



DÍOSPÓIREACHTAÍ PARLAIMINTE
PARLIAMENTARY DEBATES

SEANAD ÉIREANN

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

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SEANAD ÉIREANN

Dé Céadaoin, 1 Feabhra 2017

Wednesday, 1 February 2017

Chuaigh an Cathaoirleach i gceannas ar 10.30 a.m.

*Machnamh agus Paidir.
Reflection and Prayer.*

Business of Seanad

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

The need for the Government to respect constitutional provisions on the appointment of judges.

I have also received notice from Senator Keith Swanick of the following matter:

The need for the Tánaiste and Minister for Justice and Equality to engage directly with the Courts Service and the Common Investment Fund, with a view to divesting from tobacco-related stocks, and the need for clear guidelines within her Department on such investments, given that tobacco-related illness is the leading cause of preventable deaths in Ireland.

I have also received notice from Senator Gabrielle McFadden of the following matter:

The need for the Minister of State at the Department of Health with responsibility for mental health services and older people to outline what can be done to enhance 24/7 mental health services for those who have particular challenges in accessing them such as young people, the homeless and those suffering from addiction issues.

I have also received notice from Senator Neale Richmond of the following matter:

The need for the Minister for Education and Skills to extend the consultation period on the role of denominational religion in the school admissions process and possible approaches to making changes.

I have also received notice from Senator Catherine Noone of the following matter:

The need for the Minister for Health to examine the high cost of car parking in many public hospitals, especially for long-term illness patients, and if he will consider providing

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car parking guidelines for hospitals nationwide, with the objective of reducing the cost for long-term illness patients and their families.

I have also received notice from Senator Martin Conway of the following matter:

The need for the Tánaiste and Minister for Justice and Equality to rectify the anomaly whereby rent supplement is considered in determining eligibility for free legal aid, whereas the housing assistance payment is not taken into consideration.

I have also received notice from Senator Colm Burke of the following matter:

The need for the Minister for Health to confirm that funding will be provided to open a new six-bed gynaecological day unit within Cork University Maternity Hospital as it is urgently required to help to reduce the current waiting list for gynaecological services.

I regard the matters raised by Senators Michael McDowell, Keith Swanick, Gabrielle McFadden, Neale Richmond, Catherine Noone and Martin Conway as suitable for discussion. I have selected the matters raised by Senators Michael McDowell, Keith Swanick, Gabrielle McFadden and Neale Richmond and they will be taken now. Senators Catherine Noone and Martin Conway may give notice on another day of the matters they wish to raise.

I regret that I have had to rule out of order the matter raised by Senator Colm Burke on the grounds that it is a repeat of a similar Commencement matter raised on 26 January 2017.

Commencement Matters

Judicial Appointments

An Cathaoirleach: I welcome the Minister of State.

Senator Michael McDowell: A Programme for a Partnership Government, we are told, contains the statement:

We will reform the judicial appointments process to ensure it is transparent, fair and credible. We will reduce the number of suitable candidates proposed by the Judicial Appointments Commission for each vacancy to the lowest number advised as constitutionally and legally permissible by the Attorney General, but in any event not more than three candidates to be shortlisted by the Judicial Appointments Commission for any vacancy.

The scheme of the Bill recently published by the Government also states:

It is a requirement that Government is in a position to retain a substantive choice as part of the exercise of the executive discretion under Article 35 of the Constitution. The choice that Government must have given its role under the Constitution is satisfied by the provision whereby the Commission recommends three names.

The Constitution gives to the Government and it alone the right to select from eligible persons people to be appointed to the Judiciary. That is simple. The Government has, for instance, the right, among High Court or Court of Appeal judges, to appoint any of them to the Supreme

Court as it considers right. That right cannot be taken away from it. It cannot be subject to a process, which seems, on the face of it, to deprive the Government of that discretion. There is nothing in law that this or the other House can do. No Bill or Act can change the situation that if one is eligible to be appointed to the Supreme Court, as a matter of law, the Government is entitled to make the appointment. There is a huge attempt being made to suggest that somehow, by changing the Judicial Appointments Advisory Board, which was to give advice to the Government on the suitability of candidates, to a judicial appointments commission with a small shortlist, the Government will be constrained to appointing from the shortlist. It will not and cannot be.

The other great illusion that has been put forward to the people of Ireland is that it is somehow wrong for the Attorney General, the Minister for Justice and Equality or the Taoiseach of the day to say, for instance, to an eminent solicitor or barrister, “We believe you should be appointed to the Bench.” The procedure has generally been that those people who apply to the Judicial Appointments Advisory Board, if they are approved by the board, are subsequently appointed. On occasion it has happened that people have been appointed without any involvement of the Judicial Appointments Advisory Board, from the position of a lay practitioner, to the superior courts. That is the first thing I wanted to say.

The second thing I want to say relates to the Minister for Transport, Tourism and Sport, Deputy Shane Ross, who has been championing the cause of a lay majority on a judicial appointments commission. According to *The Irish Times* of Monday, 21 November 2016, “Mr Ross said the programme for Government sets out a commitment to reform the way judges are selected which would take the process out of the hands of politicians.” That is untrue and constitutionally infirm and impermissible. I will not use a term that would involve going further than that, but I will say it is untrue as a proposition of law.

I remind the House that we are talking about a common law system and a common law Judiciary. Ireland is the only state in the common law world in which a government has ever proposed having a lay majority on an advisory board. It is of some significance that such a change has not been proposed in America or anywhere else with a common law system. Under the proposed new scheme which has not applied heretofore, a judge of the High Court who is willing to become a Supreme Court or a Court of Appeal judge is supposed to submit to being interviewed by seven lay people who, in turn, are supposed to look at everybody else and select three people, thereby possibly excluding that judge from first consideration by the Cabinet. That is an attack on a system that has worked extremely well. I do not want to push it any further than to say this proposal will not produce better candidates for the Judiciary. It will politicise promotions within it. This process will discourage many people who would be good judges or good candidates for promotion to a higher court from applying for such positions. The Bill is misconceived.

I remind the House that before he became a Minister, Deputy Shane Ross introduced the Thirty-fourth Amendment of the Constitution (Judicial Appointments) Bill 2013 which proposed that the Government have no role in the selection of judges. He suggested this would be done by a committee of the Houses of the Oireachtas. Believe it or not, he proposed from the Opposition benches that Government supporters would have to be in a minority on that committee. He introduced his Bill in 2013 in an effort to depoliticise the appointment of judges, but the Bill in question proposed to hand that responsibility to elected politicians. When he spoke in the Dáil in support of the Bill, he said the Oireachtas committee could debate the merits of individual candidates for the Judiciary. He is now saying as Minister that he wants to take

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responsibility for the appointment of judges out of the hands of politicians. I suggest the Government reconsider carefully whether the scheme of the Bill that has now been published will disimprove the quality of the Judiciary, inhibit people from seeking selection and remove the perfectly reasonable faculty of the Government of the day to select people from among serving High Court judges for appointment to the Court of Appeal and the Supreme Court and without having to go through any process.

Minister of State at the Department of Justice and Equality (Deputy David Stanton): I thank the Senator for raising this matter which I am pleased to address on behalf of the Tánaiste who apologises for not being here. The Government's general scheme of a judicial appointments commission Bill was the subject of pre-legislative scrutiny, in conjunction with Deputy Jim O'Callaghan's Bill, at last week's meeting of the Joint Committee on Justice and Equality. The Tánaiste intends to take account of the feedback from that meeting when she introduces improved and elaborated proposals in a Bill that is to be published at an early stage for further discussion and examination by both Houses. The Government's proposals arise, in the first instance, from policy consideration of the responses to a 2014 public consultation and call for submissions on the need for the existing provisions for eligibility for judicial appointment to be reformed.

A commitment to the establishment of a new judicial appointments commission was made in the 2016 programme for Government and as part of the confidence and supply arrangement between Fianna Fáil and Fine Gael. The design of the Government proposals which allow for a lay majority of one and a lay chairperson will provide for a much-needed critical mass of non-judicial and non-legal people in the selection process and ensure there is a wider set of expertise and experience among the lay people who will be represented on the commission. It seems that there are no difficulties with the lay chairperson and lay majority concepts in the jurisdictions of England and Wales and Scotland, where judicial procedures have been fully reformed in recent times. In line with a commitment in the programme for Government, the Chief Justice will be a member of the commission. As the most senior member of the Judiciary, the Chief Justice will make a critical and highly influential input into determinations on the suitability of candidates for judicial office. I believe the overall balance proposed by the Government is correct.

No one will disagree that the Judiciary can play an important role and make a hugely significant input in the judicial selection process on the basis of its unique knowledge, skills and experience. The Tánaiste acknowledged this specifically at last week's joint committee discussion. The Government's proposals which deliver on the commitment in the programme for Government will reduce from seven to three the minimum number of names the commission will recommend to the Government for appointment. There will be two additional names to correspond with each additional vacancy. As the Senator may have noticed, the Tánaiste said last week that she intended to include in the legislation a prohibition on canvassing, which will prevent any person, candidate, applicant or otherwise from seeking to interfere with or compromise in any way the selection procedures.

It needs to be emphasised that judicial selection is an administrative or non-judicial function, as opposed to a judicial function. The formal function of appointing judges by the President is not one of Presidential discretion but is to be performed only on the advice of the Government in conformity with Article 13.9 of the Constitution. The current proposal to replace the Judicial Appointments Advisory Board with a modernised commission will not change anything from a constitutional point of view. It is now a standard international model to have judicial appointments commissions in place to select and recommend candidates, while executives remain

responsible for the formal act of appointing judges. Building on the enactment of the Judicial Appointments Advisory Board legislation in 1995, it is clearly a matter for these Houses to consider what should go into legislation to reform the appointments system. It is a matter for the Government and any Member of this or the other House, as the case may be, to propose to the Houses what should be in such legislation.

Nothing in the reforms proposed by the Government impinges on the independence of the Judiciary. Equally, nothing in the proposals could impinge on the constitutional prerogative of the Government to advise the President on appointments. The proposed legislation enhances the independence of the Judiciary in a number of ways, for example, by establishing a body to design and conduct independent and professional selection processes leading to the recommendation to the Government of the names of proposed appointees to judicial office. Engagement with key stakeholders is continuing. Senators will be aware that the establishment or amendment of a judicial selection system through legislation is a matter for the Oireachtas alone. There is no authority other than the Oireachtas on what the new legislative arrangements may be. It is the Government's prerogative to bring proposals to the Oireachtas for enactment. That is an objective we are determined to realise. We should always acknowledge and value the enduring independence of the Judiciary which has provided a constitutional structure that has enabled the State to withstand enormous political and economic threats to its existence and stability.

Senator Michael McDowell: While I thank the Minister of State for what he has said, I am increasingly alarmed by the Government's inability to admit that it has a constitutional right to appoint any person who is eligible to be a judge and that this right cannot be compromised by legislation. The words read by the Minister of State skirt around that issue. At least he has indicated some willingness on the part of the Tánaiste to consider refining the scheme of the Bill, as published. That is good, whereas the suggestion in the words the Minister of State has given us that there should be "a prohibition on canvassing" for judicial appointment is an alarming proposition. If somebody wants to be considered by the Government for appointment to the courts, he or she has an entitlement to indicate that to it. These Houses have absolutely no right to prevent people from informing the Government of their desire to be appointed to a position. It cannot be criminalised, made unlawful or made an offence. The Government should go back to the drawing board with these proposals. The fundamental question it should ask itself is whether we will have a better or a far worse Judiciary if the new proposals are enacted.

An Cathaoirleach: We are well over time on this issue. We normally allow eight minutes. We have already taken 12. I am sure the Senator will have more to say on it - he will have his day in court, so to speak - when the Tánaiste's Bill is brought before this House. I ask the Minister of State to speak briefly in conclusion.

Deputy David Stanton: The scheme of the new Bill takes full account of the essential constitutional tenet that the appointment of judges is a decision of the Government in the exercise of its executive role, albeit that the actual appointment is undertaken by the President on the advice of the Government. I am aware that the judicial appointments review committee which is a committee of senior judges submitted its views on the scheme recently. I understand the Tánaiste intends to meet representatives of the committee soon to discuss the matter further. That might help.

I again thank the Senator for bringing this very important matter to the floor of the House today.

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An Cathaoirleach: In view of Senator Michael McDowell's CV and past prowess, I do not doubt that the Tánaiste will take on board the very salient points he has made.

Departmental Agencies

Senator Keith Swanick: I thank the Minister of State, Deputy David Stanton, for coming to the House to discuss the investment of taxpayers' money in the tobacco industry by two publicly funded organisations within the remit of the Department of Justice and Equality, namely, the Charities Regulatory Authority and the Courts Service. In response to a parliamentary question submitted by Deputy Jack Chambers, the Minister confirmed that the common investment fund, CIF, held a small proportion of tobacco-related stocks as part of a dividend reinvestment scheme that afforded charities the choice of receiving dividend income in cash or reinvesting it back into the fund. According to the Minister's response, the Courts Service also invests in a small proportion of tobacco stocks on a passive basis. It is extremely frustrating to have to bring such a Commencement matter before the House, given the knowledge we have of the harmful effects of tobacco is not new. We are all too aware of how lethal tobacco is and it is worth remembering that tobacco-related illness is the leading cause of preventable deaths in Ireland, with more than 6,000 people dying annually. That is equivalent to the population of the entire town of Bandon, County Cork or Westport, County Mayo. It is also worth remembering that the estimated cost of health care as a result of smoking is more than €506 million per annum. That sum is made up of direct costs in three areas, namely, hospital-based costs of €211 million, primary care costs of a whopping €256 million and domiciliary care costs of €40 million. That should be considered in the context of the recent accident and emergency crisis which resulted in the Minister for Health, Deputy Simon Harris, investing €40 million in the winter initiative. These direct costs do not include lost productivity from ill health and other huge drains on public health services. Data from the Department of Health show an average cost of €5,400 every time a smoker is admitted to hospital with a tobacco-related illness. The most recent data available which date from 2013 show that there were 31,000 such admissions at €5,400 per admission, which equates to €164 million per year. As can be seen from these figures, tobacco is an enormous drain on the health system. For the paltry amount made on returns, the cost, both literally and figuratively, is too high.

