heritage Council, the removal of payment of remuneration to the council members, changes to its composition and quorum and the removal of the obligation to establish specific standing committees. Currently, the Heritage Council is obliged to “co-operate with public authorities, educational bodies and other organisations and persons in the promotion of the functions of the Council”. Section 12 provides that it will now be a function of the council to “co-operate with, engage with, advise and support public authorities, local communities and persons in relation to the functions of the Council”. Currently, members of the council and committees of the council are entitled to remuneration and allowances for expenses incurred by them. The Bill amends the entitlement to remuneration, whereby members of the council or its committees will now only be entitled to allowances for expenses and no remuneration will be paid, which must be welcomed. Other changes relating to the Heritage Council in the Bill reduce the number of board members to between eight and ten, excluding the chairperson, and will address the issue

of gender balance. It is proposed that there will be at least four gentlemen and four ladies on the board. It also reduces the quorum to five. The Bill removes the obligation on the council to set up standing committees on each of its areas of responsibility, namely, wildlife, archaeology, architectural heritage and inland waterways, and refocuses a streamlined council, the principal function of which is to facilitate the grant-aiding of heritage from various sources and engage with and support local government and communities in the capacity of building and support.

While many areas of sensitivity are involved and representations have been made to most of us in this House regarding the proposed changes to the Wildlife Act, I am happy that the Minister and her Department have given due consideration to putting in place a fair and balanced system, while ensuring the protection of biodiversity. An assessment of the impacts will be carried out before any decision is made on continuing these measures beyond the pilot period.

**Senator David Norris:** I would like to address two issues first. One was raised by the Inland Waterways Association of Ireland which has complained about a poor consultation process, despite what the Minister said. It made a number of other points, but I am sure it has also made them to the Minister. I want to concentrate on section 40, but Inland Fisheries Ireland has also contacted me. It approves of section 40(2)(d) about the management of noxious weeds, but suggests it should be expanded to cover invasive plant species. I ask the Minister to consider this point because there is a serious problem with invasive plant species.

The real problem that concerns me is the fact that the Bill will give the Minister the power to make regulations to permit the burning of vegetation during a specified time or times in March in specified areas of the State and, in addition, to allow landowners or their agents to cut, grub or destroy vegetation in any hedge or ditch during August. These are very serious matters. In a press statement the Minister discussed the submissions received. She also referred to them in her contribution. However, she failed to mention that the vast majority of them were opposed to section 40 and they were from the most concerned areas - from Birdwatch Ireland, An Taisce and so on. All these groups opposed section 40. This is just a gesture for the farmers, coming up to an election. That is all it is. It is perfectly naked.

The Minister said “[m]anaged hedge cutting will be allowed, under strict criteria, during August to help ensure issues such as overgrown hedges impacting on roads can be tackled.” For God’s sake, can they not be done at any time of the year? I was the person in this House who raised the issue of the danger to pedestrians and road traffic from overgrown hedges because I was briefed on it by somebody who was involved in a serious accident; therefore, I know all about it, but it does not have to be done in August. It is laughable to think of it being done in August when the farmers are harvesting. They are busy at work. Why do they need to do it then, which is right in the middle of the nesting season?

There are a number of threatened birds. We have already been up before the European Court and have been found guilty. The Minister actually quoted section 40 as a protection in that case, but the European Court found it was not strong enough and was not sufficient. I do not know what the Minister has to say about that. Then she has the amazing gall to quote biodiversity. How, in the name of God, is the Minister encouraging biodiversity by pulling down the hedgerows that are full of biodiversity, not only in terms of birds’ nests but also seeds, plants, and all that kind of stuff? Every survey has shown that more intensive hedgerow cutting leads to a catastrophic decline of up to 75% in species of berry and so on and also in bird life. How this can be described as biodiversity is beyond me. As we already have section 40 which allows for a wide range of exemptions, I wonder why the Minister is introducing this. There is already



20 January 2016

a catalogue of exemptions from this restriction. They allow for: the destroying, in the ordinary course of agriculture or forestry, of any vegetation growing on or in any ditch or hedge; the cutting or grubbing of isolated bushes or clumps of gorse, furze or whin or the mowing of isolated growths of fern in the ordinary course of agriculture; the cutting, grubbing or destroying of vegetation in the course of any works being duly carried out for reasons of public health or safety by a Minister of the Government or a body established or regulated by or under that statute; the clearance of vegetation in the course of fisheries development; the destroying of any noxious weed; the clearance of vegetation in the course of road or other construction; and the removal or destruction of vegetation required by a notice served by the Minister under section 62(1) of the Wildlife Act of 1946. All of these exemptions are already in place. What is to prevent the Minister implementing them properly? They are in the targeted areas where it is necessary. It is not a type of wholesale unlimited destruction of the natural environment.

The closed dates for burning and cutting are based, in a generic way, on what the Department calls “the generally recognised nesting and breeding period for wild birds”. In fact, there is a strong case for the precautionary principle to be introduced and for an extension of the closed period to protect early nesting and breeding species in the nest building period, not least in the face of climate change which is already affecting the situation. A number of birds nest well into August. I refer, in particular, to the yellowhammer which nests into September. In the case of burning controls on ground nesting birds, the hen harrier nests well into September. The exemptions are framed so broadly, for example, for public health and safety, and appear to be regulated so poorly that they arguably provide almost a *carte blanche* for cutting during the closed period already, without any tampering. I am extremely concerned about this.

With regard to burning, I remember as a child going to the strand in Sandymount to watch Howth burning after the farmers had set a torch to the furze. It was always very exciting. However, fire is estimated to have destroyed 16,000 hectares of land in Ireland in 2011. Despite it being illegal, Coillte has reported that in the space of one week in April 2010, approximately 1,500 areas of forest had been burnt, putting properties, wildlife and habitats at risk. This is what we have already. Research carried out on 100 peatland sites in Ireland indicated that burning was evident in 19% of the sites surveyed with severe damage evident in 8% of the cases.

I have also received submissions from An Taisce, which is opposed to this. In less than one day it had 4,000 signatures on a petition against these measures. Hedgerows are critical to the landscape, which is an important aspect of the tourism product. They are important for land protection, including management of soil erosion, land drains and flood management. They are also critical to biodiversity. How can the Minister continue to mention biodiversity in this Bill, when it is mentioned so often in the situation referred to by An Taisce? Seanad Éireann is expected in the run-up to an election to accept a pig in a poke with this Bill. We are expected to pass provisions allowing for effective wholesale cutting, grubbing and so forth during the month of August when many native birds are still nesting, without seeing any associated restricting regulations or any guarantee that such restrictions will be provided. We are expected to pass the Bill allowing for burning in March without knowing how the areas where it will happen will be selected or how extensive it will be. The Bill contains a sunset clause of two years but it has an entirely open-ended reactivation clause, so that clause is of no use whatever. We are told it is a pilot but there is no mechanism to assess it. Where is the mechanism? If it is supposed to be a pilot project, surely there should be some provision for assessing the impact.

We are expected to accept section 8(2) of the Bill which provides for wholesale cutting, grubbing and so forth without any clarity about the restrictions, the basis for any restriction

and no guarantee that the proposed regulations will ever be introduced. By passing this Bill we will provide for no protection in August, contrary to expert evidence based on the submissions. I note that the Minister quoted no scientific evidence. However, the organisations that have briefed me have provided extensive scientific information. For example, the British Trust for Ornithology provides information on egg laying dates for breeding birds. This is the most reliable scientific evidence available, since we do not have similar recording of egg laying and nesting activities in Ireland. We are seeking such data from the Minister.

I return again to the issue of biodiversity. I have to laugh when a Minister who is introducing provisions for massive hedge cutting and almost unrestricted burning talks about biodiversity. She refers to grubbing. This grubby little Bill is grubbing out the possibility of biodiversity and is certainly not enhancing it. I know that it will be passed. That is the mathematics of politics. However, it will not be passed without my strong objections to it. They are reasoned objections backed by scientific evidence which the Minister has failed to produce. It is a sop to the farming vote for the forthcoming election.

**Senator Máiría Cahill:** I welcome the Minister and thank her for bringing forward the Bill. I will not be as eloquent or get as worked up as Senator David Norris, but I will focus on three general areas of the Bill that are important to the heritage of Ireland - canals, wildlife and the Heritage Council.

First, the provisions in Part 4 relate to the Heritage Council. The council was established to identify, protect, preserve and enhance our national heritage by focusing on areas such as national monuments, architectural objects, archaeological objects, flora, fauna, wildlife, seascapes and parks, to educate the public on these issues and to promote employment and tourism in these areas. It also seeks to encourage the appreciation of our national heritage by members of the public. All Members will agree that this is important work. Our national heritage is key to our identity as a nation and protecting and promoting it are vital. As such, it is crucial that this work is done in as efficient and effective a manner as possible. I welcome the aspects of the Bill which seek to streamline and strengthen the Heritage Council.

The critical review of the work of the Heritage Council which was carried out as part of the Minister for Public Expenditure and Reform, Deputy Brendan Howlin's public service reform plan made a number of recommendations that are to be implemented in the Bill. The report proposed two possible options - the abolition of the council or to streamline it. As the work of the council is so important, I believe the second option which the Minister is seeking to implement with the Bill is the best way forward. It is welcome that board members will no longer receive payment for serving on the board and that they will now only receive remuneration to cover their expenses. The number of board members is to be reduced, while, crucially, maintaining the gender balance. That is welcome. I am also pleased that the council will now have to engage in a more effective and productive way with local authorities and local communities.

The second area of the Bill I wish to discuss is Part 3 which seeks to amend parts of the Wildlife Act to allow for the cutting of hedgerows in August, on which we have heard all manner of debate, and particularly for an additional month for the burning of vegetation in March. These months were previously excluded to protect bird life during nesting season and to protect vegetation and habitats during months of growth and reproduction. I appreciate that a wide public consultation was undertaken before these changes were proposed. I also appreciate that it is necessary to maintain a balance between the protection of wildlife and agricultural interests. However, like other Members, I have received correspondence from a number of envi-

20 January 2016

ronmental agencies and organisations with concerns about parts of the Bill such as An Taisce, BirdWatch Ireland, the Irish Wildlife Trust and the Hedge Laying Association of Ireland which have come together to oppose these measures. They believe the Bill will have a serious impact on a range of wildlife species. On this Senator David Norris and I agree. There is an online petition on the issue and at the last glance I took today it had over 7,000 signatures. However, I accept what the Minister has said about having taken the concerns of the organisations into account. That is important and welcome. I ask her to take these concerns into account as the Bill moves forward.

**Senator Sean D. Barrett:** I welcome the Minister. I agree with what Senator David Norris said about the wildlife section of the Bill, but I emphasise its other two parts, namely, canals and the Heritage Council. We have the Minister, Minister Carál Ní Chuilín who will look after the same activities in Northern Ireland and Ms Dawn Livingstone who is the chief executive of Waterways Ireland. Gender balance has been extremely well achieved.

I will discuss some of the sections that concern me. Section 4(c) refers to the closing to navigation of any part of the canals and section 4(g) to the opening to navigation of any part of the canals. I would put more emphasis on another part of the section. There are proposals to extend the Ulster Canal to the scout camp near Belturbet. I am sure the people of Clones agitate with the Minister to restore the canal.

Canals are linear parks and people like Dr. Ian Bath promoted that idea as the goal. They are not just for the boat people the Minister for State mentioned. They are a wider amenity. From reading the documentation, I understand Waterways Ireland costs about £50 million sterling a year and a large part of the emphasis seems to involve trying to bring in some money from boat users. Perhaps we might consider them in a wider context, not just Belturbet, Clones and so on, but places such as Kilbeggan, Mountmellick and the Newry Canal.

The Northern Ireland report on waterways and their success notes that the Lagan towpath is visited by 1 million people a year. It is one of the most visited amenities. Some positive changes might be considered.

I refer to the property section and the representations made by the Inland Waterways Association of Ireland. It is concerned about authorised officers and people for whom boats are houses. The relevant section of the Bill states authorised officers will need a search warrant to come into the part of the boat which is the residence, but how will we deal with situations where an entire vessel is a residence? There are concerns about this. A boat may not simply involve part of a very private dwelling; rather, the entire vessel could be a private dwelling. There is a need for communication on the concerns of the Inland Waterways Association of Ireland about the powers of the authorised officers. I gather it would prefer to deal with An Garda Síochána and further consultation. It regards 21 days as insufficient and wishes to see the period extended to 60 days.

The canal system is capable of significant development right through to Lough Neagh. The Newry canal and what is being done in Belfast were mentioned. We need to develop a better connection between the Royal Canal and Dublin Port, something that is referred to in the strategic plan for Waterways Ireland. Perhaps there might be Grand Canal access to the River Liffey. I see that in a very positive light.

The Bill is somewhat dismissive of what the Heritage Council has done. I understand half

of the members, or at least a substantial number, take no fee at all and if they do, it would be a sum of €5,000. Making a gesture by taking away a relatively small fee and reducing the board from 14 to eight members seems to be a case of somebody somewhere wanting to teach the Heritage Council a lesson. It does valuable work and I am in favour of giving people a pat on the back and commending them.

The Bill proposes to delete the section that the council shall establish standing committees on wildlife, archaeology, architectural heritage and inland waterways and that it could have members which are not members of the council on those standing committees. I do not know why we do not cherish the Heritage Council more. I see no great problem in the establishment of such sub-committees.

The work the Heritage Council has done in Kilkenny and increasing the appreciation of heritage and how it relates to educational bodies are things which I would broadly support. Its funding is being cut unnecessarily. I thank the Cathaoirleach for the extra time. I wish the Minister success in her endeavours in canals, wildlife and the work of the Heritage Council.

**Senator Michael Comiskey:** I welcome the Minister to discuss this important Bill which I also welcome.

I have an interest in two issues. I refer to the burning of overgrowth and commonages, in particular heather. During the years mountains were under-grazed and there was a problem with heather growing too long. It had to be managed in a proper order. The fact that this will be reviewed in two years time is good news. We can examine how it works out and introduce the scheme on a pilot basis. The burning of heather in the uplands is very important to control the growth. Once it is controlled and burned in a managed way, it will be of much more use to the animals that graze it, from a farming point of view, and wildlife.

We work very closely with people in commonage areas who are reintroducing grouse, in particular, an issue in which I have an interest in County Leitrim. The groups involved told us if heather is managed and burned in small areas, it will be of much more use to the grouse when they hatch and are being reared on the mountains afterwards. It will prevent heather from getting too long for sheep farmers and will also be of much more use to them. When heather is much too long, farmers are penalised and disqualified from certain payments, as we have seen in the past. From a farming point of view, it is very important that this is managed.

My colleagues have mentioned the dangers of overgrowth along the hedges on roadsides where people are walking. We must continue to encourage people to use the roadways to exercise more, but there is nothing as annoying when one is walking or running along the roadway as getting a slap of a branch on the side of the face or a cut on a leg from a briar or whatever else. It is very important that overgrowth is cut as summer goes on and August is the ideal time to do this. Last year there were problems in my county, Leitrim, whereby a school bus had difficulty in travelling on a very narrow road. The mirrors on the bus were constantly broken and the driver refused to drive the bus because of the overgrowth which was damaging the vehicle and the hedge had to be cut on a Saturday.

This is a very worthwhile Bill. It involves a pilot scheme which can be reviewed after two years. If any changes are needed after that, that will be possible.

**Senator Gerard P. Craughwell:** I welcome the Minister. Some time ago I had the pleasure of congratulating her on her work, in particular on 1 January at the flag raising ceremony

20 January 2016

and concert she had laid on. I am afraid that this is not her finest hour. Like most Senators in this House, I have been contacted by people who have grave concerns about the Bill before the House. I thank a colleague of mine in Cork, Councillor Marcia D'Alton, for her efforts regarding what I am about to say. She stated:

It is sadly ironic that the Heritage Bill is being debated in the Seanad today - Penguin Awareness Day. Penguins worldwide are facing extinction due to loss of habitat caused by human practices. And in Ireland, the numbers of so many upland birds... are exhibiting massive decline also because of loss of habitat caused by human practices.

There has been a large cry from the farming and other communities to extend the legally permissible burning season. It is true that our legal burning season in Ireland is very much shorter than it is, for example, in Scotland and England. The restrictions on burning were tightened in 2000, primarily to reflect concerns about the nesting season.

The letter continues to explain how, since 2000 and despite these restrictions, uplands have continued to decline. An assessment prepared by the Government for the European Commission in 2013 found that the upland habitats were in a bad state. Many birds were breeding in upland habitats listed as areas of critical concern in respect of conservation.

The most sympathetic of considerations indicates that the current stricter controls on burning are simply not working. Why is this? It is because conservation of uplands is not simply about burning. Vegetation management in the uplands is critically linked with the biodiversity welfare of the uplands. Too much vegetation is as bad as too little. Traditionally, farmers, in particular, sheep farmers, were the caretakers of the uplands. Their sheep kept vegetation levels down, they burned in small areas regularly and vegetation recovery was possible and cyclical. Up to 2011, these farmers had the opportunity to be rewarded for such sensitive land management practices through the rural environment protection scheme, REPS. By 2011 the REPS was done away with and replaced by the agri-environment options scheme. Under the scheme, assistance is provided by Teagasc to prepare a plan, but the plan focuses primarily on the restoration of over-grazed areas. It does not require a farm survey or offer guidelines on when grazing should occur. It does not suggest measures to encourage co-operation between farmers with commonage. It does not include a burning plan.

The number of upland sheep farmers is in decline. They simply cannot make the same profits as lowland farmers. The work is difficult, especially for an ageing population. Many of these farmers depended on the REPS to supplement their income, but the financial benefits under the AEOS are far smaller than under the REPS. Since the number of upland farmers is in decline, the number of sheep is in decline also. Therefore, vegetation is not kept as it would be otherwise.

Another significant issue is that farmers do not control unwanted invasive species on land under the single farm payment scheme. Penalties may occur, but some species regarded as invasive may act as valuable habitat for native birds and wildlife. When burning season opens, fewer farmers are trying to control higher vegetation on larger areas of upland during a shorter season. This leads to large uncontrolled burning. It is too hot; it targets the wrong species and occurs over wide areas. There is a major detrimental impact on the wildlife, not only birds. The practice encourages soil erosion; there is much added danger and the areas take a long time to recover.



We have a major balancing issue, but it is not going to be resolved by revision of the heritage legislation today. All the Bill does is permit the Minister to make regulations to extend the burning season. We badly need an improvement management system for the uplands with a genuine understanding of farm management issues and biodiversity issues. They are intimately related. The management system needs to be informed by a code of good practice for burning. This needs to be drawn up in conjunction with farmers and ecologists. I note we have a code of prescribed burning drawn up by the Department of Agriculture, Food and the Marine in 2011, but this is targeted towards facilitating the larger farmer.

The point being made by Councillor D'Alton is that the Bill is flawed and we should do everything we can to stop it. She makes reference to the Heritage Council. My colleague, Senator Sean D. Barrett, has addressed this point also. She says that despite whatever protestations the Minister may make to the contrary, the council is very much the poor relation when it comes to funding. Funding from Government to the Heritage Council has been slashed by almost 90% since 2011. She fears that the changes proposed to the board structure and remuneration would further undermine the invaluable statutory function of the Heritage Council.

**An Cathaoirleach:** The Senator is way over time.

**Senator Gerard P. Craughwell:** She has said there are so many State boards that it is too difficult to count, yet how many of them have seen revisions similar to those proposed for the Heritage Council?