Following the recent commercial decision by the Ireland Strategic Investment Fund, ISIF, to exit from its legacy tobacco investments, it is now, more than ever, untenable for a Department or Government agency to have investments in the industry. The Minister for Finance, Deputy Michael Noonan, the Minister for Health, Deputy Simon Harris, and the Minister of State at the Department of Health, Deputy Marcella Corcoran Kennedy, have each acknowledged and shared my concerns about the investment of taxpayer's funds in the tobacco industry. It must not be forgotten that the companies in which the Department of Justice and Equality has investments are the same companies that threatened to sue the former Minister for Health and current Fine Gael Senator James Reilly and his successor, Deputy Leo Varadkar, for doing their job in dealing with cigarette packaging and advertising.

In response to Deputy Jack Chambers, the Minister acknowledged that no guidelines were in place in the Department on such investments. The Minister further acknowledged that she was not aware of all of the investments made by organisations in receipt of grant funding from the Department. There must be a commitment to divest from such investments and guidelines must be put in place to ensure no future investments in tobacco stocks will be made. The guide-

lines should be Department-wide and prohibit any investment in tobacco companies.

Deputy David Stanton: On behalf of the Tánaiste and Minister for Justice and Equality, I thank the Senator for raising this matter. The Tánaiste appreciates his interest in the subject.

As the Senator will be aware, the Courts Service, in accordance with the Courts Service Act 1998, is responsible for the management and administration of the courts and the provision of support services for judges. It is in this capacity that the Courts Services has a role in the management and investment of court funds which are held in trust by the courts on behalf of wards of court, minors and other beneficiaries. The Office of the Accountant of the Courts of Justice has responsibility for the management and investment of funds. The funds managed by that office are those that are held under the control of the courts and managed in a fiduciary capacity on behalf of the beneficiaries who include various categories of litigant, persons who are wards of court and minors who have been awarded damages by the courts. The investment committee oversees the implementation of investment strategies. It comprises members of the Judiciary, county registrars, court officers, Courts Service officials and independent external members. The committee is chaired by the President of the High Court. The funds are invested in line with the provisions of the Trustee (Authorised Investments) Act 1958 and subsequent orders. In accordance with the Act and based on independent investment advice, the Courts Service invests a proportion of the funds in equities and shares on a passive basis, which means that the funds are invested, in line with FTSE All-World index, across a very wide range of diversified funds in the best interests of the beneficiaries. As of 12 November 2016, the percentage allocation within the FTSE All-World index to tobacco stocks was 1.51%. The Senator will appreciate that the fund is operated independently of the Department of Justice and Equality and in the best interests of the beneficiaries. The Department has no role in managing or directing investments. It should be noted that court funds are not public funds and not under the control of the Government.

The Department of Justice and Equality understands ISIF management and the National Treasury Management Agency board's investment committee are reviewing the sustainability and responsible investment policy to examine the potential of adding to the list of excluded investment categories so as to consider excluding investment in tobacco companies. This process is expected to be completed by the end of the first quarter of 2017.

In regard to the common investment fund, CIF, the Tánaiste has been informed it holds a small proportion of tobacco-related stocks as part of a dividend reinvestment scheme which gives unit holders, namely, charities, the choice of receiving dividend income in cash or reinvesting back into the fund. The Charities Regulatory Authority has oversight of the CIF which is independently managed. The Tánaiste has been informed that it is reviewing all legacy matters, including those relating to the CIF and ethical indices will form part of the review process. It is also worth noting that in December 2016 the Minister for Finance, Deputy Michael Noonan, announced that the ISIF had completed the sale of its remaining investments in tobacco manufacturing as part of a wider process of selling its legacy investments over time. All ISIF investments since its establishment in December 2014 comply with its sustainability and responsible investment policy which sets out key principles for responsible investment.

Senator Keith Swanick: I thank the Minister of State for his response. I believe the 1.51% allocation for stocks in tobacco companies is too much. I am aware of the NTMA's willingness to divest of its tobacco stocks, but my question is related to the CIF. While I appreciate what the Minister of State has said, I will continue to pursue this issue and work with others to bring

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a motion or resolution before the Seanad to seek full divestment and the implementation of guidelines to ensure no further investments in tobacco companies will form part of any portfolio within the State.

Deputy David Stanton: As I said, the Courts Service and the Accountant of the Courts of Justice and the investment committee are all independent in their duties in managing court funds. As of 12 December 2016, only a very small part of the funds were invested in tobacco stocks. It should be noted that court funds are not public funds and not controlled by the Government. As the Senator will appreciate, the funds are operated independently of the Department of Justice and Equality in the best interests of the beneficiaries. The Department has no role in managing or directing investments. However, the review under way by ISIF management and the National Treasury Management Agency board's investment committee, in excluding certain investment categories, including tobacco companies, will be of interest. The Tánaiste has arranged for its findings to be brought to the attention of the Courts Service and the Charities Regulatory Authority. Similarly, the review by the Charities Regulatory Authority of the CIF will also be relevant. The Courts Service will be kept informed of developments.

I congratulate the new Clerk of the Seanad, Mr. Martin Groves, on his appointment.

Mental Health Services

Senator Gabrielle McFadden: I welcome the Minister of State to discuss an issue that affects families and individuals from all walks of life. While mental health is an issue that affects all of us at one time or another, I want to talk about two groups that have specific mental health needs, namely, young people and persons who are homeless. According to a 2013 report on the mental health of young people in Ireland, one in five young adults aged between 19 and 24 years and one in six young people aged between 11 and 13 experiences serious mental health problems. The report also found that when a young person experienced health problems, he or she was at significantly increased risk of suffering further episodes of mental ill health in adulthood. The factors young people identified as the causes of difficulties included stress, isolation, lack of support and, of course, bullying. On the other hand, what they found helpful were hobbies, exercise and keeping busy. I strongly welcome the establishment by the Minister of the task force on youth mental health which will consider how best to introduce and teach resilience and coping mechanisms, increase mental health awareness among children and young people and teach them how to access support services voluntarily at a young age.

11 o'clock

I recently came across a situation involving a 12 year old boy who was suffering from panic attacks. He has not attended school for the past 18 months because of his anxiety and is unable to leave his home. He had been on a waiting list for months to see a psychologist, but by the time an appointment was made, he was unable to make the journey to Mullingar, which is 30 miles from his home. Months later, after several failed appointments, he still has not received the intervention he and his family so desperately need.

If that intervention had arrived in a timely fashion, I have no doubt that the child would be in school today. Instead, there is now a risk that his life opportunities have been thwarted. There are many similar situations in which young people have difficulty accessing mental health services in Athlone and throughout the country.

Accessible and informal mental health services play an essential role in preventing mental health problems in vulnerable young people. The economic benefit of local rapid response mental health services has been proved. The personal benefit is incalculable. Services such as those provided by Jigsaw which are free and do not require GP referral are informal and, therefore, attractive to young people. I urge the Minister of State to make Athlone a priority for the development of the next Jigsaw service since the town is the largest in the midlands.

Another group of people who suffer disproportionately are the homeless. Up to 47% of homeless persons have been diagnosed with at least one mental health problem. Recently I have been in discussions with the Midlands Simon Community. Those running the service have explained to me that it is not uncommon for homeless persons to face two, three or even four such challenges. For example, they may have a mental health diagnosis, an addiction, a history of abuse and a brain injury. Each time the Midlands Simon Community attempts to access services on behalf of a client, the service provider states it cannot accept the client because of an addiction issue that needs to be resolved. The service provider also states it cannot accept someone who has a brain injury or someone who is actively suicidal. It seems there is no joined-up thinking and no appreciation of how hard life is for people. There is little appreciation that some people have multiple hardships and simply do not fit neatly into one box or another.

We need more accessible services, but we also need special tertiary services for people with complex needs in order that someone who has fallen into addiction as a way of coping with trauma can be helped. Every community in Ireland has been afflicted by suicide or self-harm and the emotional turmoil associated with such ideation does not confine itself to business hours. My concern is that someone who is suicidal and turns up outside normal hours often has nowhere to go. No one who is suicidal should be turned away. I am aware of a number of cases in which people have sought help or tried to get a place in a psychiatric hospital only to be told that they would have to have the underlying addiction treated first. For some, the place on an addiction service has come too late.

I am passionate about this issue. Not a single parish in the country has avoided the devastation of suicide. The tragedy is that all those deaths were avoidable. Were Ireland to take mental health as seriously as we have taken road deaths, for example, this would be a healthier and safer country in which to live.

Minister of State at the Department of Health (Deputy Helen McEntee): I thank the Senator for raising this important issue. I agree that people who are suicidal or who have mental health problems should never be turned away, whether it is morning, noon or night.

Improving access to mental health services is a key priority of the Minister. In many cases, mental health issues are ongoing and may require immediate treatment at any time, day or night. Significant work is under way in this area. It is important that I outline what is in place in order that we can identify what we need to do in the future.

The current provision of out-of-hours mental health care involves various interlinked components, for example, access via community mental health teams during normal working hours, that is, from 9 a.m. to 5 p.m., Monday and Friday. During this period, access is also available through emergency departments. If necessary, this involves the existing liaison psychiatric services for hospitals or alternative arrangements at local level. There is psychiatric-consultant-led cover in place in hospital emergency departments both during normal working hours and

the weekend period.

The national clinical programme for the assessment and management of self-harm was initiated by the HSE in 2014 and is being developed on an ongoing basis. We have already seen the positive effects because while we discuss suicide, self-harm is probably more prevalent overall. The HSE has indicated that weekend access is provided in nine of the 17 mental health areas, with a further seven areas having partial cover. The HSE has prioritised the provision of improved out-of-hours liaison and seven-day responses for all people with mental health issues as a key priority under the national service plan this year. Services for all adults and those under 18 years of age are being developed in the light of significant new investment for mental health services. This is balanced against an acknowledged difficulty for the executive in securing suitably qualified and experienced staff for the care programme.

My objective and that of the HSE is to improve all aspects of mental health care nationally for all children and adults, including better access outside of normal working hours via emergency departments. The HSE is keen to ensure each region provides access to a weekend service for people currently attending the service. In recognition of this, a service improvement project with a dedicated project manager was set up in November last year. Data for timely access to services are collected for each team on a monthly basis. Thus far, the data indicate that 68% of children referred are seen within 12 weeks. Obviously, we need to see this number reduced further. In addition, a total of 74% of working age adults and 97% of older adults are seen within one week. This illustrates the improved response times for those with mental health problems.

Work is under way by the HSE to determine the existing level of service provision and examine international models of best practice on the most appropriate model of service delivery for use in the Irish context in order to enhance the seven-day services. In addition, the HSE is progressing a detailed plan for provision of seven-day services throughout all HSE mental health service areas. We are keen to avoid a situation where some services in certain areas provide a fantastic service and provide 24/7 cover, while other areas do not even have a seven-day service. For now, the priority is to identify the gaps. I referred to the nine areas that have full cover and the seven areas that have partial cover. We are working on identifying and providing a plan to fill in the gaps in these areas. In tandem, we are working to deliver a detailed plan for provision of 24/7 care, but it is important that we walk before we can run.

The Senator referred to specific people and areas. An additional €2 million in ongoing funding was made available in 2016 to address the specific mental health needs of homeless persons in Dublin. This is part of the response to and recognition of difficult cases. To identify service needs of people suffering from substance misuse, including alcohol and drugs, alongside mental illness, a clinical programme for dual diagnosis was initiated last year. To date, a programme manager has been appointed to oversee the clinical programme. In addition, a clinical lead has been identified at interview and will be seconded pending discussions with the local addiction services. I will continue to work with the HSE on this issue, taking account of agreed policy and evolving service priorities and resource availability overall.

I wish to specifically touch on the area of young people, which is a key priority. The Senator referred to the task force. All of the work under way will benefit all people and all of society. The four key objectives of the task force are to improve awareness of services; to improve the accessibility of services such as the development of the seven-day week and 24/7 services; to align services in order that public, private, community, voluntary and online services are all

working together and all aligned; and to work towards supporting younger people to build up their resilience in order that they can deal with the many stresses and pressures they face. I hope the young people in question will be able to take these skills with them into later life.

I again thank the Senator for raising this important matter.

Senator Gabrielle McFadden: I accept that significant work is ongoing. While I also accept and acknowledge the commitment of the Minister of State to deal with the issue, there is a serious need for 24/7 emergency care for persons with mental health issues.

The Midlands Simon Community is obviously based in the midlands and recently it had a client in emergency accommodation who was taken to a psychiatric service because he was suicidal. He was sent home or back to the emergency accommodation. The Midlands Simon Community then had to monitor him all night to ensure he did not self-harm.

Simon Communities and other similar organisations do not have the facilities or money to put staff in place. It is not appropriate to have one member of staff in emergency accommodation to monitor someone with a mental health issue. That person cannot be expected to do that job and also look out for others in the service.

Another issue that needs to be examined is funding and training for staff in organisations such as the Midlands Simon Community and other organisations. It is also important that no one is turned away from a psychiatric service. A lady who visited my clinic last year had gone thrice to St. Loman's Hospital, Mullingar to state she was suicidal, but each time she had been sent away and told that she was not. If someone is trying to commit a person, that is one matter, but if a person turns up, stating he or she is suicidal, he or she should never be turned away.