I thank the Minister for taking the time to listen to me. I hope she will take the points on board, not only those made by me and my colleagues but also those made by people involved in the wildlife area who have serious concerns about the Bill and where it is going.

**Senator John Whelan:** I welcome the Minister. With all due respect to her, however, I do not welcome the Bill and it does not enjoy my support. It will not enjoy my support and I am minded to vote against it. I do not lay the charge at the door of the Minister, but I call on her to ensure she does not leave this as her legacy. She should not allow this to be the last legislation she puts on the Statute Book before the Dáil is dissolved and we go to the country in a general election.

Serious issues are at stake. I have no wish to fall foul of the farming community, but certainly I am crying foul today. The Minister, her officials and those behind this legislation cannot speak out of both sides of their mouths on this matter. The Minister cannot say she is in favour of balance and biodiversity while introducing this Bill. Section 40 is an assault on the landscape and habitat. It is an assault on conservation, wildlife and our natural heritage. I note that the Title of the Bill is rather innocuous - the Heritage Bill 2016. It is a Trojan horse for an attack on our heritage. It represents an assault on our natural heritage and landscape. No one in his right mind would extend the hedge-cutting, hedge-burning and scrub-burning season by a full two months while claiming to have any regard for wildlife, heritage, conservation or habitats. I strenuously oppose that section and urge the Minister to reconsider it. It should be withdrawn and I hope it makes no further progress in this House. Moreover, I hope it makes no progress in the Lower House and that time betrays and delays it to the point where it falls with the Government and never sees the light of day again.

I live in the countryside. All the decent farmers I know respect the landscape, habitats and nature. They believe biodiversity is important for food production and the balance of nature.

20 January 2016

They know it is important for all other aspects of a sustainable lifestyle in the countryside, including those referred to previously such as tourism and natural heritage, aspects which attract so many visitors.

I am sick and tired of people speaking out of both sides of their mouths, talking about our natural heritage and how much they respect, love and value it. This is not valuing our natural heritage, wildlife, flora or fauna. Is the Minister honestly trying to tell me that farmers need two further months in the year to tend to hedgerows? I do not think so.

I have heard it all today. While I have great respect for my colleagues, Senators Eamonn Coghlan and Michael Comiskey, from whom I take advice on agricultural and farming matters - I take advice on other matters from Senator Eamonn Coghlan - I did not know until today that hedgerows throughout the country have a habit of attacking people. It is absurd to suggest the briary thorns of a blackberry bush amount to just cause to bring in these draconian measures.

Everyone should tend to his or her hedgerows. The landscape should be maintained and we must have balance, but there is already provision in the case of road safety issues. If road safety concerns arise, the law already provides for intervention to deal with it. It is a ruse to suggest there are road safety or pedestrian safety issues. It is a guise to introduce this measure under a two-year pilot programme. It will never be clawed back or rolled back. It will be in place forever.

People come to this House week after week saying they are concerned about our heritage. What about the curlew, the golden plover, the skylark, the meadow pipet, the yellowhammer, the greenfinch and the linnet? They will be decimated if we desecrate the hedgerows in March and August as proposed in this legislation. It is absurd. There has not been adequate consultation. The Bill was published in Christmas week. Now, here we are trying to sneak it through in the dying days of the Government and the House. It is not necessary. I know of no farmers calling for this measure. If there are unique examples or extenuating circumstances where hedgerows have to be addressed, there is already provision in law for it to be tackled. We are talking about green food, green technology, green energy, green economy and green jobs. It is paying lip service. There are talks about climate change. There is nothing green about the provisions in the Bill. There is nothing pro-heritage in the proposals in section 40. It is anti-environment, anti-conservation and anti-habitat. It is an attack on wildlife and the countryside. It is not pro-rural Ireland. Most right-thinking farmers and landowners would agree with me that there is adequate provision in law to address hedgerows in the existing timeframe and if one needs to extend beyond that, one can seek permission to do so as it is allowed. We are blue in the face paying lip service to the climate change issue. This is a further attack on the countryside. It is not good for the economy, the countryside or our conservation policies. It is an attack on the landscape and that is even before I get to the issues around the canal by-laws. The Minister's predecessor, the Minister of State at the Department of the Taoiseach, Deputy Jimmy Deenihan, tried to introduce them and we saw them off three years ago and now we have another Trojan horse attempt to sneak them in before the Government is dissolved. These by-laws are not robust. They are also draconian to curb ordinary decent people in trying to use canals.

I do not agree with the Bill. It does not enjoy my support and I will not be supporting it.

**Senator Rónán Mullen:** Dár ndóigh, cuirim fáilte roimh an Aire.

I will address my comments to the contents of Part 4 of the Bill. In the past 20 years the

Heritage Council has done excellent work in carrying out the functions assigned to it under the Heritage Act of 1995. In May last I had the pleasure of visiting the information exhibition organised by the council specifically for Members of the Oireachtas and it was heartening on that occasion to listen to representatives of a dozen or so not-for-profit heritage organisations extol the changes the Heritage Council had brought about by using its limited means to work with its local and national partners. The benefits to communities the length and breadth of the country, in terms of economic activity, job creation and enhancing the quality of rural community life, cannot be over-emphasised. This is work that has improved the quality of where we live and it is critical to maintaining and enhancing the attractiveness of Ireland to overseas tourists.

I believe a refocusing of activities and functions of the Heritage Council, as is proposed in the Bill, with a particular emphasis on engagement with public authorities and local communities but to the exclusion of educational bodies and other organisations, will adversely affect the work of those educational bodies and other organisations. I have had a look at the strategic plan for 2012 to 2016 of the Heritage Council and I note that it refers to the importance of working with numerous organisations in order to achieve the outcomes of the plan. Such bodies and organisations include local authorities, educational bodies and many other bodies, some of which are educational trusts and some of which have a nationwide brief. While I appreciate the wording in the Bill to amend the Heritage Act 1995 at section 6(3)(b), I strongly believe the functions of the Heritage Council must also include the original emphasis of engagement with “educational bodies and other organisations”. The Heritage Council cites bodies such as the Discovery Programme, the National Biodiversity Data Centre, the Irish Landmark Trust and the Museums Standards Programme as key partners in enabling it to achieve its outcomes, and most, if not all, of these bodies have educational objectives. How are we to know in the years ahead that there may not be other not-for-profit public organisations that become involved in important national heritage undertakings that would benefit from the support of the Heritage Council? These organisations must not be precluded from seeking public support. Therefore, we need to ensure the Bill does not eliminate hard-working publicly motivated bodies. The Bill’s amendment of section 6(3)(b) of the 1995 Act must be further amended to retain the phrase “educational bodies and other organisations”.

As a matter of public policy, it is important to include within the requirements, not only of support but of consultation, educational bodies and other organisations, whether they be publicly funded bodies or private bodies. As a matter of public policy, why would one deliberately excise a reference to consultation with educational bodies and other organisations? What mischief is the Minister trying to address by taking it out? It is good to include consultation with the community and other persons, but why would one take out a reference to educational bodies and other organisations? What is that designed to achieve? It seems that can only do mischief. We should be promoting a culture of consultation with educational bodies and other organisations and support for them and their initiatives.

As for the rest of the Bill, it is a great pity that it proposes to remove the requirement for the Heritage Council to establish statutory standing committees on wildlife, archaeology, architectural heritage and inland waterways and given the proposed reduction in the number of board directors, it seems it will not always be possible to have board members or standing committee members who are skilled in directing the board to effect policies in all the different heritage areas cited at section 6(1) of the 1995 Act. Of course, I am aware that the Heritage Council will still be able to appoint committees as it requires, which is why I am concentrating my fire, as it were, on the need to change the amendment to section 6(3)(b) of the 1995 Act contained in the

20 January 2016

Bill so as to reinsert the reference to “educational bodies and other organisations”. It should not really fall to us here in the House to have to propose the amendment. It is a reasonable, minor amendment that the Minister could bring forward on Committee Stage and I think everybody in the House would support it. I am requesting her to revisit that section and reinsert the reference to “educational bodies and other organisations” at section 6(3)(b). If she is minded to make this amendment - obviously, we will need to propose it if she does not - it will ensure the Heritage Council will not lose its original focus as it further develops its functions and inclusivity in so many important heritage areas in Ireland.

**Senator Terry Brennan:** I will address the section on canals, the opportunities available for the tourism sector and the benefits that will accrue to the towns and villages situated on the canals which I honestly believe are being under-utilised and the use of which I encourage.

Provision is being made in the Bill to amend the Canals Act 1986 to allow for the making of by-laws for the regulation of boating on canals. The amendments to the Canal Act 1986 are primarily enabling provisions to allow for the making of by-laws to regulate boating on canals and manage the use of the Royal Canal, the Grand Canal and the Barrow navigation. The existing provisions are very much out of date and the new provisions will allow for better management and better maintenance and control of canals, which are a fantastic public resource and which, I reiterate, are under-utilised.

The proposed amendments will include provisions for the regulation of canals, the issue of permits or licences to regulate the use of boats on canals and canal property, the regulation of the type or class of boat, including the dimensions, which may be used on canals and the regulation of berths and moorings and the placing of buoys on canals or other canal property. There is nothing nicer to see than a boat navigating canals. One sees them in other countries such as the United Kingdom and the resulting benefits to the communities.

On the appointment and powers of authorised officers, the Bill provides for powers of entry, the issue of search warrants and the service of directions.

*4 o'clock*

The legislation will also provide for a number of miscellaneous amendments, mostly of a technical nature, including to section 56 of the Maritime Safety Act 2005 and the consequent repeal of section 56. It will update the references to the titles of the various Ministers in the Act to reflect the current applying position. It will amend to “Waterways Ireland” those references to the Commissioners of Public Works relating to the functions transferred to Waterways Ireland by the British-Irish Agreement Acts 1999 to 2005. It will provide for the deletion of section 13 - this provision expired three years after the vesting day - and further details on proposed amendments are contained in the explanatory and financial memorandum to the Heritage Bill 2016.