Deputy Helen McEntee: I agree wholeheartedly with the Senator. Nobody should ever be turned away, day or night. Whether the person has a substance abuse problem or whatever the issue is, he or she should always receive support.

This year we will spend €853 million on mental health services. A total of €15 million was allocated in the budget which will develop into €35 million worth of spending next year. Every year we are developing new services. Every year we are hiring new staff.

A total of 1,550 positions have been approved in recent years. While not all have been filled and we have a difficulty in that area, a lot of work is under way to try to fill them. If we do not have the staff, we cannot provide 24/7 services. The priority is to ensure we can hire staff.

The National Office for Suicide Prevention has a budget in excess of €11 million. The funding goes to support many of the organisations provided they can show where their funding is going and they provide the service they say they do. Training forms part of what that funding is provided for, if the Senators wants clarity on that issue.

On the Jigsaw network, this year we will develop a further five new Jigsaw projects in Cork, Limerick and Dublin. The HSE is actively engaging with Jigsaw to develop a new programme whereby other counties and areas can actively engage with the organisation. I encourage the Senator to engage with her local organisations and the local HSE to get as much groundwork done as possible because when the conversation has finished between the HSE and Jigsaw, that will be the time to put her case forward. I am sure the Senator has a strong case.

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Legislative Process

Senator Neale Richmond: I welcome the Minister and thank him for dealing with this Commencement matter on what is an important and welcome consultation process.

On 16 January the Minister stated he would commence a short ten to 12 week process of consultation. It is disappointing, therefore, that the Minister has reduced this consultation period to only four weeks. In my experience as a county councillor, I have never seen such a short consultation period, be it for a planning permission or statutory consultation. A recent consultation process in my home area of Stepside for a new park had a pre-consultation period of six weeks, with a statutory consultation period of at least eight weeks still to follow.

I must ask the Minister what is the rush. It is often said bad decisions are made in haste and I am sure the Minister, like me, is keen that the new proposals agreed on for school admissions are the correct ones, ones that will stand the test of time. Schools, parents, prospective parents, churches and teachers' groups need proper time to discuss the proposals and draft submissions that accurately reflect their preferences or possible concerns. Such submissions may also have to be made following internal consultations, including the carrying out of surveys of parents or other groups. The shortened four-week period which clashes with the February mid-term break puts many people and groups in a position where they are under pressure to complete a submission, especially given that many of those who hope to make a submission are doing so voluntarily in their own time.

Needless to say, my office has been inundated with representations on this shortened consultation period, with particular concern being expressed by those involved in education involving minority faiths - the Church of Ireland, the Presbyterian Church, the Methodist Church, as well as the Jewish and Muslim faiths, not to mention those from a Roman Catholic or secular background who do not believe they have been given sufficient time to make a meaningful contribution. As the role of religion in admissions raises legal and constitutional issues, stakeholders may need to obtain legal advice to inform their submissions. The shortened period will prevent stakeholders from obtaining this advice in sufficient time to formulate their submissions.

The implications of the measures proposed by the Minister are extremely serious for all faith-based schools, especially minority faith-based schools. The current proposals represent a fundamental shift in education policy which merits careful and serious consideration by all the stakeholders in education. It is important that the Minister hear from the widest possible range of stakeholders who will be impacted on by the proposals.

I am broadly supportive of the Minister's efforts. I come from the generation that is possibly most affected by the current policies. Among my friends and peers in Dublin, the topic of securing a school place for a child now dominates conversation, even more so than possible house purchases, wedding plans and other such grown-up topics. However, the short period permitted for consultation prevents the various stakeholders from engaging in a meaningful and genuine consultation with the Minister, suggesting, perhaps, that the matter has been pre-determined. In the interests of proper consultation, I appeal one last time to the Minister to extend the consultation period.

Minister for Education and Skills (Deputy Richard Bruton): I thank the Senator for raising this important issue which has been considerably debated. As the Senator will be aware, the Labour Party's Bill was introduced last year, involving a deadline of 12 months which is

coming up in June this year, where one particular proposal was outlined by the Labour Party. It was agreed by the Dáil that we would have parallel tracks, one track being the admissions policy, for which we have the Education (Admission to Schools) Bill 2016, and the other being continuing consultation which has been under way since June, in terms of the Oireachtas committee, on the Labour Party's Bill which deals with only one option. I was keen to broaden that consideration in order that when the Dáil and the Seanad came to consider the Bills, we would have the benefit of a broad consultation and I would have the opportunity to hear the views of stakeholders within the education system and bring them to bear on the various Committee Stage and Report Stage discussions.

As the Senator will be aware, this is only concerned with primary schools. It concerns the admission policies to more than 3,000 primary schools. It comes from the growing sense of frustration for parents that at times they cannot gain access to their local school, they may find children coming from a very far distance receiving preference over a child who lives beside the school or they may be under pressure, as they see it, to baptise their child when that is not their preference.

To try to resolve this issue, I have set out four separate options. The first, much along the lines of the Labour Party's Bill, is a catchment approach where one could only have preference exercised by a denominational school within that catchment area. The second is similar in that it would look at the nearest school of that denomination and one could only exercise preference for a child in that denomination if it was the closest school of that denomination. The third is a quota system where there would be a limited quota over which preference could be given. The fourth is an outright prohibition on religion as a criterion for admission but making sure there could still be a capacity to allow religious schools to require parents or students to indicate support or respect for the ethos of the school.

The reason I have had a consultation process is I am mindful of the possible pitfalls and unintended consequences and it has been clear that some other parties in the House have expressed the intention to put forward amendments, not only to the Labour Party's Bill but also to the Education (Admission to Schools) Bill 2016 which is on a tight schedule because many want to see it implemented for the coming school year, which is a correct ambition. I am keen to see the twin-track approach respected and hope it can be done.

To clarify, the ten to 12 week consultation period was the entire consultation period. I envisaged a period during which written submissions could be made and that we could assess them. That would be followed by the internal assessment. There could then be the necessity to have meetings with individual groups which raise particular issues. My ambition was that, in setting a ten to 12 week period, we would be in a position by the end of April to deal with the issues if they came up under the Labour Party's Bill, which I believe is the correct approach. If the issues were to arise earlier, with some party seeking to have them dealt with in the Education (Admission to Schools) Bill 2016, we would be in a position to present a properly evaluated position by the Department on the issue. It is timely that we are bringing them forward.

I am conscious of the points made by the Senator. I will consider the issue he has raised of extending the period, but I emphasise that there is a certain sense of urgency. There are two Bills before the House that will be progressing to Committee Stage. The Labour Party's Bill is expected to proceed to Committee Stage some time after June, while the Education (Admission to Schools) Bill will be dealt with before then. There is a strong sense of the need to get views into the Department. I know that when deadlines are set for submissions, there is often a ten-

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dency for people to leave it to the very end of the period before they make a submission. I will bear in mind what the Senator has said and his expression of genuine concern because we do want to give people the opportunity to make submissions. I will consider what he has said, but I ask that all those interested in making a submission to make a strong effort now to get views together, carry out assessments and be in a position to submit them before the deadline. That said, I will consider the possibility of extending it.

An Cathaoirleach: Is Senator Neale Richmond happy with that response? Before he responds, I have two observations to make. At this stage of my life, this affects my grandchildren, but is it primarily a Dublin issue? The Minister referred to a Labour Party Bill. Has it been adopted by the Government?

I should not be intruding on Senator Neale Richmond's time.

Deputy Richard Bruton: Just to clarify, the Labour Party Bill has passed Second Stage, but on the basis that its further passage will occur in June this year, giving the time to the Oireachtas committee on education to evaluate the potential issues with it in the meantime. The committee is in the process of evaluating that Bill. Clearly, it is appropriate that my Department and the stakeholders that report to it be in a position to collate views also in order that I, as Minister, can bring the wisdom of the education stakeholders and the Department to bear on the debate under way.

This issue is not just confined to one area. It reflects the fact that at primary level, 96% of schools are denominational, but at this stage, one third of marriages are occurring outside any denominational religion. It signals that there are people of no religion who want different educational options. There are also many Catholics who would prefer to see other options being made available. We are responding to change, but we need to do it in a way that is sensitive to traditions and the respect, constitutional and otherwise, for religious, denominational schools and the rights of these schools. That is the importance of the issue.

An Cathaoirleach: I apologise for intruding and invite Senator Neale Richmond to respond briefly.

Senator Neale Richmond: I thank the Minister for his response, which is very welcome. The initial ten to 12 week consultation period displayed a considerable level of understanding, but I appreciate that the Minister has clarified the position in that regard. Many of the groups concerned are not leaving things until the last minute. I outlined earlier the reason for the delays, namely, that it takes a lot of effort, time, people and moving parts to have a proper submission prepared. As the Minister said, this is a very complicated issue. I am supportive of the general idea and do not want my contribution to be interpreted otherwise. However, a four-week period for the making of written submissions is too short, especially in the context of the obstacles I have outlined. I appreciate that the Minister will take this into consideration and appeal to him to consider extending the deadline by a week or two to accommodate the mid-term break.

An Cathaoirleach: I am sure the Minister will take the Senator's observations on board.

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

Sitting suspended at 11.25 a.m. and resumed at 11.30 a.m.

Seanad Éireann
Business of Seanad

An Cathaoirleach: Before I ask the Leader to outline the business of the day, I bring to the attention of Members - some may already be aware of it - the death of a former Clerk of the Seanad, Mr. Jack McGowan-Smyth, at the age of 94 years. Mr. McGowan-Smyth served as Clerk of this House for 15 years, from 1958 to 1973, after which he left to pursue a career in the European Parliament. He published two books, including one entitled, *The Theory and Practice of the Irish Senate*. It would do Members, including me, no harm to read that book which provides a good insight into the workings of the House.

I propose to convey the sympathy of the House to Mr. McGowan-Smyth's wife, Christine. I also propose that Members stand and observe a minute's silence.

Members rose.

Order of Business

Senator Jerry Buttimer: The Order of Business is No. 1, Health (Miscellaneous Provisions) Bill 2016 - Second Stage, to be taken at 12.45 p.m. and adjourned not later than 2 p.m., if not previously concluded, with the contributions of group spokespersons not to exceed eight minutes each and those of all other Senators not to exceed five minutes each; No. 2, Knowledge Development Box (Certification of Inventions) Bill 2016 - Report and Final Stages, to be taken at 3 p.m. and adjourned not later than 4.30 p.m., if not previously concluded; and No. 3, Convictions for Certain Sexual Offences (Apology and Exoneration) Bill 2016 - Second Stage, to be taken at 4.30 p.m., with the time allocated for the debate not to exceed two hours.

Senator Catherine Ardagh: I convey the sympathy of the Fianna Fáil Party to Mr. Gowan-Smyth's family and, in particular, his wife. Ar dheis Dé go raibh a anam dílis.

I wish to mention a matter I have raised many times in this Chamber, that is, the housing crisis and the Government's lack of action on it. The issues related to the crisis include spiralling rent costs, a rushed and poorly executed rent cap strategy and a flawed first-time buyers' grant, in respect of which only 21 contractors throughout the country have registered to date. I refer to another failure of the Government. I refer to the repair and leasing scheme which has been designed to bring vacant and unused houses back into use by allowing councils to enter into long-term leases with property owners to allow the latter to refurbish properties and let them to tenants. So far, however, the Government has only allocated €6 million for refurbishing 150 properties when there are more than 40,000 vacant properties in the greater Dublin area alone. With a severe lack of housing supply in the market, every effort must be made to ensure idle properties are brought back into the market and that every avenue is explored to increase the supply. My constituency office is continually inundated with housing queries from constituents. There are more than 3,500 vacant and unused properties in Dublin South-Central alone. It makes sense that measures be introduced to get vacant properties back on the market and to put long-term leases in place to provide for extra social housing nationwide. The repair and leasing scheme is a quick solution, but it should only be operated in parallel with the construction of new builds. We all know that supply is the elephant in the room in dealing with the housing crisis. I urge the Minister for Housing, Planning, Community and Local Government to increase the funding for the repair and lease scheme and ensure more funding is given to lo-

cal authorities, as a matter of urgency, in order that they might build new homes, especially in the Dublin area.

Senator Gerard P. Craughwell: I realise the Leader has many commitments in trying to organise the business of this House. It is not easy to organise everything that everybody wants. However, on a number of occasions, I have asked for the Minister for Defence to be brought before us in order that we might discuss the current state of the Defence Forces. One of the issues of immediate concern is that the Defence Forces annual report used to be published in May or June. Matters have been allowed to slide to the point where it is now late October before it is published. This constrains any discussion or debate on the report at the annual conferences of the representative bodies, which is totally unfair. The Defence Forces are in a serious state, as the climate survey shows. We have seriously unhappy people in the Defence Forces and, in the light of the job they do, that is grossly unfair. They need to be treated better than they are. There is recruitment to the Defence Forces, which is to be encouraged. I ask that the Minister be brought before the House. Not only do we need to talk to him about the climate survey; we also need to hear what plans are being put in place in the event that there is the re-establishment of Border controls. The Leader and I both know that the moment a camera is installed at a Border crossing anywhere in the country, some security measures will be required to protect it. While I understand the Minister is probably busy and that the Leader has a lot on his plate, I ask that we have such a debate and that we be notified in good time in order that we will be able to prepare for it.

Senator Rose Conway-Walsh: Yesterday, at the Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach, the European Commissioner, Ms Vestager, engaged in possibly the most damning criticism of the attitude of the Government to the Apple tax ruling. This is an issue of national importance, yet, as reported in one European newspaper this morning, most of the questions asked yesterday were aimed at disproving the Commission's ruling in order to score political points against other parties. The ruling is watertight and was well researched. It finally disposed of the idea that it was all a misunderstanding of the application of Irish sovereign tax law. The Commission exposed the arrangement as having been calculated, contrived and unique. It is very plain and simple: absolutely no methodology whatsoever was applied to the manner in which the tax rulings were made. That is the major problem. The only major challenge yesterday was to whether the figure of €13 billion was due to Ireland alone or to an array of EU and other countries. Fine Gael and Fianna Fáil's argument in this regard was destroyed. Commissioner Vestager responded by saying, "A large majority of the unpaid taxes would be due in Ireland," not in another European country. The robust defence offered by her exposes the folly of the Government's decision to appeal. The public has heard about the attempts of Ministers to challenge the report; they must now hear about the giant waste of taxpayers' money that will take place. It will take up to six years and cost millions in lawyers' fees, all just to save face. The Commissioner's ruling was reached with the help of hundreds of lawyers. From listening to her yesterday, I am extremely confident that the work done within the Commission has been thoroughly researched and that it was not just based on a whim. I want the Minister for Finance to explain to the House how the taxpayer will gain from refusing the €13 billion in unpaid taxes and instead spending millions on a doomed appeal that may be ongoing after the Government and many Members have left. I want him to explain it in as forthright and clear a manner as Commissioner Vestager explained the Commission's position yesterday. The public is asking the question and deserves an answer. I do not buy the argument that we need to appeal and that if we do not do so, it will somehow put off multinationals from investing in this country because they need clarity on taxation issues. We have a responsibility to have

methodologies in place to ensure fair tax is paid. While we certainly offer tax incentives, we need to ensure there is fair taxation across all multinationals and indigenous businesses to give everybody a fair chance.

Senator Colette Kelleher: I welcome the Leader's motion on the report of the Joint Committee on Justice and Equality on the recognition of Traveller ethnicity. I also very much welcome the report. I welcome the Taoiseach's indication that the Government will act on its recommendations, that Travellers are *de facto* a separate ethnic group, that this is not a gift to be bestowed on them but a fact the State ought to formally acknowledge, preferably by way of a statement by the Taoiseach to Dáil Éireann. The report strongly encourages that this step be taken at the earliest possible date in 2017. It also states the Government should then conduct a review in consultation with Traveller representative groups of legislative or policy changes required on the foot of the recognition of Traveller ethnicity. As the Chairman of the committee said in launching the report, this cannot be a false dawn. There was a very similar report in 2014, following which no action was taken. We are already behind our neighbours in Scotland, England and Northern Ireland who have recognised Irish Travellers as an ethnic minority. Historically, international bodies have also recognised and continue to recognise the Traveller community as an ethnic minority and consistently recommended that the State do likewise. We know that the recognition of Traveller ethnicity would not be the panacea to all issues faced by members of that community. It would not fix the fact that Traveller women, on average, die 11 years earlier than settled women, that suicide rates are six times higher than the national average among the Traveller community and that there are shocking infant mortality rates. However, the recognition of Traveller ethnicity would be a huge step forward. I will be delighted if the Leader allows time in the Seanad for us to debate the issue with the Minister for Justice and Equality and welcome the pending recognition of Traveller ethnicity.

Senator Kevin Humphreys: I wish to raise two issues with the Leader of the House. The first is an old one, namely, that of Airbnb and the change in the nature of the city as a result of Airbnb lettings, especially within the city centre area. I have received several e-mails about the matter, of which I will give the House just a flavour:

Three new houses built in the last two years in my lane are being rented out on short-term lets. All are Airbnb.

Airbnb properties are changing the nature of my street. Do I have any rights?

A hotel [another development] would nearly have been a better choice. At least then there would be staff to interact with.

A series of questions have been raised with the Minister for Housing, Planning, Community and Local Government about the number of enforcement actions being taken by local authorities across the country regarding the changing of housing units into properties to be let through Airbnb. I refer to properties that were previously long-term lets. The answer from the Minister has been that the local authorities do not keep such data. I raised the issue just before Christmas when the Minister was in the House and he referred me to Circular PL12/2/2016, a letter he had circulated to all local authorities on An Bord Pleanála's decision. An Bord Pleanála's decision is clear: there is a need for planning permission when units are being rented short term as, basically, they are being operated as hotels. Unfortunately, however, in the letter the Minister does not ask local authorities to be proactive in dealing with the matter; he just asks them to act where it is brought to their attention. According to the lowest estimates, approximately 1,600

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long-term lets in the Dublin area that were being rented by families have been moved to Airbnb. I have heard Deputy Fergus O'Dowd raise the issue as it was affecting Drogheda and elsewhere in County Louth. I have heard other Deputies speak about the position in counties Wicklow, Meath and Kildare. Senator Denis Landy has raised the issue as it is affecting his area. If we are to have a Rebuilding Ireland strategy, we cannot have a quick fix. We must instruct the local authorities to be proactive. One can have far more units put back on the letting market by being proactive in planning enforcement. I, therefore, ask the Leader of the House take up the issue with the Minister who I believe has very good intentions. Setting up a committee to produce a set of proposals in the first quarter of 2017 is not sufficient. We need action.

Briefly-----

An Cathaoirleach: Very briefly.

Senator Kevin Humphreys: I wish to raise an issue in Dublin that I have raised on several occasions previously in the House. When the Minister for Transport, Tourism and Sport, Deputy Shane Ross, was in the House, I referred to the DART underground project. He said it was a cornerstone of traffic management and public transport services within the city. I made him aware of several planning applications along the DART underground line which obviously he ignored. I raised the issue with the National Transport Authority. Unfortunately, I was again ignored. I raised it with Dublin City Council and now we see live planning applications on the line in question that will prevent the construction of the DART underground project. I am firmly of the belief Dublin is being neglected. There is no long-term planning by the Minister for Transport, Tourism and Sport, Deputy Shane Ross, in respect of it. He has cancelled new greenways and new cycle routes and now, through his neglect, we will possibly lose the major infrastructure proposal that is the DART underground project. He must come before the House at the earliest opportunity in order to answer Senators questions and discuss the specific needs of the greater Dublin area in the context of public transport, cycleways, greenways and the protection of pedestrians on the streets.

Senator Paul Coghlan: There is increased concern among people in my county about the lack of an obstetrics clinic at University Hospital Kerry. The lack of a dedicated obstetrics clinic at the hospital has become a significant risk factor. According to the HSE's assessment, it equates to an extreme risk. However, the HSE also states the risk is being managed well. In this day and age, an approach where a risk is managed well is one that is very unsatisfactory. That is not the way in which we should proceed. There is always the possibility that the risk will not be managed well on a particular day and the latter would undoubtedly end in tragedy for someone involved. In addition, those who are scheduled for minor surgery regularly have their operations cancelled at short notice because of an unexpected obstetrics emergency. There is then a double impact on patients as a result of no clinic being available. We are at a critical stage in dealing with this matter. Business cases have been submitted to the agency from the hospital outlining the need for the clinic, but, as yet, no action has been taken. It is not acceptable that we are trying to manage risk at one of the major regional hospitals. By providing an obstetrics clinic at University Hospital Kerry, we would, essentially, be removing the risk that at this point in time is being managed. As stated, it only takes one minor mistake for a managed risk to turn into tragedy. This is a matter on which we need to hear from the Minister for Health. The Leader may state it should be raised in the Commencement debate and I will take him up on that offer. I am sure, in early course, the Minister for Health will be before the House.

An Cathaoirleach: If the Senator submits a Commencement matter, I will give it serious

consideration.

Senator Keith Swanick: This morning the Minister of State at the Department of Justice and Equality, Deputy David Stanton, was present for a Commencement debate which I had initiated on bodies within the Department's remit and their investments in the tobacco industry. In response to a parliamentary question submitted by Deputy Jack Chambers, the Tánaiste confirmed that the Common Investment Fund held a small proportion of tobacco-related stocks as part of a dividend reinvestment scheme that afforded charities the choice of receiving investment income in cash or reinvesting it in the fund. She also confirmed that the Courts Service invested in a small proportion of tobacco stocks on a passive basis. In the light of the decision made by the Ireland Strategic Investment Fund, ISIF, shortly before Christmas to exit from its legacy tobacco investments, it is imperative that we see a full divestment of all taxpayer moneys from tobacco companies. It frustrates me somewhat to have to bring such a Commencement matter before this House. It is worth remembering that tobacco use in Ireland is a leading cause of preventable deaths, with approximately 6,000 deaths each year from the direct effects of tobacco. As well as the human and personal tragedies of each death, tobacco is the cause of an enormous drain on the health system. The direct cost, an estimated €500 million per year, does not include lost productivity from ill-health and other huge drains on public services. There are approximately 31,000 admissions each year that are directly related to tobacco illnesses. Each admission costs €5,400, which equates to a staggering €164 million per year. ISIF's decision came as a result of pressure from within this House and my party colleagues in Dáil Éireann. It is a welcome decision, one which is entirely in line with the tobacco-free Ireland plan which was launched by Senator James Reilly when he was Minister for Health. While I acknowledge the small nature of these investments, I also acknowledge the monumental efforts made by Members of this Parliament in combating the negative effects of tobacco use in this country. It beggar's belief we would have a Department with financial interests in any major tobacco corporation. I intend to continue to pursue this issue and bring a motion or resolution before the Seanad to seek full divestment and the implementation of guidelines to ensure no further investment in the tobacco industry by a Department or any body within its remit.

An Cathaoirleach: I do not normally allow Members to have two bites of the cherry. The Senator raised this specific issue on the Commencement of the House and, as such, there has been duplication. I will give him the benefit of the doubt this time. Any issue raised on the Commencement of the House should not be regurgitated on the Order of Business because it defeats the purpose in raising points. I am sure Senator Michael McDowell has something new and innovative to offer.

Senator Michael McDowell: I have an entirely fresh topic. It is approximately five years since regulations were introduced by the then Department of the Environment, Community and Local Government banning the letting of what are commonly called bedsits. As a result, a huge number of tenants in bedsit accommodation found that it was no longer appropriate. It became a criminal offence for landlords to maintain these properties in the condition they were in at the time. An awful lot of the properties were made the subject of evictions and then sold for redevelopment. One of the curious features of this is that some 10,000 or 12,000 people were affected by that massive clearance of tenants. A strange phenomenon is that, at the same time, the number of people sharing houses in Dublin and every city in Ireland increased. These individuals share the same bathrooms as their housemates. Objectively, very little changed in one sense, but the effect of the regulations to which I refer was to drive out the most vulnerable tenants and those with the least money and resources. It also removed the first step on

the ladder for people migrating to the cities in the context of accessing accommodation. It is a curious irony that this was done in the interests of housing standards at a time when a crisis was developing. That crisis has led to many people being unable to find accommodation and there is a shortage of separate units available in a city. I ask the Leader to consider asking the Minister for Housing, Planning, Community and Local Government, Deputy Simon Coveney, or a Minister of State at his Department, to come to the House to explain why that to which I refer was done and who takes responsibility for the fact that, in the long term, it probably caused homelessness and that it certainly drove up rents. Second and more importantly because I am not only interested in a retrospective blame game, will the Leader call on the Minister to tell us if the rule is still being enforced. If there are bedsits still in existence, are housing inspectors prosecuting people for maintaining them? At the very least, a moratorium on the enforcement of the regulations should be considered, rather than driving people out of the lowest rung of the ladder type homes during a housing crisis, which has been the unintended effect of this intervention in the housing market.

Senator Maria Byrne: I thank the Cathaoirleach. In today's edition of *The Irish Times*, I read about the talks between the HSE and Vertex on pricing and the pricing agreement on Orkambi, the drug for cystic fibrosis sufferers. There are over 500 patients in Ireland who are dependent on the drug. Unfortunately, the HSE and the company involved failed to reach agreement in the past 24 hours. The HSE negotiating team has forwarded the issue to senior management of the HSE to see if it can make a decision on the matter. The original estimated cost was to be somewhere around €400 million and the HSE went in with an opening offer of €75 million.

It worked out at approximately €159,000 per patient. The drug is available in other countries, including Germany, the USA and Austria. Perhaps the HSE might talk to the authorities in these countries to see how they negotiated the price. The Minister has spoken to other health Ministers, but, at this stage, it is a very serious issue, given that so many people are dependent on the availability of the drug.

Senator Paul Gavan: I again refer to Bus Éireann, an issue I have to raise. Who uses the public bus service? If we think about it, it is used by old people, young people, those who are sick, those living in rural towns and those on low incomes who do not have private transport. They are facing the prospect of losing key parts of the service. The Minister for Transport, Tourism and Sport, Deputy Shane Ross, who must be vying for the title of the worst Minister with responsibility for transport in the history of the State, continues to insist that he will not intervene. However, hard-pressed Bus Éireann workers who have been the victims of the hard-right ideology of competition at all costs are facing the loss of their jobs, while
12 o'clock are facing the potential loss of the public bus service provided by the company. I am calling on the Minister to come to the House, although I know that he will not do so, and on our colleagues in Fine Gael and Fianna Fáil who have the power to do so to insist that he engage with the trade unions, with which he is refusing to engage. They have a simple request - that all of the key stakeholders, the National Transport Authority, the Department of Transport, Tourism and Sport, Bus Éireann management and the unions, sit down together to work out how we can fix the company. Unbelievably, the Minister is still insisting that it has nothing to do with him, that it is purely an industrial relations matter, even though everyone in this Chamber knows that is not the case. For the sake of all of the people I have mentioned who are facing the hardship of industrial strife and the potential loss of services, I call on those with power in this Chamber, Fine Gael and Fianna Fáil Members, to insist that the Minister get up

off his behind and do something.