Waterways Ireland is responsible for the management, maintenance and development of over 1,000 km of inland navigable waterways, principally for recreational use. These waterways include the lower Bann, the Royal and Grand Canals, the Shannon-Erne Waterway, the River Barrow and the River Shannon and further information is available.

I want to see the waterways opened up and the North-South link maintained. I want to see opportunities for employment for small villages and small businesses located on canals.

**Minister for Arts, Heritage and the Gaeltacht (Deputy Heather Humphreys):** I thank

those Senators who have participated, some of whose contributions have been practical and helpful on canals, wildlife and the Heritage Council elements of the amending legislation.

On canals, I welcome Senator Sean D. Barrett's constructive and positive comments as canals are valuable resources and public amenities. Like Senator Terry Brennan, I want to see further investment in them. I want to see the Ulster Canal open. It is the last piece in the jigsaw and I was delighted to obtain approval from the Government last year to commence work on the first stage of the Ulster Canal from Belturbet to Castle Saunderson. As the canal moves towards Clones on an incremental basis, it will open up a whole new area of tourism and greenways and that will be hugely positive. Waterways Ireland is proactive in developing the recreational aspects of the canal.

On the powers of authorised officers to enter boats that are permanent dwellings, protection is provided by the requirement to obtain a search warrant which can only be granted by a judge of the District Court.

There was extensive consultation by Waterways Ireland during the consultation period on the draft canal by-laws and over 2,000 submissions were received. This is evidence of a very positive consultation process. I have taken note of the comments on the consultation period extending beyond 21 days.

I welcome Members' support for the provisions clarifying the powers of my Department's authorised officers and for updating penalties for offences under the Wildlife Acts.

In answer to Senator Brian Ó Domhnaill, there will be a further consultation process on the regulations for hedge cutting and burning and we need to get the right balance in achieving road safety, managing the environment and protecting flora and fauna. I note the concerns of some Members about the impact of the provisions relating to burning and hedge cutting on bird life, especially during the nesting periods of bird species. There seems to be a misunderstanding. We plan, in a very controlled environment, to move the hedge cutting date from 1 September to 1 August on a pilot basis. In answer to Senator Gerard P. Craughwell, regulations made on burning will include guidelines on burning in upland areas and will take account of our obligations under the EU nature directives.

Senator Michael Comiskey is right; if there is proper management of the uplands, it will benefit wildlife. I live in the country and as birds and the natural environment surround me, I am very conscious of this issue. I want birds to be protected and doing this in a managed and proper way will benefit wildlife.

Senator David Norris had a few interesting things to say. He said August was in the middle of the nesting period. That is absolute nonsense - August is not in the middle of the nesting period, as anybody who lives in the country, or even who lives in a city, should be aware. As the hen harrier is a protected species, it is incumbent on a landowner to ensure no harm is done to it, no matter what time of the year cutting or burning takes place. It is very important to note that landowners must take account of the habitats directive and the onus on them to make sure they do not do any damage to wildlife. People should realise that we depend on rural dwellers and the farming community to help to manage and maintain the countryside.

Reference was made to the birds case. My Department, in conjunction with a number of Departments and agencies, has been engaged in a significant programme of work to meet the requirements of this case since the findings were published in 2007. As a result of these efforts,



20 January 2016

the majority of the findings have been addressed to the satisfaction of the European Commission and no fines have been applied against the State. We must ensure the changes to the hedge-cutting period in August do not impact on the population of wild birds, including the yellow hammer and many other species that have been mentioned. Any such cutting will be subject to conditions and restrictions which will be specified in regulations on hedgerow husbandry, management and maintenance to protect fauna and flora. There is a sunset clause in the Bill and I will review the operation of the provision after two years. My Department will also gather data to underpin the decision. They will include data on bird nesting and the level and impact of cutting.

During the consultation process 188 submissions were received, ranging from detailed submissions to individual, brief points of view. Stakeholder groups such as Birdwatch Ireland, An Taisce, the IFA, the ICMSA, Departments and local authorities were among those to respond. Some 102 submissions were received from members of the public, 44 from representative bodies, 29 from other Departments and local authorities, eight from elected representatives and five from businesses and consultancies.

The changes to the Heritage Council mainly relate to governance procedures and have arisen as a result of a detailed review undertaken in 2012. I agree that the council does great work and is very good at engaging with communities. That is one of its great strengths. All of the changes proposed in the Bill have been agreed with the Heritage Council. I reassure Senators that my Department works very closely with the council.

I say to Senator Gerard P. Craughwell that the councillor gave him wrong information because funding for the Heritage Council has increased by 15% in the past two years. Its funding remained constant between 2011 and 2013 and has increased since. As the economy continues to improve, I want to see more investment in our heritage.

I acknowledge the supporting comments made by Senator Brian Ó Domhnaill on the review of the Heritage Council. The role of the council in terms of our heritage, education and awareness is very important. That is why it is an essential part in working with communities, as outlined in the Bill. The Bill has been brought forward with the agreement of the council.

**Senator David Norris:** I am not being rude to the Minister, but I wish to make a point of order.

**Deputy Heather Humphreys:** That particular section reflects the wider Government objective-----

**Senator David Norris:** I shall wait until the Minister reaches the end of her sentence.

**Deputy Heather Humphreys:** -----to achieve efficiency and streamlining in the governance of State agencies and their cohorts.

**An Cathaoirleach:** Senator David Norris wishes to make a point of order.

**Senator David Norris:** I would like to correct something the Minister said. She said I had maintained that August was the middle of the nesting season, but it was a complete nonsense.

**An Cathaoirleach:** That is not a point of order.

**Senator David Norris:** It is the nesting season for a number of threatened species. I have

quoted Birdwatch Ireland.

**An Cathaoirleach:** Will the Senator, please, resume his seat?

**Senator David Norris:** With the greatest respect, Birdwatch Ireland ought to know a little more about birds than the Minister. I instanced the species of birds that were threatened and nest not only in August but right up until September. Therefore, I was accurate.

**An Cathaoirleach:** The Senator can raise the matter on Committee Stage.

**Deputy Heather Humphreys:** I again thank Senators for their contributions and look forward to receiving their amendments which I will consider fully.

**Senator Rónán Mullen:** I asked whether the Minister would consider a particular amendment.

Question put:

The Seanad divided: Tá, 28; Níl, 6.	
Tá	Níl
Bacik, Ivana.	Barrett, Sean D.
Brennan, Terry.	Craughwell, Gerard P.
Burke, Colm.	Healy Eames, Fidelma.
Cahill, Máiría.	Mullen, Rónán.
Coghlan, Eamonn.	Norris, David.
Coghlan, Paul.	Power, Averil.
Comiskey, Michael.	
Conway, Martin.	
Cummins, Maurice.	
D'Arcy, Jim.	
Daly, Mark.	
Hayden, Aideen.	
Keane, Cáit.	
Kelly, John.	
Landy, Denis.	
Leyden, Terry.	
Mac Conghail, Fiach.	
Mooney, Paschal.	
Moran, Mary.	
Mullins, Michael.	
Noone, Catherine.	
Ó Domhnaill, Brian.	
Ó Murchú, Labhrás	
O'Neill, Pat.	
O'Sullivan, Ned.	
van Turnhout, Jillian.	

20 January 2016

Walsh, Jim.	
Wilson, Diarmuid.	

Tellers: Tá, Senators Paul Coghlan and Aideen Hayden; Níl, Senators Gerard P. Craughwell and David Norris.

Question declared carried.

**An Cathaoirleach:** When is it proposed to take Committee Stage?

**Senator Maurice Cummins:** Next Tuesday.

**An Cathaoirleach:** Is that agreed? Agreed.

Committee Stage ordered for Tuesday, 26 January 2016.

**Senator Maurice Cummins:** I propose that the sitting be suspended until 5 p.m.

**An Cathaoirleach:** Is that agreed? Agreed.

*Sitting suspended at 4.25 p.m. and resumed at 5 p.m.*

### **Competition (Amendment) Bill 2016: Order for Second Stage**

Bill entitled an Act to delimit the application of the Competition Act 2002 to Trade Unions and Trade Union Members and to certain agreements negotiated with public bodies, and to provide for related matters

**Senator Ivana Bacik:** I move: “That Second Stage be taken now.”

Question put and agreed to.

### **Competition (Amendment) Bill 2016: Second Stage**

**Senator Ivana Bacik:** I move: “That the Bill be now read a Second Time.”

I welcome the Minister for Jobs, Enterprise and Innovation, Deputy Richard Bruton, and thank him for coming to the House for the debate on this Bill. I also welcome the opportunity to introduce this important Bill. In addition, I welcome the people with a real interest in this matter in the Visitors Gallery, particularly representatives from the Services Industrial Professional and Technical Union, SIPTU, the National Union of Journalists, NUJ, and Irish Actors Equity, among others. I thank the Minister of State at the Department of Justice and Equality, Deputy Aodhán Ó Ríordáin, who met us earlier and is a strong supporter of the legislation.

The Bill arises from a long-standing Labour Party commitment to ensure protection of the right to collectively bargain for freelance workers, including journalists, actors and others, who perform their work on a self-employed or contract for services basis. Under competition law, self-employed persons are considered to be separate, independent economic undertakings. If the Competition Act 2002 were to be applied with full force and effect to trade unions and their members, as the explanatory memorandum to the Bill suggests, trade unions would revert to

their old common law status as unlawful combinations and trade union leaders would be prosecuted as parties to a criminal conspiracy. Clearly, that is not the case, but the objective of the Bill is to seek to exempt certain groups of workers from an over-rigid application of the Competition Act. At present, if one self-employed person combines with others to set prices for their services, the risk under the current competition law is that they could be accused of an illegal, anti-competitive practice. At its most extreme, freelance journalists in a newsroom would be barred from bargaining collectively with their common employer about their wages.

The Acting Chairman, Senator Paschal Mooney, today raised with me, as did others, the fact that minimum rates were being set by some unions for freelance workers and that they continued to apply. However, the reality is that the Competition Act 2002, as interpreted and applied by the Competition and Consumer Protection Commission, formerly the Competition Authority, has had a chilling effect - as union representatives have informed me - on those unions that represent freelance workers. It leaves freelancers vulnerable. Employers can use the 2002 Act and its interpretation by the Competition Authority to avoid the bargaining of minimum pay rates with unions for freelance workers. The European Court of Justice recently held, however, that a worker was not genuinely freelance or independent of his or her employer if the worker acted under the direction of the employer as regards freedom to choose time, place and content of work and, in reality, formed an integral economic unit within the employer's undertaking. As a result, this category of worker is entitled to bargain collectively. This was the European Court of Justice's decision in 2014 in *FNV Kunsten Informatie en Media v. the Netherlands*. Arguably, this case has a direct impact on Irish competition law and is helpful in providing support for the principle being put forward in the Bill. The commitment to introduce a Bill such as this is also contained in the Labour Party document, *Standing Up for Working People*, published last week. The Bill shows the seriousness of our intent to act on the reforms within the document.

I will describe further the historical background to the Bill and its origins before discussing its provisions in more detail. The historical issue is described in the explanatory memorandum. The application of the Competition Act to freelancers has been an issue of contention for some time and a matter of serious concern to the trade union movement. I should declare a professional interest as I advised a number of trade unions on this issue some years ago in my capacity as a barrister. In 2004 the then Competition Authority ruled, in applying the Competition Act 2002, that a collective agreement between Irish Actors Equity and the Institute of Advertising Practitioners in Ireland in respect of voice-overs provided by freelancers was a breach of section 4 of the 2002 Act on the basis that each actor was a separate business undertaking and it was, therefore, unlawful for them to collectively fix prices for voice-over services. I am told this ruling went on to affect all those engaged in acting in visual commercials. It has had a chilling effect and could affect many others such as journalists, photographers, writers, musicians, models, bricklayers and other skilled tradespeople in the construction industry and other professionals. The Dutch case from 2014 to which I refer related to musicians, namely, orchestra members who were ostensibly self-employed musicians but whom the court found potentially to be false self-employed or bogus. In other words, they were, in effect, employees. The competition ruling also had an impact on representative bodies such as the Irish Medical Organisation, IMO. That is the issue with which a further section of the Bill is concerned.

In 2006 the then Deputy Michael D. Higgins published the Competition (Trade Union Membership) Bill which would have permitted collective agreements between individuals who engaged for gain under a contract personally to do work or provide services. This issue was

20 January 2016

then pursued by unions in national agreement and partnership negotiations and a previous Government in the programme entitled, Towards 2016, made a commitment to deal with the matter in respect of both freelance workers and representative bodies by way of amending legislation. I understand the EU-IMF memorandum of understanding then posed an obstacle by providing that there was a need to ensure no further exemptions to the competition law framework would be granted unless entirely consistent with the goals of the EU-IMF programme and the needs of the economy. In 2012 Deputy Emmet Stagg published the Competition (Amendment) Bill 2012, on which the Bill before the House is based. It had the same aim of former Deputy Michael D. Higgins's earlier Bill, but the correspondence from the EU-IMF and the correspondence between the EU-IMF and the Irish Congress of Trade Unions, ICTU, in 2012 were grounds for a reason not to proceed with this type of amending legislation.

Obviously, matters have moved on, but the issue remains a live one for many freelance workers in various fields and the unions that represent them. Happily, we have emerged from the programme; we are in a phase of economic recovery and now have the 2014 judgment of the European Court of Justice. In that judgment the Dutch domestic law was very much equivalent to our existing Competition Act 2002 and I argue that the decision has a very direct relevance to the law in Ireland. In January of 2015 ICTU wrote to what is now the Competition and Consumer Protection Commission asking it to reconsider its position on the 2004 interpretation in the light of the judgment of the European Court of Justice. I understand it did not agree to reconsider at that point. However, the decision does pave the way for a Bill of this nature to be brought forward.

Before I turn to the specific provisions of the Bill, it is important to say there is a serious issue about consumer protection. Any exemption from the normal application of competition law must be narrowly drawn to ensure consumers are not put to any detriment. It is a knotty business to distinguish between self-employed contractors, on the one hand, and employees, on the other. We are all conscious that atypical employment involving people who are not obviously either self-employed or employees is a growing phenomenon and that people often describe themselves as, or are described as, self-employed for a variety of reasons such as tax, PRSI or pension purposes. The decision of the European Court of Justice states we must look behind that description to see what is the reality, which is very helpful for a Bill of this nature.

I will now turn to the provisions of the Bill. Section 2 is the core section which will provide the protection of which I speak for freelance workers as represented by their trade unions. The Bill provides a definition that "where an individual engages for gain under a contract with an undertaking personally to do any work or provide any services", a trade union should be able to negotiate effectively on his or her behalf on his or her terms and conditions. This is a new litmus test for what constitutes an undertaking or an individual to whom the Competition Act 2002 applies. A core point in section 2 is to enable trade unions to organise and negotiate collectively on behalf of those individuals who enter into, or work under, contracts personally to do or provide any work or services. The emphasis is on the word "personally". This will protect those freelancers who currently face this legal uncertainty. It will also prohibit self-employed individuals from price fixing against consumer interests and it will retain the core public interest principle of the Competition Act 2002. The exemption from the application of the Competition Act would apply only to contracts with undertakings, not with consumers. This is a key component of the Bill.

Section 3 is designed for a different purpose to allow for collective negotiation and bargaining regarding terms and conditions of a scheme whereby services are provided for the public by



members of a trade or so on. It covers issues such as negotiations with the IMO. However, I believe the core part of the Bill is section 2. It is important to adopt the Bill and, in particular, section 2, as it will end the unfair and anomalous situation where many vulnerable workers are denied the protection of collective bargaining rights on the basis of what is an overly rigid interpretation of competition law, an interpretation which arguably goes against the decision of the European Court of Justice. I urge colleagues to support the Bill.

**Senator Aideen Hayden:** I congratulate Senator Ivana Bacik and Deputy Emmet Stagg on bringing an important matter to fruition today. It is an important step on a road to remedy what is a significant anomaly in the employment code. The Bill will provide, under section 2, that where a person works under a temporary contract, any activity by that person as a member of a trade union will not be deemed to be an association of undertakings, for the purposes of the Competition Act 2002. Senator Ivana Bacik has set out the importance of that distinction. Section 3 will provide that a representative organisation is not an association of undertakings where a declaration is made by the Government. This also will apply to professions where a profession included a trade, vocation or other occupation. It is immaterial whether members of a profession provide services as sole traders or as members or employees of partnerships or corporate bodies.

This issue has been bubbling under the surface since the Competition Authority held, in a 2004 decision on arrangements between Irish Equity, SIPTU and the Institute of Advertising Practitioners in Ireland, that any immunity enjoyed by a trade union, for example, on collective bargaining, could apply only when the union was acting on behalf of employees and not, as in this case, where Equity was acting more as a trade association on behalf of independent contractors as opposed to employees. That is the nub of the problem which section 2 attempts to address.

People who work under contract and currently work together through collective bargaining could be prosecuted under competition legislation as it stands. Under the law every self-employed person is considered to be a separate, independent economic undertaking. If one self-employed person combines with others to set prices for their services, they can be accused of illegal, anti-competitive practices. Senator Ivana Bacik has made reference to the huge impact this has on people who work as freelance journalists, actors, models, photographers, musicians, construction and trade workers, various professionals and temporary workers for hire in the hospitality sector and many others. These workers are inherently vulnerable owing to their need to continually apply for jobs and are in a dangerous position to agitate for better pay and conditions. I will give the example of one freelance journalist who told me that freelance journalists sent work to a number of outlets. The outlets often do not state their pay levels for pieces which are printed upfront and it can take a number of months for payments to be made. It could be very easy to lowball a new journalist in the profession while paying more to established freelancers for similar quality work. Unions such as the NUJ and SIPTU have sought to change the law such as the Bill would achieve.

The Bill is also in compliance with the ruling of the European Court of Justice that the worker is not genuinely independent of his or her employer if the worker acts under the direction of the employer regarding the freedom to choose time, place and content of work and forms, in reality, an integral economic unit within the employer's undertaking. There is a balance to be struck between protecting the rights of vulnerable workers, while not providing cover for individuals who are legitimate self-employed contractors and business who jack up prices for consumers. The test of whether the worker has the ability to choose his or her own

assignments or whether he or she shares the economic risk of the outlet does not protect workers such as freelance journalists where there is a substantial amount of power in the hands of media outlets and a huge number of journalists competing with each other for work. This goes right to the heart of the problem where collective bargaining is not an option. One may get a race to the bottom where workers would try to outbid each other by agreeing to accept less and less pay. This is especially pertinent as we see a move away from traditional full-time employment towards situations where an employee is more likely to work on temporary contracts, be self-employed or work as an intern. There has been a demise of the job for life. There are many reasons employment has become more precarious not least because of employers' desire to avoid the costs associated with the status of employee.

I will conclude by reiterating that the Bill is a very important step along the road to restoring fairness in a situation where self-employed persons do not have control over their own destinies and are at the mercy of those who are economically able to determine the outcome. The Labour Party has always believed in standing up for workers dating back to the 1920 Lock-out. The answers, unfortunately, become more complex as the economy does and how we ensure consumers get better value, while also protecting workers and making it attractive for businesses to set up and remain in the State, also becomes more complex as time passes. Changing employment patterns must be taken into account while firmly committing to ensuring workers are protected. However, we must acknowledge that we are increasingly seeing people trapped in precarious work. There is a word to identify this work situation without predictability and security and it is now part of the English language - "precariat". The word has been analysed as a new social class by the author Guy Standing. It must be asked if, as a society, we can achieve a balance between the legitimate needs to ensure healthy competition while ensuring protection for those in work. The Bill will do just that.