Senator Rónán Mullen: In the House yesterday I strongly criticised President Trump's executive order on immigration and the manner in which it had been introduced. However, I am very conscious that it is easy to criticise President Trump; in fact, it is something of a global pastime. What worries me is that we do not seem to challenge other elite people in authority in the same way. Perhaps it is time to have the debate on the media for which I have often called to see how they could help and better serve us in that regard. For example, when the former President Mrs. Mary Robinson was interviewed on "Morning Ireland" this morning about President Trump's executive order, she availed of the opportunity to talk about another executive order he had introduced - the Mexico city policy. This is the policy that stops American tax dollars from being used to fund abortions in developing countries. The former President was given a completely free run to give an extremely partisan interpretation of what the move would mean on the ground. She was introduced as one being of the so-called Elders, the same Elders who had been silent on the issue of forced abortions in China and the horrendous abuses in the abortion industry worldwide. There is no question but that the Mexico city policy will save, not cost, lives. The former President does not seem to understand the principle of the fungibility of money; how, by giving money for maternal health services with which nobody could disagree, those engaged in the killing of unborn children are able to free other resources for these horrible deeds. The real issue is the way in which those on the left are never challenged on the claims they make. We have reached the point where there is no international outcry, not even a debate, for example, when people are forcibly euthanised against their will and even physically restrained as the injection is administered, as we learned happened recently in the Netherlands. By all means, let us challenge President Trump and the bad things he does, but in so doing let us not delude ourselves for one minute that we are asking the same hard questions of others in authority who are doing bad things.

Senator Máire Devine: As this is lá Bríde - the Celtic spring - I want to talk about mental health. As there is an extra two minutes of daylight a day, it will improve, but, obviously, without Government action, the position will not improve significantly. On the back of a report prepared in Denmark by the Happiness Research Institute, mental health campaigners are calling on all of us to switch off Facebook for the month of February. I doubt that we will be able to do it, as politicians, but it has certainly been found that there is a 55% increase in mental well-being once we stay away from the dreaded social media that eat up our time. This morning we delivered a petition from Uplift, Mental Health Reform and Lust for Life on the #inourhourofneed campaign to the Minister of State, Deputy Helen McEntee, at the gates of Leinster House.

Senator Jerry Buttimer: Will the Senator repeat what she said?

Senator Máire Devine: I am referring to the #inourhourofneed campaign by Uplift, Mental Health Reform and Lust for Life. Many thousands of signatures were collected to demand the provision of mental health services 24/7, something about which we have been talking for so long, as well as implementation of A Vision for Change as soon as possible. Just a few minutes ago daughters in the Greaney family from County Cork, whose parents died tragically - the husband had been helped in the Central Mental Hospital - said we needed access to mental health services 24/7 to stem the epidemic affecting every county. Will the Leader ask the Minister of State to address the Chamber to update us on the promised provision of emergency services 24/7 for those in need?

An Cathaoirleach: Senator Gabrielle McFadden and the Minister of State, Deputy Helen

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McEntee, spent 15 minutes debating that issue this morning in the Commencement debate, but do not get me wrong - I am not saying it does not deserve to be raised by Senator Máire Devine.

Senator Jerry Buttimer: I thank the 12 Senators who spoke. I join the Cathaoirleach on behalf of everyone in the House in paying tribute to a former Clerk of the Seanad, Mr. Jack McGowan-Smyth, who died at the very honourable age of 94 years. As the Cathaoirleach rightly said, he was Clerk of the Seanad for 15 years and served with distinction. The Cathaoirleach has made reference to the fact that he was the author of two books, of one of which we should all be aware, *The Theory and Practice of the Irish Senate*. To his wife, Christine, and extended family, I send our sympathy, our comhbhrón, on his sad passing.

I will be happy to have the Minister for Housing, Planning, Community and Local Government, Deputy Simon Coveney, come to the House to discuss the matter raised by Senator Catherine Ardagh. It is fair to say the Minister, in the budget and the action plan for housing, has increased the moneys available for house refurbishment. In that context, I am disappointed to hear that in the Senator's constituency moneys have not been available. In my constituency of Cork South-Central and that of Senator Colm Burke, Cork North-Central, we have seen Cork City Council putting national moneys aside for the refurbishment of houses. I will be happy to have the Minister come to the House to discuss the matter. The Senator is right that there is a need for us to expedite the refurbishment of vacant houses. There is no reason for houses to remain vacant in many parts of the country for an inordinate length of time. I share the Senator's concern in that regard.

Senator Gerard P. Craughwell referred to the Defence Forces. I assure him that the Minister of State, Deputy Paul Kehoe, has given a commitment to come to the House to discuss the issue. To be fair to him, he has been a very good Minister of State with responsibility for defence who has been willing to work with all stakeholders in the Defence Forces. We have seen an increase in the budget. The issue of pay is one the Senator has addressed repeatedly in the House. He represents his nominating body quite well and it is important that he do so, but it is equally important that we recognise that, with the restoration of pay and conditions, the Government is also recruiting to the Defence Forces. I hope the Senator welcomes this. He makes a fair point that there is a need for a wider debate on the role of the Defence Forces in a new European Union post-Brexit and dealing with conflict around the world. I will be happy for the Minister of State to come to the House to discuss the issue and thank the Senator for raising it.

I was going to say Senator Rose Conway-Walsh was back to her old "chestnut", but that would be the wrong word to use. She referred to Commissioner Vestager's appearance yesterday at the finance committee to discuss the Apple ruling. Many people's views on the issue differ from those of the Senator. It is a question of how state aid is applied. I think it is being used in a spurious way by the European Union. It could be a way of getting at our very good corporation tax rate.

Senator Rose Conway-Walsh: I made that absolutely clear.

Senator Jerry Buttimer: The decision to appeal the Apple ruling has been supported by many eminent people across the country, including in business, farming and politics. Sinn Féin wants to continue its isolationist and abstentionist policy on the European Union when it suits it.

Senator Rose Conway-Walsh: That does not make it right.

Senator Jerry Buttimer: It is important for Sinn Féin to recognise that the Government has a right to challenge the ruling. The money does not necessarily belong to Ireland. I will put the matter in context for the Senator.

Senator Rose Conway-Walsh: Go on - give me a lesson in economics. I missed it over Christmas.

An Cathaoirleach: Will the Senator, please, allow the Leader to respond? I should also admonish the Leader about not goading other Members of the House.

Senator Jerry Buttimer: Sometimes less is more. I ask Senator Rose Conway-Walsh to look at and reflect on the unemployment figures in Ireland today, compared to the figures when we entered government.

Senator Rose Conway-Walsh: That is because of JobPath and every other scheme.

Senator Paul Gavan: And emigration.

An Cathaoirleach: The Leader should be allowed to continue, without interruption.

Senator Jerry Buttimer: Senator Colette Kelleher raised the important issue of Traveler ethnicity. I spoke to the Minister of State, Deputy David Stanton, about it last week. He is working on it and willing to come to the House to discuss it. The necessary piece of work is in progress and evolving. I will be happy to bring the Minister of State to the House when it reaches a certain point.

Senator Kevin Humphreys raised the question of Airbnb, with which we have to come to terms as a society at national and local authority level. He is right when he suggests Airbnb is taking much-needed beds and properties out of the system. I am aware that local authorities in many parts of the world, including London and Paris, have issues with Airbnb in respect of planning, the charging of hotel rates and costs. The issue of taxation is a general point also. I will be happy to invite the relevant Minister to come to the House to discuss the matter.

Senator Kevin Humphreys also spoke about DART underground, while Senator Paul Gavan spoke about Bus Éireann, both of which concern the Minister for Transport, Tourism and Sport, Deputy Shane Ross. Again, at the risk of creating controversy, I suggest that, rather than focusing on policy, Members are becoming fixated on what the Minister does and does not do.

Senator Paul Gavan: We are interested in what he is not doing.

Senator Jerry Buttimer: I am just making the point. To be fair to the Minister, in the case of Bus Éireann, last night in the Dáil he referred to the creation by Seán Lemass of the mechanisms of State that trade unionists want to see being used and remain in place. If they do not work, the Minister should be allowed to intervene, if necessary. I think the Labour Party, Sinn Féin and Fianna Fáil must have undertaken opinion polls on the Minister. Perhaps that explains the fixation with him in some quarters. He has become the new bogeyman of the Government. Senator Michael McDowell also has him in his sights.

Senator Kevin Humphreys: That is nonsense.

Senator Jerry Buttimer: The Senator would say that.

Senator Kevin Humphreys: DART underground is key infrastructure.

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Senator Rónán Mullen: The poor man.

Senator Kevin Humphreys: Fine Gael is probably the only party which is undertaking opinion polls.

Senator Michael McDowell: You should leave him-----

Senator Jerry Buttimer: When the Senator was a Minister, he was part of a group that was lampooned all of the time. The Minister is doing his job.

Senator Rose Conway-Walsh: What is his job?

Senator Kevin Humphreys: I do not think the Leader believes that.

Senator Jerry Buttimer: There is a mechanism in place for engagement with unions at Bus Éireann.

Senator Paul Gavan: We do not need a mechanism; we need a new Minister.

Senator Jerry Buttimer: The people voted him in. That is the reality. Whether the Senator likes it, democracy is the way it is.

Senator Kevin Humphreys: Fine Gael put him into the Department with responsibility for transport.

Senator Jerry Buttimer: I would like to give Senators Kevin Humphreys and Paul Gavan and the members of the Fianna Fáil Party a sense of cheer. I have requested the Minister to come to the House.

Senator Rose Conway-Walsh: We will not hold our breath.

Senator Jerry Buttimer: I look forward to him coming here in order that we can have a debate with him.

Senator Kevin Humphreys: I hope this time we will not be talking about rugby. Can we talk about the issues?

Senator Rónán Mullen: The Leader should tell him to bring his umbrella.

Senator Jerry Buttimer: I will also put a time limit on the Minister's speech this time. There will be no ambiguity in that regard.

Senator Paul Coghlan raised the important issue of obstetric services at Kerry General Hospital in Tralee. He highlighted the issue of risk management, for which I commend him, but I would like to pick up on one reference he made to the hospital. Clinics are being held. I understand the issue is one of shared theatre space, but I might be wrong in that regard. There is not an exclusive theatre to deal with the particular obstetric issue to which he referred. I will, however, be happy to ask the office of the Minister for Health, Deputy Simon Harris, to deal with the Senator on the issue raised by him.

As Leader of the House, I will not in any way prevent Senator Keith Swanick from bringing forward the issue of the divestment of shares in the tobacco industry. We all subscribe to a tobacco-free Ireland. I commend the Senator for the work he has been doing in promulgating an alternative to the smoking of cigarettes. We can talk about setting aside time at the appropri-

ate time.

Senator Michael McDowell referred to the bedsit regulations introduced in 2013. I know that the former Tánaiste, Deputy Joan Burton, asked for them to be reviewed in 2014. Mr. Bob Jordan who is now an adviser to the Minister for Housing, Planning, Community and Local Government, Deputy Simon Coveney, made the point at the time that the elimination of bedsits was not necessarily the problem. Senator Michael McDowell made an interesting point about how we could increase capacity. It is one at which we should look. I will submit a request for the Minister to come to the House to discuss the issue. We cannot compromise on standards when it comes to the space, type and quality of accommodation and actual physical environment in which people live. Those of us who are engaged in constituency politics will know that, in some cases, conditions are absolutely appalling. To be fair, I appreciate that that is not Senator Michael McDowell's view. I hope that, if the conditions are relaxed, we will not be allowing squalor to come back. The Senator made a good point about who inspected properties. The Health Information and Quality Authority looks at things like health and safety and hygiene, including food hygiene. It sometimes strikes me that apartments and other forms of living accommodation are not inspected. I do not want to bring Big Brother into it, but recently I have seen some absolutely unacceptable accommodation. The points made by the Senator can be considered when we have a debate on housing in a couple of weeks' time or as soon as we can.

Senator Maria Byrne spoke about Orkambi, which is used to treat cystic fibrosis. It is important that the Minister for Health engage with all of us but especially Vertex on how the price can be kept down in order that the drug will be affordable and accessible. I will be happy to have him come to the House in that regard.

Senator Paul Gavan mentioned the issues at Bus Éireann. I appreciate that we need a public bus system. We need public transport. The language we use is important, as we can scare people by talking about the removal of routes. The Senator knows well that that is not going to happen and he can give me all of the Sinn Féin spin he wants.

Senator Paul Gavan: The manager of Bus Éireann told the transport committee yesterday that routes were being removed.

Senator Jerry Buttimer: I know, but last night the Minister for Transport, Tourism and Sport, Deputy Shane Ross, told the Dáil during a debate on this issue in Private Members' time that the Government was committed to providing transport. I can circulate a copy of his speech to the Senator. There is also a commitment to provide alternatives, but I hope it will not come to that. My view is that we need to have a public service bus transport company. I will work with others to ensure we will have such a company. We will have the Minister come to the House to discuss the issue. As Leader of the House, it is important for me to say management and the unions in Bus Éireann will sit down and engage in conversations, talks and discussions on the future of the company. It is not just about the people who use bus services; it is also about the workers who work and engage in Bus Éireann every day. To be fair to them, they have also taken pay cuts during the years. There is a need for a discussion and a conversation. We cannot engage in megaphone diplomacy on television, the radio and in the newspapers. Those involved need to sit around the table. That is the principle to which we need to get.

Senator Paul Gavan: That is what we are about.

Senator Jerry Buttimer: Senator Rónán Mullen made a meandering contribution on the

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provision of abortion information and funding.

Senator Rónán Mullen: I think the Leader was looking for the word “comprehensive”.

Senator Jerry Buttimer: I was going to use the word “specific”. I heard the conversation with the former President Mrs. Robinson this morning. I must say I thought it was a very measured conversation. I must go back and listen to it again. I thought I was listening to a different station.

Senator Rónán Mullen: That is the problem.