I conclude by acknowledging the Government's role in improving employment conditions overall. The House will forgive me for mentioning the Low Pay Commission, restoration of the minimum wage and more recently the increase in the minimum wage in budget 2016. Without further elaborating on the wider role of the Labour Party in government, I believe we should look at the Bill on its merits as extremely important legislation which will restore balance to what should be a more equitable working relationship.

**Senator Brian Ó Domhnaill:** I concur wholeheartedly with Senators Aideen Hayden and Ivana Bacik. I welcome this legislation which will restore the equilibrium of rights to all workers, irrespective of where they are employed or to whom they are contracted. Society is changing, the economic output of society is changing, the role of the employee is changing, economic actors within society are changing and diversification is the reality in terms of the type of employment which is created within many sectors. It is vital that workers' rights across the whole spectrum be fully protected.

This Private Members' legislation, brought forward by the Labour Party, will be supported by Fianna Fáil. Current competition law prevents actors who provide voice-overs for advertisements, musicians and freelance journalists from negotiating pay collectively. This issue has been raised through the trade union movement, members of the media and the arts fraternity. It is right that this legislation will address that issue. The Bill will afford the people concerned and others the right to collective bargaining and negotiation of their pay and conditions. The Bill will ensure such individuals will not be classed as undertakings for the purposes of competition law. Self-employed individuals will continue to be prohibited from price fixing, which is in the best interests of consumers. The ruling of the European Court of Justice was referred to

and that was a groundbreaking ruling brought about as a result of Dutch unions bringing a case before the court. The court hearing of December 2014 set the bedrock for bringing forward legislation such as this, not only in Ireland but right across Europe.

This Bill will affect many in society such as all the people I mentioned - actors, individuals doing voice-overs for radio and others such as freelance journalists, photographers, those providing written copy, sound and visual contributions, photographs and film clips for media outlets, writers for radio, television and film drama, musicians hired for gigs or recording sessions, orchestras, bands, dancers for shows in clubs and other performers, models on photo-shoots, bricklayers and many other skilled tradesmen in the construction industry, as well as doctors and many other professionals. This is wide-ranging and not definitive to one sector, in particular. It brings equality to many within the dynamic workforce we have in Ireland. It brings forward employee rights, which we fully support.

The timeframe is short between now and when the Taoiseach will call the general election, but I hope this legislation can be adopted before then. We will facilitate it in every way possible and, in the year that is in it, it would be good to recognise the role of many individuals employed in different sectors of society by the nation cherishing them all equally under legislation. I commend Senators Ivana Bacik and Aideen Hayden for bringing forward this legislation which I hope will see the light of day before the general election is called.

**Senator Michael Mullins:** I, too, compliment Senators Ivana Bacik and Aideen Hayden on introducing this Bill and bringing forward legislation that will help improve the protections afforded to certain categories of employees who provide valuable services and who do not have the protection that organised employees have. As I understand it, any practice that distorts competition or has that as an objective is both a civil wrong and a criminal offence. However, union representation is a different animal. The area where collective bargaining and competition law intersects is rather difficult and tortuous. As the Bill notes, since late in the 19th century our understanding of trade unions has radically altered. The Constitution and international human rights law recognise the right to form trade unions. The question with this legislation is whether unions representing people who are not in traditional employment are covered by competition law. The test currently is whether somebody is employed or self-employed. If they are employed, they can partake in union membership and collective bargaining. The self-employed cannot. That might be a simplification but, as I see it, that issue is at the heart of the matter. The categories of people impacted on have been referred to.

We can trace this back to European Union law. It encourages competition within the trade union and regulates anti-competitive activity. Its aim is to prevent cartels and monopolies and no one would disagree with such an aim. Based on Articles 101 to 109, inclusive, of the Treaty on the Functioning of the European Union there is also a plethora of directives and regulations. This proposed legislation, therefore, transgresses on a hugely legally complex area. I will not get too immersed in the detail, but I will refer to one case already referred to by Senator Ivana Bacik, namely, the European court case C-413/13 in which the court decided that competition law did not apply to arrangements among freelance, substitute or orchestra musicians. Its aim was an improvement in working conditions. The European law blog notes that the court significantly expanded the scope for taking social interest into account within competition law. It rejected the view of the European Commission. It is said this particular case is very important as, for the first time, it took account the issue of false self-employed or those not in what one would term traditional employment. It said the court very much demonstrated a willingness to take public interest arguments into account rather than concentrating on very narrow economic

ones. It is something which I think is very relevant to the Bill.

There is also a very interesting paper on collective bargaining by musicians, written by Camilo Rubiano and supported by the International Federation of Musicians. This report notes that it is widely acknowledged that collective agreements concluded in good faith and dealing with core labour subjects are, in principle, legal. However, it also notes that there is little in the way of clear legislation removing collective bargaining from competition law and that it has been a matter for courts to establish where the limits lay and to harmonise conflicting relationships. The author goes on to give case law of the European courts in support of this position while noting that it has been very narrowly interpreted by various national competition authorities within the European Union. It is, therefore, suggested that, although the European courts have suggested a more social approach to competition law, national authorities are very slow to follow. It is interesting to note that an Irish competition authority case involving SIPTU and self-employed actors formed the basis of decisions in other member states' various competition authorities. It is suggested the EU courts are more open to social aspects but national authorities seemingly read and interpret the text of Articles 101 to 109, inclusive, strictly.

The Labour Party Bill is on a very interesting topic. It is also a very complicated topic and, in trying to balance the proper prohibition of anti-competitive practice and the right of people to fair terms and conditions, there will always be some tension. I welcome the chance to engage in further debate on Committee Stage and generally. As a Government we are doing everything possible to enhance the rights of employees in all categories and the Bill addresses a situation where there are anomalies and people in certain occupations are being treated less favourably. It is with pleasure that I support the Bill.

**Senator Gerard P. Craughwell:** I welcome the Minister and support this timely Bill. I thank Senators Ivana Bacik and Aideen Hayden for introducing it. Like Senator Brian Ó Domhnaill, I hope it will pass through the House as quickly as possible and be enacted before the Houses' dissolution.

Employment has undoubtedly changed in the past 100 years. In the past ten or 20 years it has become precarious. One can walk into an organisation today and find that some of its employees, who are of the mistaken belief that they are employed by the company on all the terms and conditions that one would expect, are essentially private contractors. Yesterday, I was shocked to see that 65,000 claimants to the Department of Social Protection were casual workers. That is a large number. It is a slight aside from this Bill and is not what it is trying to address, but it is only right and proper that those in the professions - doctors, bricklayers, voiceover artists, photographers, journalists, etc. - have access to all of the protections that one might have when in full-time employment. I congratulate the Labour Party and Senator Ivana Bacik on the introduction of the Bill.

**Senator Paschal Mooney:** Like Senator Ivana Bacik, I will declare an interest, although not at the lofty level of being a barrister. I am a member of the National Union of Journalists, NUJ, and Irish Equity.

**Senator Ivana Bacik:** Much loftier.

**Senator Paschal Mooney:** I thank the Senator. Like her, I welcome the representatives of both trade unions to the House.

As my colleague Senator Brian Ó Domhnaill outlined, Fianna Fáil supports the Bill. I com-

pliment Senator Ivana Bacik who gave me her personal insight into this legislation prior to the debate. I listened with great interest to her presentation which made it clear that this amendment was long overdue. I posited to her - she may have been wearing her barrister's hat, as she did not quite reply - that perhaps I should have sued RTE during my time there because there were people in that organisation who were operating on minimal pay rates. I do not want to separate from the NUJ which has done the same job, but I thank Irish Equity. As an on-air presenter in RTE, I was always subject to contracts that were of short duration and at the minimum rate negotiated by Irish Equity on my behalf, even though I was deemed to be self-employed for tax purposes. This is the case the Senator is making, more or less. It seems that RTE and I were acting illegally in this regard because our situation went against the essence of the 2002 Act, which I understand the Bill will correct in order to remove the legal limbo regarding the status of persons such as me who operated in RTE under those terms.

The Bill is also timely in that it allows me to reiterate the fact that the majority of on-air people working in RTE are operating on minimum Irish Equity rates. The high flyers and celebrities give the public the mistaken impression that everyone they listen to on RTE radio is earning multiple thousands of euro. Only a small number of presenters are being paid at that level. They operate on individual contracts that are negotiated by agents whom they are affluent enough to afford. I was never in that situation. During the recent economic downturn, rates for programmes were cut drastically by RTE. In my case, it sadly reached the point at which it was no longer worth it to me financially because of the amount of work involved in the programmes. I am not blaming RTE, which was loss-making. I am glad that it has extricated itself from that position, as I am a strong supporter of the concept of public service broadcasting.

This debate allows me to make a point, particularly given the attendance of my Irish Equity friends. When I started in broadcasting, there was an agreement between Irish Equity and RTE that non-Irish television and radio advertising would be re-voiced by the former's members, but that agreement seems to have gone away. Forget about the other channels. I am becoming increasingly irritated with regional British voices on RTE trying to sell consumer products to Irish viewers. It is unacceptable. One does not hear Irish voices in adverts on ITV, but one hears a plethora of British voices - not just plummy, upper-class English voices, but also regional accents that are, in some cases, harsh on the Irish ear. I wonder whether advertisers are aware of the adverse impact this has on Irish consumers. It is not because people are anti-British but because they cannot understand some of the accents. I should have checked with Irish Equity prior to this debate whether the agreement had lapsed or RTE had taken a decision to end it, but it is long past time for it to be restored. It provides Irish voice-over actors with work. I do not know whether the Minister has a role in this matter or whether he will stand back and state that this is between RTE and the trade union concerned, but I would be interested in his opinion. Perhaps I might draw him out a little.

This legislation is welcome. It will protect many of those who like me, even though I am no longer employed by RTE, operated or continue to operate on short-term contracts. This issue may also affect local radio, where there is a race to the bottom. People who are anxious to get involved in broadcasting, particularly young people, are prepared to take whatever money is offered. I am not suggesting they are not being paid the minimum wage, as they are, but JobBridge raises serious concerns. The NUJ conducted a survey of its use in enhancing the income of local radio stations. JobBridge participants were taken on for nine months, only to be told at that point that the stations were not in a position to offer them full-time employment. The stations then readvertised the same jobs, albeit with different wording to give the impression that



they were different jobs. The radio stations benefited by having a continuing stream of people taking over from others. This practice is unacceptable. I do not know whether the Minister has been made aware of the NUJ's survey, or whether there has been communication between the NUJ and his office in this regard. It is unacceptable, regardless of the difficulties facing local radio in maintaining current job levels following a difficult economic period that affected it and other elements of the economy. I am not trying to have a go at local radio stations. If, as the Bill proposes, the law is meant to protect workers and ensure they get fair wages, it should be applied across the board.

**Minister for Jobs, Enterprise and Innovation (Deputy Richard Bruton):** I thank Senator Ivana Bacik for introducing the Bill and other Senators for participating in the debate. I have not opposed the Bill because a fresh examination of this issue is timely. I understand the motivation outlined by Senator Ivana Bacik and others to protect vulnerable workers. The Bill seeks to establish the rights of self-employed individuals to be represented by a trade union for the purposes of collective bargaining and to allow representative bodies to enter into collective negotiations with a public body in respect of services provided for the public by its members.

It is important that Senators remember that Irish competition law derives from the EU treaties. Since competition policy falls within the competence of the European Union, we are not sole authors of our approach in this respect. That does have a bearing on the way in which we have to assess proposals such as this. We need to look at the implications of the proposals in the context of the wider EU provisions and have to make sure all legislation, however well motivated, is designed in such a way that it does not have unintended consequences in other areas. It is important that we do that work and that we have a proper regulatory impact assessment of any legislation of this nature, because it will apply to many professions, not just to vulnerable workers but also to people in very well paid professions, farming, and so on. It raises wider issues and we need to ensure we understand the implications of proposals of this nature, while recognising the motivations behind them.

The issues the Bill and its two substantive provisions seek to address are governed by the provisions of section 4(1) of the Competition Act 2002 which, among other matters, prohibits price-fixing. The subject matter of the proposed Bill has its genesis in an investigation conducted by the then Competition Authority in 2004 regarding possible price-fixing among self-employed actors and advertising agencies. The authority found that an agreement between Irish Equity, on behalf of the actors, and the Institute of Advertising Practitioners in Ireland, on behalf of advertising agencies, was in breach of competition law in that it provided for both specific fees for services rendered and various other terms and conditions. In August 2004 the Competition Authority published an explanation of its decision and the text of the undertakings made to it by Irish Equity and the Institute of Advertising Practitioners in Ireland, in which both parties agreed not to fix fees and to comply with the provisions of the Competition Act. The authority's investigation centred on the fact that section 4 of the 2002 Competition Act prohibits anti-competitive agreements, decisions and concerted practices. Section 4 applies when undertakings are engaged in arrangements which have as their object or effect the prevention, restriction or distortion of competition in trade in any goods or services in the State. Section 4(1) reads:

Subject to the provisions of this section, all agreements between undertakings, decisions by associations of undertakings and concerted practices which have as their object or effect the prevention, restriction or distortion of competition in trade in any goods or services in the State or in any part of the State are prohibited and void, including in particular, without

prejudice to the generality of this subsection, those which—

(a) directly or indirectly fix purchase or selling prices or any other trading conditions...

Section 3 of the 2002 Act defined an undertaking as “a person being an individual, a body corporate or an unincorporated body of persons engaged for gain in the production, supply or distribution of goods or the provision of a service”. This was expanded in the Competition and Consumer Protection Act 2014 to provide legal clarity that it includes, where the context so admits, an association of undertakings. In order to establish whether a breach of section 4 of the Act has occurred, the then Competition Authority, now the Competition and Consumer Protection Commission, would have needed to prove that there was an agreement, decision or concerted practice; that the parties to that agreement, decision or concerted practice were undertakings and that the object or effect of the agreement, decision or concerted practice was to prevent, restrict or distort competition.

In the 2004 case I understand the parties did not dispute the existence of an agreement and neither did the institute contest that it was an association of undertakings and that its members were undertakings in their own right. The issue the then authority had to consider was whether actors were undertakings and whether Irish Equity was an association of undertakings for the purposes of the Act. In layperson’s terms, it was a question of whether the actors in question were self-employed independent contractors, who are subject to the Act, or employees, who are generally not subject to the Act. The authority considered this issue to be particularly important in this case, where the trade union had both employed persons and self-employed independent contractors as members. The authority stated in its decision that while it was perfectly legal for a trade union to represent employees in collective bargaining with their employers, its trade union mantle could not exempt its conduct when it acted as a trade association for self-employed contractors. The authority also stated that if one were to take an inflexible approach and find that all trade union members were exempt from the Act, the protections afforded to consumers by the Oireachtas in the Competition Act could easily be bypassed in that associations of independent professionals could obtain sanctuary for their members by adding “union” to their name and obtaining a negotiating licence.

On the question of whether actors are undertakings within the meaning of the Competition Act, I understand the Competition Authority noted that the Revenue Commissioners treated the vast majority of actors in the State as independent contractors rather than as employees subject to PAYE. It also considered other factors such as the following: actors providing advertising services generally are not obliged to work for a single advertising agency and may work for several at a time; such actors generally do not receive the benefits one usually associates with a contract of employment - holiday pay, health insurance, maternity leave, and so on; such actors do not generally have employment security and are free to accept or decline specific work as they see fit; and actors are not generally thought of as employees of a particular agency. In the light of these factors, the Competition Authority took the view that most actors were independent contractors and, therefore, undertakings subject to the Competition Act. The authority also stated there might be some actors who had genuine contracts of service and who were therefore employees, as is the case with some musicians. However, its investigation into that particular agreement revealed that the vast majority of actors providing advertising services under the agreement were independent contractors and, therefore, undertakings.

Having found the actors to be undertakings, it followed that Irish Equity in this case was

an association of undertakings and subject to the provisions of the Competition Act. The then Competition Authority had the option to enforce competition law either by seeking appropriate civil remedy in the High Court or by recommending the prosecution of a criminal action by the Director of Public Prosecutions. Ordinarily, the authority pursued criminal prosecutions only where there was clear evidence that parties were in breach of the more serious or hardcore provisions of the Act. Although the authority's investigation at the time revealed an element of price-fixing, it elected to pursue civil relief. However, prior to the commencement of legal proceedings, the parties expressed their willingness to address the competition concerns and signed binding contractual undertakings to the authority. The authority also acknowledged the right of Irish Equity to represent employed actors in collective bargaining with employers. I understand the view expressed by the authority was in respect of this particular set of circumstances only, as it is the courts alone that can interpret the law.

As I mentioned, section 4 of the Competition Act 2002 prohibits and makes void all agreements between undertakings, decisions by bodies representing undertakings and concerted practices that have as their object or effect the prevention, restriction or distortion of competition in trade in any good or service in the State or any part thereof. This reflects the provisions of Article 101 of the Treaty on the Functioning of the European Union, previously Article 81 of the Treaty Establishing the European Community, which contains a similar prohibition on agreements, decisions and concerted practices that may affect trade between member states. Under both Irish and EU competition legislation, therefore, self-employed persons, including professionals who are not employees, are regarded as undertakings.

There is ample evidence of EU case law at the European Court of Justice which has determined that professionals are regarded as undertakings from an EU competition law angle. Just over one year ago, as Senators have acknowledged, on 4 December 2014, the European Court of Justice made a ruling on a case, *FNV Kunsten Informatie en Media v. Staat der Nederlanden* - my Dutch is not so good - relating to self-employed substitute orchestral musicians in the Netherlands, of which many Members will be aware. These musicians were part of a trade union, and claimed they had been excluded from minimum fee provisions in a collective agreement which they had formerly enjoyed. The ruling of the European Court of Justice emphasised that self-employed service providers are, in principle, undertakings and are therefore subject to competition law. However, the European Court of Justice also acknowledged that it is important to examine, in each case, whether individuals who appear to be self-employed service providers should, in fact, be categorised as false self-employed because they are, in reality, employees who should not be subject to the provisions of competition law that apply to self-employed independent contractors. The court made it clear that it was for national courts to examine the facts of particular cases in order to determine whether an individual should be classified as a "false self-employed" person and, therefore, be deemed to be an employee for competition law purposes, or as a genuinely self-employed independent contractor.

That case has been helpful in that it sets out the considerations to which the European Court of Justice had regard. However, that ruling was a preliminary ruling on the interpretation of EU law and leaves the application of that law to the national court. Ultimately, that court had regard to a particular set of circumstances and, therefore, future cases would need to be examined on their own merits. It is not possible to deduce how the European Court of Justice would interpret the law if a different set of circumstances were presented before it. I know the Competition and Consumer Protection Commission has carefully considered this case and is satisfied that the judgment constitutes a restatement of well established principles of EU law regarding the

application of competition law to collective labour agreements. It is also of the view that the analysis and conclusions of the former Competition Authority in 2004 on the agreement between the Irish Actors Equity, SIPTU and the Institute of Advertising Practitioners in Ireland remain consistent with Irish competition law as interpreted in the context of the relevant principles of EU competition law set out in the European Court of Justice ruling of December 2014. We must be mindful that any deviation from the current consistency between EU and Irish law could have unintended consequences. It would be prudent to explore whether an anomalous position could arise whereby if the Bill were enacted, self-employed persons would be exempt under Irish competition law but could be in breach of EU competition law under Article 101 of the treaties. For this reason, I will need to consult the European Commission on the draft text of the Bill, particularly section 2, in the context of the post-programme surveillance process on the EU-IMF programme of financial support for Ireland. This is desirable and prudent because the strong view of the European Commission, as part of the troika, in 2012 was that any exemption from competition law in any sector would not be beneficial to the Irish economy.