Senator Jerry Buttimer: No.

Senator Rónán Mullen: People who are conditioned by the media do not hear the hard questions. They are living in a bubble.

An Cathaoirleach: As I gave the Senator great latitude, I ask him to allow the Leader to continue, with interruption.

Senator Jerry Buttimer: One thing that struck me during the interview was the reluctance of the former President to engage in a political discourse out of respect for the Government and the Taoiseach, which I thought was very interesting.

Senator Rónán Mullen: I am sure the Leader was very glad.

Senator Jerry Buttimer: The Senator might agree with me in that regard. I take his point about human rights across the world. The Members of this House, like the members of the Government, should stand up for human rights, regardless of whether we are dealing with the leaders of Russia, China, Japan, the United Kingdom or any other country. It is unfortunate that the new leader of the United States has got off to a bad start in the way he has created fear and division. I am all for democracy. The Senator and I live by the sword of democracy. One is either beaten or wins; that is the way it goes. The people speak. What President Trump has done in the past 11 days has sent a bad signal to people across America and the rest of the world. It is about the United States of America, not the divided states of America. The Senator will share part of that response.

In response to Senator Máire Devine, Lá Fhéile Bríde atá ann inniú, the first day of spring. We have seen the days lengthening. Mental health services are important. The Minister of State at the Department of Health, Deputy Helen McEntee, was in the House this morning to discuss the issue with Senator Gabrielle McFadden in the Commencement debate. It is important that we recognise the document A Vision for Change has evolved and needs to be implemented. It has not been in part.

Senator Máire Devine: Some 72% of it has not been. That does not constitute “in part”.

Senator Jerry Buttimer: I am not in any way condoning the fact that it has not been implemented in full. The Minister of State, Deputy Helen McEntee, and in fairness, her predecessor, Kathleen Lynch, have prioritised mental health services. We have as a result seen an increase in the budget for them. There is now a proposal that there be weekend access in 17 mental health areas, with partial cover being provided in a further seven. It is important that we recognise mental health issues do not end at 5 p.m. on a Friday or at 4 p.m. on a bank holiday Monday. We accept that there is a need to provide a mental health service 24/7. We must work

to provide a service that is inclusive of all people and deals with all issues. It is important that we recognise the Minister of State has secured additional funding to meet specific needs, be it for the homeless or those with mental health issues in our homes, families and communities. They are members of our families and friends. They are people who work with us and in all walks of life. They do not only include people who are anonymous but people whom we know and with whom we can identify. We need to understand they have real needs and it is important that we make progress. I will be happy to have the Minister of State come back to the House to discuss the issue.

I hope I have not missed anybody, but I do not think I have.

Order of Business agreed to.

Sitting suspended at 12.25 p.m. and resumed at 12.45 p.m.

Health (Miscellaneous Provisions) Bill 2016: Second Stage

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

Minister of State at the Department of Health (Deputy Marcella Corcoran Kennedy): I am very pleased to have the opportunity to address the House on Second Stage of the Health (Miscellaneous Provisions) Bill which was passed on 6 December last by Dáil Éireann. The Bill includes some provisions which relate specifically to my health promotion portfolio. When it comes to health promotion and encouraging behavioural change in relation to tobacco, alcohol and unhealthy diets, what we need is a whole-of-government and a whole-of-society approach. That is crucial if we are to be successful in stemming the tide of non-communicable diseases and their impact on the population.

Healthy Ireland, the national framework, aims to make it easier for more people to stay healthy, stay out of hospital and make positive changes that will enhance their lives. Part 5 of the Bill aims to progress the Healthy Ireland agenda by making amendments to the legislation that introduces standardised packaging of tobacco. Standardised packaging is just one of the many important public health measures we are introducing in order to reduce the number of deaths of Irish people from non-communicable diseases. The Bill has five Parts, with 16 sections. Part 1 sets out the Title to the Bill. All Parts will be commenced on enactment.

Part 2 of the Bill amends the Irish Medicines Board Act 1995 to allow for the payment of fees to members of the Health Products Regulatory Authority, formerly the Irish Medicines Board. This is in line with the practice of other similar boards, where fees are paid to board members in order to attract individuals of the highest calibre and expertise to apply for board membership, for example, to the Medical Council and the Pharmaceutical Society of Ireland. Currently, under section 8(7) of the Irish Medicines Board Act 1995, as amended, only the chairman of the authority is entitled to a fee. There is an onerous responsibility and a significant time commitment placed on members of the authority. Some people may be self-employed and, without the modest fee that will be paid under this amendment, it would be very difficult for them to give the time commitment involved. There is no additional cost to the Exchequer related to paying board members of the authority, as it is mainly self-funding. The fee approved for payment to each board member, in keeping with the guidelines issued by the Department of Public Expenditure and Reform, is €7,695 per annum. The additional cost to the authority will

be approximately €61,560 per annum. However, some members may choose to waive their fee and the one person, one salary system will also apply to members who are in receipt of a salary from the public service.

Part 3 of the Bill proposes to amend the Nursing Homes Support Scheme Act 2009 in order to exclude certain *ex gratia* payments which have, or will in the future, be made to individuals under specific schemes approved by the Government for the purposes of assessment of means under the nursing homes support scheme, commonly known as the fair deal scheme. The fair deal scheme is a very important scheme that provides financial support for those assessed as needing long-term nursing home care. Participants contribute to the cost of their care according to their means, while the State pays the balance of the cost. The scheme aims to ensure long-term nursing home care is accessible and affordable to everyone and that people are cared for in the most appropriate settings. All applicants to the scheme must undergo a financial assessment which is carried out by the HSE to determine how much a participant in the scheme will contribute to the cost of care. The scheme has a number of important safeguards built into the financial assessment to ensure nobody will pay more than the actual cost of care and that an applicant will keep a personal allowance of 20% of his or her income or 20% of the maximum rate of the State pension, whichever is greater.

The proposed amendment to the Nursing Homes Support Scheme Act is a critically important provision for many senior citizens, as it will exempt payments made to persons under *ex gratia* schemes approved by the Government from being included in the assessment for State support under the fair deal scheme. This provision applies to persons who have received awards under four schemes: the surgical symphysiotomy payment scheme which has made awards to around 400 women; the Lourdes hospital redress board, involving 119 women; the Lourdes hospital payment scheme which compensated women who were excluded from the redress board on age grounds alone and relates to 47 women; and payments made either by the Government or the German Contergan Foundation to 32 Irish survivors of thalidomide.

I am also particularly pleased that the Bill proposes to amend section 36 of the 2009 Act to provide for the Minister to make regulations to allow an exemption for other similar groups that may in the future receive *ex gratia* awards, provided that the Government has approved the scheme. This future-proofing is an important and significant feature of this part of the legislation. For any individual who has received an *ex gratia* payment under a Government-approved scheme, it is a very important principle that, on reaching a more senior stage of their life, people should not be in any way disadvantaged financially when it comes to making an application under the fair deal scheme. In summary, the proposed amendments to the Health (Miscellaneous Provisions) Bill are key, age-related provisions for people who have received an *ex gratia* award and who now in their older years are seeking supports under the nursing homes support scheme.

Part 4 of the Bill amends Part 1 of Schedule 3 to the Health (Pricing and Supply of Medical Goods) Act 2013. The purpose of the proposed amendment is to allow the HSE to consider reimbursing over-the-counter products, where appropriate. The amendment corrects an anomaly in existing legislation, where current rules only allow medicines that are prescription-only to be supplied under the community drugs schemes. This anomaly affects a number of products that were prescription-only and are now over the counter, as well as some over-the-counter items that have long been available under the schemes. The 2013 Act gives a temporary reprieve on supplying over-the-counter medicines until 2018 and the amendment I have proposed will make this permanent. This means that some very useful medicines such as emergency contraception

and nicotine replacement therapy will continue to be available under the drug payment scheme, the medical card scheme and other schemes. Patients will, however, still need an authorisation to obtain an approved over-the-counter product under the various schemes. This applies to all schemes and both over-the-counter and prescription-only items. This is a very important control, both clinically and for the financial operation and governance of the schemes.

Specifically regarding access to emergency hormonal contraception, there are a number of important points that have been carefully considered by the Department. First, it is important to note that medical card holders already have access to emergency contraception. It is available free to medical card patients, provided they get a prescription first. It is also available as an over-the-counter treatment; therefore, any person can go into a pharmacy and buy it without a prescription. In the 12 months to August 2016, just under 13,000 emergency hormonal contraceptive prescriptions were dispensed across all the schemes, of which over 12,000 were under the medical card scheme. The barrier, therefore, for medical card patients in accessing emergency contraception as soon as possible is not access, as over 12,000 people per year go to their doctor and then the pharmacy. The issue is when women need emergency contraception but cannot get a prescription in time to receive the treatment, for example, it might be at the weekend, they cannot get an urgent appointment with their GP or they cannot afford to buy the product. The Minister for Health, Deputy Simon Harris, and I share the concerns raised by some Deputies in the Dáil about timely access to treatment for medical card holders. I fully accept that there should not be unnecessary barriers to women receiving this treatment and that issue is being addressed. The Minister has instructed officials to change the process for supplying emergency hormonal contraception to medical card holders as a matter of urgency and work on the development of service and clinical structures is under way.

Much of the IT infrastructure needed was trialled in the recent minor ailments pilot project, under which pharmacies treated medical card patients with over-the-counter medicines for minor conditions, without needing to see a GP. In line with the Minister's instructions, the HSE is developing the operational structures to implement this service safely and effectively, including procedures for identifying pharmacies in compliance with the Pharmaceutical Society of Ireland's professional practice guidelines for dispensing over-the-counter emergency contraception, as is done for the vaccination programmes, and also secure claiming and verification processes.

It is expected that the measures for emergency contraception will be in place in the second quarter of the year.

Senators will appreciate that significant steps have already been taken to remove barriers to timely treatment for medical card holders for both emergency contraception and over-the-counter products in general. Concerns also have been raised about the availability of emergency contraception to women where a pharmacist may not be able to provide the treatment or may have personal reasons for not wishing to do so. The statutory code of conduct for pharmacists requires that where they are unable to provide a service, pharmacists take reasonable action to ensure the patient's care is not jeopardised. In practice, the patient should be referred to another pharmacist, pharmacy or health service. All pharmacists must subscribe to this code. If a patient is unhappy with the conduct of a pharmacy or pharmacist in this or any other matter, he or she should contact the Pharmaceutical Society of Ireland which regulates the profession.

There is also provision in the Bill to remove the unintentionally restrictive provision re-

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ferred to in paragraph (a) which excludes products authorised by the European Medicines Agency and parallel imports from the medical card and community drugs schemes. Parallel importation is the importation from a European Union member state or a country within the European economic area, EEA, of a medicinal product which is essentially similar to a product already authorised in Ireland by an importer who is someone other than the importer appointed by the marketing authorisation holder of the product on the Irish market. The parallel trade of medicinal products is based on the principle of the free movement of goods within the Internal Market of the European Union. It was never the intention to exclude such products and any such inference would be contrary to free trade principles.

For the information of the Senators I point out that the explanatory memorandum which accompanied the Bill noted that “Allowing reimbursement of certain over-the-counter medicines under the GMS and community drug schemes will give rise to some additional cost from loss of prescription charges over time, but this is not expected to be significant”. However, that is not correct. My officials have confirmed that there are, in fact, no additional costs arising from the amendments proposed in Part 4.

Part 5 of the Bill holds a particular interest for me in my capacity as Minister of State with responsibility for health promotion. It seeks to amend the Public Health (Standardised Packaging of Tobacco) Act 2015, a significant tobacco control measure. I acknowledge the tremendous work of the former Minister for Health, now Senator, James Reilly in enacting this important public health legislation. I know that introducing this legislation is of great importance to the Senator and assure him and all Senators of my commitment and that of the Minister to ensuring the legislation is commenced fully in the near future.

The aim of the legislation is to make all tobacco packs look less attractive to consumers; make health warnings more prominent and prevent packaging from misleading consumers about the harmful effects of tobacco. It gives effect to Ireland’s obligations under the World Health Organization Framework Convention on Tobacco Control. Standardised packaging of tobacco is Ireland’s next step towards creating a tobacco-free Ireland. Evidence indicates that tobacco packaging is a critically important form of promotion. This is more relevant in Ireland where we have comprehensive advertising and marketing restrictions. We know that branding works, particularly on children. If the tobacco industry did not addict children, it would disappear within a generation. Given that 78% of smokers in a survey said they had started to smoke before they reached the age of 18 years, it is clear that children are targeted to replace those consumers who die or quit.

The amendments to the 2015 Act put forward in the Bill are of a technical and practical nature and some seek to provide basic information for the consumer. The amendments will permit the following elements to be included on tobacco retail packaging: text to indicate the type and weight or number of tobacco products contained in the packet; the inclusion of a tab to allow consumers to reseal the pack excluding cigarette packs; the inclusion of a calibration mark which may be necessary for the automated production of the packaging; contact details of the manufacturer and additional information on cigar bands. The amendments also set out new transitional times to reflect the time that has elapsed since the Bill was initiated in the Dáil. The original timeframe for the manufacture of the new standardised packaging from 20 May 2016 has now passed. The approach taken in the Bill is in line with the original intention of the Public Health (Standardised Packaging of Tobacco) Act 2015. It is my intention to give key stakeholders, including the tobacco industry, adequate notice of the commencement date referred to in the Bill. The amendments set out in the Bill will enable Ireland to proceed with

the introduction of standardised packaging of tobacco products. The objective of this and many other tobacco control measures is, of course, to dissuade people from starting to smoke, encourage current smokers to quit and ultimately save lives. It is the combination of past, present and future tobacco control measures that will reduce tobacco consumption in Ireland and not one measure in isolation. All of the measures outlined in the tobacco policy, Tobacco Free Ireland, will have a role in reducing the prevalence of smoking in Ireland.

The Health (Miscellaneous Provisions) Bill serves to make important changes to four Acts in the interests of equity or, in some cases, patient safety. Of course, the tobacco legislation is to help to protect public health. I hope Senators will give their support to the Bill. I, therefore, commend it to the House.

Senator Keith Swanick: Fianna Fáil will support the Bill which makes necessary changes in several areas. I welcome the amendment of the Nursing Homes Support Scheme Act 2009 which underpins the fair deal scheme to exclude *ex gratia* payments to patients of the Lourdes Hospital redress scheme, the Lourdes Hospital payment scheme, the symphysiotomy payment scheme and schemes for individuals disabled by thalidomide, as well as the Magdalen laundry redress scheme that was catered for in a previous Act in 2009.

Separately I acknowledge the importance of including several over-the-counter medications under the general medical service, GMS, scheme for people with medical and long-term illness cards. It includes nicotine replacement therapy and emergency contraception. Unfortunately, however, prescription charges are not covered in this legislation. As we are all aware, prescription charges have increased in recent years from 50 cent to €2.50 per item. I believe this sole action discriminates against elderly patients who have many core mobility issues and are on multiple drugs but not of their own free will. I have always advocated a flat prescription fee or, ideally, no prescription fee should be put in place because in that way people who are vulnerable will not be jeopardised. The charge diminishes the quality of life of elderly citizens. As for nicotine replacement therapy, it is worth remembering that there are almost 31,000 hospital admissions per year for cigarette-related illnesses, at a cost of €5,400 per admission. This equates to a staggering €164 million per year. To put the matter in perspective, the Minister afforded €40 million to the winter initiative.

Fianna Fáil fully supports the introduction of legislation to allow the Minister to make regulations to add certain elements to tobacco packaging and we published our legislation on the issue in 2012. Cigarette companies use marketing techniques to deliberately target young people. The Marlboro brand, identified by its iconic red chevron, is worth \$21 billion, which is truly staggering.

In September 2015 the Seanad passed on Second Stage a Private Member's Bill, the Longer Healthy Living Bill, introduced by the Independent Senator Professor John Crown. The Bill was supported on Second Stage by Senators from Fianna Fáil, Sinn Féin, the Labour Party, Fine Gael and on the Independent benches. The then Minister for Health, Deputy Leo Varadkar, did not oppose it and highlighted a few suggestions, including making minor technical changes to improve it. During that debate the Minister stated, "In terms of recruitment, there is an international shortages of consultants, doctors and nurses." I have been examining the retirement of key personnel in the health service. It has now reached the point where significant changes are required. There are too many times when critical professionals within the health service are forced to retire due to their age and for no other reason. The health system is embattled by staff shortages, shortages of senior consultants, not having enough general practitioners and a dearth

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of highly qualified specialist nursing staff. As Professor John Crown said during the debate, “Are we so flush with trained, experienced staff that we can afford to offload them involuntarily?” Since being elected to the Seanad, I have engaged widely on this topic and while it does not address the issues of conditions and pay or otherwise, it is an evidence-based solution to an ever increasing problem. It is my intention to submit extensive amendments on Committee Stage which will be designed to allow health professionals to postpone their retirement with the mutual agreement of their respective employers in the HSE, organisations funded directly by it, the Department of Health and all other major health service providers. To ensure the amendments would be workable, I have reviewed and taken cognisance of the issues identified by then Minister for Health, Deputy Leo Varadkar, during that debate. I am seeking to incorporate them into the amendments I will be tabling on Committee Stage.

Senator Colm Burke: As the Minister of State outlined, the Bill amends several Acts, including the Irish Medicines Board Act 1995, the Nursing Homes Support Scheme Act 2009, the Health (Pricing and Supply of Medical Goods) Act 2013 and the Public Health (Standardised Packaging of Tobacco) Act 2015.

Like my colleague, I welcome the amendment to the Nursing Homes Support Scheme Act 2009 and its application to persons who have received compensation awards under the surgical symphysiotomy payment scheme, the Lourdes hospital redress board scheme and the Lourdes hospital payment scheme, as well as payments made to survivors of thalidomide. A small number of people, around 600, benefited from these schemes. In the case of a recipient who is over 70 years and has these moneys on deposit, will they be taken into account when calculating his or her entitlement to a medical card? I have recently come across cases of pensioners over 70 years who may have a pension of €450 per week but who may have more requirements, whether it be for medical or other care.

An old structure is in place for determining what interest a person is deemed to have earned on such moneys. We all know that the interest one earns on deposits is now extremely small, but there has been no adjustment made for several years to take account of this. I have encountered people who were not able to qualify for a medical card because of the interest they were deemed to be earning when, in fact, they were earning nothing. Will the Minister of State examine this issue and incorporate it into the Bill? I might be wrong, but it is my understanding the Bill does not deal with it. Most of those who received compensation under the schemes in question are now over 70 years. It is an issue to be examined from the point of view of entitlement to a medical card.

On standardised packaging, it is important all tobacco products carry adequate health warnings. The manufacturing industry raised its concerns with me about the date of operation. The Minister of State clarified that the commencement date would be set in a statutory instrument or regulation as opposed to being the date the Bill was passed. The industry has a lead-in time for the production of packaging and will require additional time. The Minister of State has clarified the issue.

It is important that every aspect of advising people of the risks of smoking be outlined clearly. Every week we come across cases of people with an illness or cancer as a direct result of smoking for a long time. A significant number of people commence smoking before they reach the age of 18 years. While it is more difficult to encourage smokers to stop, it is only right that we discourage people, particularly younger people, from taking it up. For several years there has been an increase in the number of young girls who are smoking. While it may have

levelled off, it needs to be monitored to ensure the legislation put in place and the information made available has an effect.

On the prescription charge which medical card patients must pay, it was introduced at a time when people in Ireland were consuming more medication per head of population than in any other European country. In 2000 the State's annual bill for medications was €500 million; it is now over €2 billion. There may be cases of people receiving medication under the medical card scheme and not using them. It might be interesting for the Department or the HSE to carry out some research on the effect of the prescription charge in the acquiring of medication. From what I understand, it has had an effect. Should the limit be increased to take into account the fact that older people require more support? More research needs to be carried out. We need to get the message across that drugs should be used effectively. Will we end up in a situation several years from now where, no matter what drug is prescribed, they will have no medical effect? It is a growing problem, particularly in the United States.

I welcome the legislation as it amends key legislative provisions. It is important that it be progressed to ensure it will come into effect as soon as possible.

Senator Máire Devine: I welcome the Bill on several fronts. Obviously, the most important aspect of it is the Part which refers to the plain packaging of tobacco and the potential health benefits this amendment can deliver. Ireland has been a world leader in enacting progressive legislation to reduce tobacco consumption. This is certainly another measure that will continue that strategy.

This legislation has been called for by many public health organisations for many years, including the Irish Cancer Society, the Irish Heart Foundation and ASH Ireland, among others. Sinn Féin gives its absolute support to the legislation. Its wish is for it to pass through the House and be signed into law without delay. We are all too aware of how intensively the unscrupulous global tobacco companies lobby to protect their interests. It is admirable that such a firm line has been and is being taken by the Government to enact this legislation.

It would be remiss of me, however, when talking about this issue not to reference another extremely important public health Bill that is working its way through this House and which I hope will soon be brought before us, the Public Health (Alcohol) Bill 2015. The same firm and principled line needs to be taken in respect of the intrusive lobby being instigated by global alcohol firms. We have been a world leader in advancing progressive public health legislation to reduce tobacco consumption. Let us treat the alcohol industry in the same manner in the interests of our health and the health of future generations. The Minister of State will have Sinn Féin's firm support in both instances.

Getting back to standardised packaging, it is imperative that we deal with this legislation in as timely a fashion as possible. Plain packaging has been shown to reduce the appeal of tobacco products, increase the effectiveness of health warnings, reduce the ability of profiteering companies to mislead the public about the effects of smoking and bring down consumption. It also ties in with the idea of visibility in the Public Health (Alcohol) Bill 2015. We know that young children can name the brands of popular beer, but with this measure they will I hope not be able to recognise the most popular brands of cigarettes.

One of the biggest threats to this type of legislation and the Public Health (Alcohol) Bill 2015 is the possible ratification of global trade deals such as the transatlantic trade and invest-

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ment partnership, TTIP, and the comprehensive economic and trade agreement, CETA, by the Government. Little thought is given to the ramifications that this legislation can embed. I specifically refer to the investor state dispute mechanism, ISDS, contained as part of the deals. Provision is made to allow global companies to sue governments when, in their greedy eyes, inhibitive legislation prevents them from making a profit. These deals are wrong, against the public interest and should be resisted by all well meaning parties who want to put people and our society first. Sinn Féin will certainly continue to lead the fight against these backroom deals and keep informing the public of their ills.

Regarding the general medical services, GMS, scheme, and the prescription aspects of the Bill, I would, first, like to outline Sinn Féin's firm recognition of the importance of ensuring over-the-counter medicines continue to be available under the GMS and community drug schemes. Public health and affordability of such medicines is our primary objective. Prescription fees continue to push many ill citizens beyond the poverty barrier and leave them choosing between essential food on the table or accessing their medicines. Sinn Féin wants to see these fees abolished in full in a measured timeframe. In the meantime, some medicines that are dispensed on a prescription-only basis could be switched to a non-prescription basis. The Health Products Regulatory Authority, HPRA, regulates these medicines and we again request the authority to review which drugs could be transferred to a non-prescription footing. That would immediately cease fees on certain medicines for struggling families and individuals.

I urge a certain caution, however, in the area of prescription and non-prescription drugs. This week RTE aired an extremely thought-provoking documentary on over-the-counter drug consumption. I am particularly cognisant of prescriptions for persons who present to GPs with mental health issues. At recent dual diagnosis conferences held throughout the Thirty-two Counties and hosted by Sinn Féin I was taken by the comments of the consultant psychiatrist in the HSE. What he said was well known and we need to educate people about it. He said short-term prescriptions worked but that in the long-term they would do more damage and become addictive. Education is the key and we need to roll it out nationwide. We should always remember that drugs, prescription or otherwise, are poisons and that their overuse will have detrimental health repercussions.

The fair deal scheme has received public attention recently for all of the wrong reasons. In my health statement last week I referred to the comments of senior HSE management towards elderly patients, suggesting they were taking up hospital beds to protect their finances. I again outline my disgust at this untrue statement. Getting away from that issue, the exclusion of funds received through the Magdalen laundries, Lourdes hospital and symphysiotomy schemes as financial means in accessing nursing home care is extremely welcome. It is a caring, compassionate and, I dare say, republican thing to do. It is the right thing to do for citizens who have suffered so much in the past.

As a party which promotes the interests of workers' rights, we absolutely respect the right to a fair day's pay for a fair day's work. Therefore, we do not have any issue with board members of the HPRA receiving remuneration for work carried out on behalf of the authority. We just ask that in the light of many controversies uncovered in recent years with public agency bodies and funds, transparent oversight procedures be put in place to manage the payment of such moneys. I acknowledge also that the concept of one person, one salary will apply and that approximately half of the existing members will be subject to this principle.

Certainly from my viewpoint, the most important change as part of this legislation involves

the plain packaging of tobacco products. I would like us to follow the strategy of Finland which recently announced that it aimed to have the country tobacco free by 2040. The Minister of State has said one generation, which I believe is approximately 25 years, but it could happen in a generation if we put our minds to it. That would require further measures similar to those in Finland such as increasing the price, introducing licences with a cost for sellers, the banning of advertising, health promotion measures and limiting the public spaces and areas where smoking can take place. I know that the Minister of State will be taking on the wrath of more corporations and probably thinks there is enough to do with the Public Health (Alcohol) Bill 2015, but as she will be practised and well rehearsed at it, I encourage her to go for it.

My final words will be on the Public Health (Alcohol) Bill 2015. It is the next public health measure that we need to emphasise to improve the nation's health. I again encourage all Senators to do what is right by the people and not what is right for corporate interests. I applaud the Minister of State.

Senator Alice-Mary Higgins: I welcome the Minister of State. I commend the legislation, of which we are very supportive. It addresses a number of important key issues. I particularly welcome the measures taken in respect of those who have been identified under the thalidomide scheme, the Lourdes hospital payments scheme, the symphysiotomy scheme and of women who were residents of certain institutions. I have a number of concerns about the symphysiotomy scheme overall and how it has been administered, but that is not a matter for today.

Today we should recognise a positive gesture in terms of access to the fair deal scheme. There are, however, two wider issues that need to be pointed to. First, what measures or information schemes are in place to ensure people are made aware of this measure and some of the other specific things included and covered in their scheme? I know that there has been concern about women who have been eligible to participate in previous schemes and are now living abroad but who may potentially be thinking about returning to Ireland to retire. Many such women and their families may be resident in the United Kingdom and elsewhere. What plans are in place to ensure awareness of this measure and the other supports and social protection provisions that can be accessed by such women?

I would also really like to point out that, while the Bill identifies specific schemes, we need to look to a wider principle. In the next year I hope to work with others across the House to consider some of the wider principles of redress and how we engage in redress or restorative justice for institutional violence or various wrongs. The Bill is an example of the good practice we would want to include, with other important principles such as really re-examining the use of waivers as we have them and the principle of first person testimony and how it is reflected. This is very much to be welcomed.