With reference to section 3 of the Private Members' Bill, under existing Irish competition law, representative bodies cannot decide on the fees paid for services provided by their members. I refer Senators to the example given in respect of doctors and so on. Nor can their members agree a price between themselves for their services because this is regarded as price fixing contrary to the 2002 Act. However, the State is not prohibited from unilaterally setting a fee that it is willing to pay for such services. Neither is it prohibited from consulting a representative body and its members as long as the State retains the power to set the price. Thus, the impact of any exemption from the Competition Act in respect of professionals providing services to the State would have to be examined with a view to determining whether there could be an adverse impact on Exchequer finances. In this regard, it is timely to recall the undertakings given by the Irish Medical Organisation, IMO, to the High Court in May 2014 to the effect that it would advise its members that they should decide individually, not collectively, whether to participate in publicly funded GP health services on such terms as are offered by the Minister for Health. The then Competition Authority believed that process contained safeguards which protected the State, as a purchaser of GP services, as well as public patients and taxpayers, from potentially anti-competitive conduct.

Equally, we must be mindful that any subjugation of competition law could potentially result in higher prices for businesses and, possibly, consumers, thereby affecting competitiveness. It is also possible that as a result of the application of section 3 of the Private Member's Bill, the State and, therefore, taxpayers would be subjected to higher costs. The growth of the economy is not something any of us want to see jeopardised. We need to be careful in these areas to ensure we are not inadvertently adding to costs without consideration of the wider implications of this section, which will have a broad application across a large number of professions and areas of activity in Irish life. Also, we would need to be mindful whether it would set a legal precedent that could lead to a rise in demands for similar treatment from a wide range of other self-employed groups. Depending on whether that scenario materialises, there could be a profound impact on competition in the State and on the State's ability to get value for money for the services in respect of which it contracts.

In the context of the possible enactment of the Bill, there are other possible legal consequences that would need to be explored in detail. I refer, for example, to whether the legislation would create a difficulty for the Competition and Consumer Protection Commission, CCPC, in seeking injunctions or to take action under the 2002 legislation in order to uphold competition

20 January 2016

law were there to be exemptions from the application of section 4 of the Competition Act. In that context, it does apply to concerted practices as well as to negotiating fees.

I understand the motivation behind the Bill, but we must be careful in considering reform of this nature, which is undoubtedly based on the view that we need to protect certain categories of vulnerable workers, that we have assessed all aspects of the case. We have been careful to introduce reforms across the whole area of employment rights in a balanced way taking account of the impact on all sides, as evidenced, for example, by the Low Pay Commission. Senators will be aware that by taking that approach we have secured an increase in the national minimum wage, which came into effect on 1 January this year. During the decision-making process in that regard we weighed up the potential impact of that measure across the economy. This evidenced-based approach is important as we seek to support workers in various areas of Irish life. The recently established Workplace Relations Commission makes it easier for all employees to exercise their rights and provides a wide range of information and advisory services to those who need to exercise these rights.

Another aspect on which I must touch is the constitutional guarantee of the freedom of association which has already been considered in a number of precedent-setting legal cases. Irish courts have already established the principle that a freedom or right to associate necessarily implies a correlative right not to join any trade union or a particular trade union. It is important, therefore, to ensure that this right is also upheld and that the effects of the Bill do not hinder the application of these correlative rights.

I thank Senators for their participation in this debate. As outlined by Senator Michael Mullins, there are many complexities and differing interpretations emerging in this area. For this reason, I think it is appropriate that we consider this issue afresh, which I am pleased to do. In regard to the calls by Senators Gerard P. Craughwell, Paschal Mooney and Biran Ó Domhnaill for rapid enactment of this legislation, there are other issues, which I outlined, which militate against this. We must be careful about what we do on foot of the complex issues at stake. On Senator Paschal Mooney's invitation to me to comment on voice-overs in advertisements, I do not propose to go down that road.

Senator Paschal Mooney also spoke about JobBridge and the potential for abuses of that scheme. I am the sure the Senator will be aware that this is a matter for the Department of Social Protection. While there were abuses of the scheme in the early stages, the Department has been alert to them and has worked hard to stamp them out. Significant placement and work experience has been provided through JobBridge to people who were in the catch-22 of being well qualified but not having any work experience. The JobBridge scheme has provided such people with an opportunity to gain much needed experience. I know that many of the people who took up work experience in my Department found it very beneficial and have progressed to better opportunities as a result of it.

I again thank Senators for their contributions. While the Bill is timely, there are many issues which we need to consider. This has been a worthy debate and my Department will consider these issues further.

**Senator Ivana Bacik:** I thank my colleagues for their support. It is welcome that the Minister is not opposing the Bill and thank him for his detailed consideration of it. I also welcome his reference to the need to take the time to consider these matters afresh.



I thank Senator Aideen Hayden for seconding the Bill and her support for it. I also thank Senators Brian Ó Domhnaill, Gerard P. Craughwell and Paschal Mooney for their support. As pointed out by Senators Aideen Hayden and Gerard P. Craughwell, the Bill is being introduced in the context of the dramatic change in the nature of employment. Senator Aideen Hayden described this as the growth of the precariat, which is a very accurate term. Senator Paschal Mooney has spoken about the legal limbo in which those who are members of said precariat, namely, the self-employed, find themselves, in that many of them because they are working freelance cannot be represented in collective bargaining negotiations by trade unions. As stated by many colleagues, this is a difficult and complex area.

What the then Competition Authority saw in 2014 as price fixing was viewed by the unions as wage setting for their members. It is difficult when a union representing employed persons in terms of wage setting and so on cannot also represent persons who may be close to employed. In other words, they are effectively in bogus self-employment under the rigid interpretation of competition law and, therefore, cannot be represented by the same union. The Bill seeks to tackle that anomalous and unfair situation.

*6 o'clock*

Senator Michael Mullins clearly outlined the difference of view of the EU courts which take a broader interpretation of the application of competition law to trade union activity than that taken by the national competition authority. Therefore, it is appropriate, particularly in the light of the 2014 decision of the European Court of Justice, for us as legislators to consider it afresh and not necessarily to take on board the legal interpretation of the 2014 decision that has been taken by the commission here.

On the Minister's point about Article 101, in the European Court of Justice decision in the Dutch case, the court explicitly looked at the application of Article 101 because that is the article from which the Dutch law was drawn, just as the Competition Act here is drawn from it. Under Article 101, the European Court of Justice stated it did not end the matter merely to state that because a union was negotiating for self-employed persons, they would be regarded as an association of undertakings. The court stated clearly that if the service providers on whose behalf the union was negotiating were, in fact, false self-employed, that is, if they were effectively working as employees because they did not bear any of the financial or commercial risks arising from the employer's activity and they were really an auxiliary within the principal's undertaking, they were not in business on their own account in that sense, they might be seen as employees for the purposes of EU law and the union was, therefore, entitled to negotiate on their behalf.

It is a complex area and I accept the Minister's point about unforeseen consequences. However, there is a straightforward core principle and we have attempted to deal with it in the rather narrowly drawn drafting of section 2, stating that where an individual engages for gain personally to do any work or provide any service and a trade union of which that individual is a member negotiates an agreement on his or her behalf affecting the terms or conditions under which the work is done or the services that are provided, this should form an exemption to the application of section 4 of the Competition Act of 2002. This is narrowly drawn to protect a vulnerable group of freelance workers and it can be done in such a way that it does not fall foul of EU law or competition law and does not operate to the detriment of consumers.

Clearly, we all are very much in support of the principle that the competition law is designed

20 January 2016

primarily to protect the interests of consumers. However, there is an overly rigid interpretation of competition that suggests trade union activity is anti-competitive and in our democratic tradition we do not accept this. We accept that there is a right to form and join trade unions, that collective bargaining is a bedrock of our society and that, therefore, we must see exemptions to what would otherwise, perhaps, rigidly be seen as anti-competitive activity where trade unions are engaged in valid and legitimate wage setting and terms and conditions agreements on behalf of members who may be technically described as self-employed but who are, in reality, not undertakings in the spirit of competition law. That is the nub of the legislation.

I note that others have spoken about the timing of the Bill. Of course, I would like to see the Bill enacted in the lifetime of the Government. Given the limited time available, I accept that is unlikely, but I hope we will see it restored to the Order Paper. I anticipate it will pass Second Stage shortly in the Seanad. Therefore, it will be on the Order Paper of the Seanad. It is, therefore, my hope and expectation that if the Labour Party is part of the next Government, we will see it is a Labour Party commitment and restored to the Order Paper in early course to continue its journey with rapid progress through the Houses of the Oireachtas in order that there will be the protection for freelance workers that we need in law.

I thank the Minister for taking the time to consider the matter afresh. I hope this is the start of the journey towards the enactment of the legislation. I again thank those union members and representatives in the Visitors Gallery who have lent their support and have been campaigning for this measure for many years.

Question put and agreed to.

**Acting Chairman (Senator Michael Mullins):** When is it proposed to take Committee Stage?

**Senator Ivana Bacik:** On Tuesday next.

Committee Stage ordered for Tuesday, 26 January 2016.

**Acting Chairman (Senator Michael Mullins):** When is it proposed to sit again?

**Senator Ivana Bacik:** Tomorrow, at 10.30 a.m.

The Seanad adjourned at 6.05 p.m. until 10.30 a.m. on Thursday, 21 January 2016.