I welcome the discussion on the pricing and supply of medical goods. Particular concern has been highlighted about the morning after pill and emergency contraception. I am aware that it is something the Minister of State's colleague, Deputy Kate O'Connell, has raised and championed at various points. As a pharmacist, she understands the issue very well. I am also aware that there are groups, including a very good and vibrant campaigning group called Re(al)-Productive Health, which have really sought to put this issue on the agenda. I may table amendments to the Bill to move it a little further along, but I am not sure if I will. The Minister of State spoke to it earlier, but will she clarify exactly if it is now the case that over-the-counter drugs will definitely be available without a prescription to medical card holders? While it is available without a prescription, I suggest medical card holders be able to get it under the

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medical card scheme without a doctor's prescription. Obtaining a doctor's prescription is a considerable problem with a time-sensitive issue and requires securing a doctor's appointment and having the consultation. It causes serious concern. With respect, I suggest the fact that 12,000 people may have used it and achieved a prescription is not an indication that there are no obstacles. We only know that 12,000 people have obtained a prescription. We do not know how many may have found themselves delayed in accessing it, whether it was 4,000, 5,000 or 10,000, and because of our laws in other areas we do not know what the consequences might be and have no way of measuring those who did not access emergency contraception and who dealt with the consequences in whatever way they could. That is information we do not have.

Many, including me, believe there are real problems with the conscientious objection clause as it is operating where pharmacists are concerned. As the Minister of State rightly said, this is the pharmaceutical industry's own administration. It is something on which we have lobbied them in the past. There are concerns which relate to the State, including whether the alternate provisions which are being recommended by those pharmacists who are exercising the objection are adequate. Perhaps we need to have an examination of whether alternate provisions are feasible. In rural areas do they reflect transport constraints, particularly at weekends?

Another concern I have in that regard arises on Sundays in rural areas, in particular. While pharmacists have a Sunday rota in some parts of the country to ensure a pharmacist is always available, that is not the case in other parts of the country. This is something on which I might consider tabling an amendment or the Minister of State might tell me of other ways in which the introduction of a Sunday rota system might be addressed. Again, I would like to welcome that provision and seek a little more clarification on how the Minister of State envisages it fitting in with the other provisions mentioned that are being considered by the Minister for Health, Deputy Simon Harris, to increase and support access to these vital and time-sensitive measures.

My last point is on the regulation and setting of a standardised maximum price. We know that with emergency contraception, the price of the same drug can vary from €25 up to €70. These are amounts which are not readily available to many citizens and certainly not necessarily readily available within a matter of hours. The Minister of State might let us know what she is thinking in terms of the standardised maximum pricing and how we can address the case of medical card holders.

I echo what was said by others in giving my full-hearted support and I believe that of the rest of our group to the important measures on plain packaging. I again raise the question, as have others, of the Public Health (Alcohol) Bill 2015 as the matter of plain packaging underscores the question of the power of suggestion, advertisement and visibility. It is a reminder to us that persistent suggestion, which we have in many cases in our lives, including the easy visibility of alcohol products in spaces such as grocery stores, is an issue and a concern. It underscores all of the evidence which shows the power of suggestion and I will conclude by stating I support the measures. We also will provide strong support for the Minister of State on the Public Health (Alcohol) Bill 2015. I urge that we move expeditiously because I share the same concerns about the comprehensive economic and trade agreement. If we move towards its full implementation, we will leave ourselves open and regulation is now imperative because unfortunately, new regulation will face new obstacles and new threats in the future.

Senator Jerry Buttimer: I welcome the Minister of State and commend her for the role she is playing in her health promotion portfolio.

In the context of the Bill, it is important to focus predominantly on the issue of health promotion. I refer to and agree with the point Senator Colm Burke raised on prescription drug costs and the charge being allocated or ascribed to medical card patients. At a time when the population are getting older, living longer and in need of more complex and varied health care and medical intervention and given that the economy is now more prosperous, through her good offices with the Minister for Health, Deputy Simon Harris, the Minister of State might consider how we could improve this section because Senator Colm Burke is right. While the issue of over-the-counter and prescription drugs was raised on “Prime Time”, we did not need such a programme to know that we probably are a nation that are oversubscribing to prescriptions and painkillers. That is a matter on which we also might have a debate in the House in order that we can have an holistic approach to it.

I wish to speak on the issue of health promotion. There is an expectation and a view taken by some that it is up to the State or others to bring about behavioural change, be it in tackling obesity, on the issue of tobacco or the issue of alcohol. There is a combined approach to be taken by the individual person in tandem with family, the community, the Government and so on. I note that “Operation Transformation” is on our television screens. As the Minister of State noted, it provides a six-week window in which people focus on changing bad diets. It is not a fad or a six-week programme but a life-changing experience that we need to promote and pursue. We have seen the significant impact Tobacco Free Ireland has had. I refer to Deputy Micheál Martin’s smoking ban, Senator James Reilly banning smoking in cars and playgrounds and the overarching plain packaging proposals to make Ireland tobacco free.

I listened to Senator Máire Devine speak about powerful industry lobbyists. I assure her that as a Member of this Seanad and a former Chairman of the Oireachtas Joint Committee on Health and Children, industry does not play any role in how I make my decisions.

Senator Máire Devine: Lucky you.

Senator Jerry Buttimer: The health of the nation will be well supported by the Public Health (Alcohol) Bill 2015. I hope the Bill will return and be passed. As a nation, we have a relationship with alcohol that needs to be changed and addressed. There is the issue of the price of alcohol. We all support minimum unit pricing. At least I hope Sinn Féin will support it since it had a minority report when the report of the Joint Committee on Health and Children was issued two years ago. There is the issue of how we make alcohol available, price and promote it. We also have an issue with availability. The abolition of the groceries order by Deputy Micheál Martin was a huge mistake because alcohol is now to be found in shops and petrol stations and on forecourts. I visited the United States before Christmas and in certain states one could walk into supermarkets which had no alcohol in them, which is good. Obviously, we are not going to go back to that position, but I am just making the point.

The other point we need to consider which is arising frequently in my office is the issue of the fair deal scheme and how we can make it accessible. If we can tweak it any more, it would be important to do so. As a former Chairman of the Joint Committee on Health and Children, I had the huge pleasure - I use the word deliberately - of dealing with the Irish Medicines Board, now the Health Products Regulatory Authority. The people who worked in it and who appeared before the committee were of the highest calibre.

I listened to Senator Alice-Mary Higgins’s remarks on the issue of regulation. We need regulation and to have a robust, strict regulatory regime for medicines and medical devices. That

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is my worry in the context of the new regime in America and the new President. If one listens back to his remarks with leaders of business, the other day he spoke about the cost of medicine at a press briefing. We cannot allow a situation to arise where regulation is diminished in the areas of medicines, products and devices. The Minister of State is doing a wonderful job and really setting a high standard for other Ministers in the area of health promotion.

I will make one final appeal on the issue of vaccination and vaccines. As a nation, we need to be proactive, whether it is on the flu jab, the HPV vaccine or whatever else. There is a job of work for the Minister of State in association with others in the health promotion areas of the HSE and the Oireachtas. There is a great deal of misinformation and populism is rising. We have a job to do to counteract it and address in a real and tangible way some of the concerns people have.

Senator Trevor Ó Clochartaigh: Cuirim fáilte roimh an Aire Stáit. Ós rud é nach dóigh liom go bhfaca mé í ón uair gur ceapadh í mar Aire Stáit, ba mhaith liom comhghairdeas a ghabháil léi. Cuireann mé féin agus Sinn Féin fáilte roimh an mBille seo, go háirithe na forálacha a bhaineann le pacáistiú tobac. Cé go bhfuil an reachtaíocht seo le moladh as an méid a bhfuil ann, léiríonn sí an méid atá fós le déanamh sa chóras sláinte. While this is welcome legislation, it is clear more legislation is required to tackle the worst of our health problems. I note that there are six distinct Parts of the Bill, many of which are designed to close off loopholes or remedy anomalies in the system. Unfortunately, there are many other anomalies in the working out of health services which need to be addressed. Perhaps it is something that might be taken on board through the next Stages of the Bill.

One such anomaly is the issue in the west where people presenting with acute alcoholism are not entitled to care based on that fact alone. GPs are no longer able to refer patients with an alcohol addiction to HSE services unless they have been diagnosed with a co-morbid mental health illness. This meant that over Christmas people were being turned away from the services, which is totally unsatisfactory. This was communicated before Christmas in a HSE West e-mail to the service providers. Galway has a population of 75,000 people but only one full-time and one part-time counsellor for adult problem drinkers. Waterford, by comparison, has a population of 47,000 but five counsellors for drinkers, as well as one outreach worker and a number of other personnel.

Turning to the hospital issue, a sick relative of Sinn Féin Councillor Gabriel Cronnelly was admitted to University Hospital Galway, UHG, over the weekend. He was admitted on Friday evening with an illness and not placed in a bed until 9.30 p.m. on Saturday evening. At the same time, there were 43 patients on trolleys in the same hospital. I take on board what has been said about health awareness and making people aware, but the fact of the matter is the primary health care services are in dire need of more resources in areas such as Connemara. These primary health care centres need to be fully staffed and rolled out properly. Cuts are being experienced to basic services such as the physiotherapist in Connemara who has not been replaced. People are being brought into the acute system because of issues in the primary care system.

I attended the hospital in Galway recently with a minor complaint and the staff were absolutely brilliant. Without the professionalism and compassion of the hospital staff who do their utmost to put patients on trolleys at ease as best they can, there would be a revolution. As of this morning, there are 35 patients on trolleys in the same hospital. Doctors and nurses are not only holding the health service together, they are effectively ameliorating the worst effects of

Government neglect through their care. This is something to which we need to come back. I call on the Minister of State to implore the senior Minister to have a look at the hospital issue in Galway. I have stated a feasibility study is needed of the need for a new hospital-----

An Leas-Chathaoirleach: That is not relevant to the Bill.

Senator Trevor Ó Clochartaigh: It is the Health (Miscellaneous Provisions) Bill and I am suggesting there may be other issues that could be brought on board on Committee Stage.

Senator Colm Burke: It is not relevant to the Bill.

An Leas-Chathaoirleach: Senator Trevor Ó Clochartaigh has five minutes. I will not interrupt him further.

Senator Trevor Ó Clochartaigh: I understand why the Senators opposite might want to stifle debate on these issues because they are very embarrassed about them.

Senator Colm Burke: The Senator should stick to what is on the agenda.

An Leas-Chathaoirleach: Order, please. Senator Trevor Ó Clochartaigh to continue, without interruption.

Senator Trevor Ó Clochartaigh: What would be quite useful is that instead of announcing that the senior Minister or the Taoiseach will visit UHG, they should come unannounced and see what things are like on an ordinary day. UHG has lists of more than 30,000 outpatients awaiting appointments, of whom 4,700 or more have been waiting for more than 12 months.

I have another issue which I am not sure can be addressed in the Bill, but it is something the Minister of State might consider. I understand there is a working group on the fair deal scheme which is looking at an issue that particularly affects farmers. The Minister of State is from an agricultural background and very aware of farming issues. Assets of the farm are being used in the calculation of the fair deal scheme package. The issue was raised with me yesterday at the farmer's protest and a working group is supposed to be looking into it and coming up with a solution. Perhaps this miscellaneous provisions Bill is an opportunity to address this anomaly. The Minister of State might revert to us and let us know whether the working group has come to a conclusion on how to address these issues. It seems to be the right thing to do because there are reports that farmers' land is causing an issue where it is not really an asset when they are running a farm at a loss. It is an issue, of which I am sure the Minister of State is aware. There was also a highly insulting claim in an internal e-mail that farming families were leaving relatives on hospital beds to avoid financial penalties they might suffer under the fair deal scheme. I hope the reported action will happen and that the anomaly can be remedied. Let us not forget the average farm family income is €26,000.

I welcome the drug reimbursement aspect of the Bill. I draw attention to the fact that the HSE has failed to reach an agreement on the Orkambi drug for cystic fibrosis sufferers. An initial figure offered by the drugs company Vertex was €159,000 per patient. The HSE estimated that it would cost the State €400 million over three years. This is obviously a big figure and we hope the issue can be resolved. The Minister of State should take on board some of my suggestions. It might be something she might address in the Bill on Committee Stage. I hope she will take the suggestions I am making in a positive light and come back to us on Committee Stage with suggestions.

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Minister of State at the Department of Health (Deputy Marcella Corcoran Kennedy):

I thank Senators for their contributions to the Second Stage debate on the Health (Miscellaneous Provisions) Bill. The provisions included in the Bill will allay the fears of the recipients of the *ex gratia* awards approved by the Government. It would be most unfair if people who receive such an award were then to be disadvantaged in their financial assessment for support under the nursing home support scheme by virtue of receiving an award. I hope this will give peace of mind to the individuals concerned and their families.

Some Senators raised questions about medical cards. The Bill makes proposals on the amendment of the Nursing Homes Support Scheme Act 2009 or the fair deal scheme. Accordingly, it does not relate to eligibility for medical cards. Where questions have been asked that are not relevant to the Bill, I will bring the message to the Minister and the Health Service Executive which is the relevant body. We can ensure Senators' opinions are carried to the right areas.

On the issue of support in accessing services by women who have had a symphysiotomy, services are facilitated by symphysiotomy liaison officers who are based throughout the country. The provision of a medical card is included. I hope that provides clarity on the issue.

With regard to public health, it is important to remind ourselves why tobacco control measures such as this one are so important. A total of 23% of Irish people are daily and occasional smokers, while 8% of ten to 17 year olds smoke. While the reduction in the figures in the past few years is significant and welcome, we are a long way from reaching the 5% prevalence rate set out in the Tobacco Free Ireland policy. Nearly 6,000 Irish people are killed annually by smoking. The human cost of smoking in Ireland is overwhelming. In the Tobacco Free Ireland policy we aim to have Ireland tobacco free by 2020. The minimum is a 5% prevalence rate, as set out in the policy.

Less important but still significant is the economic cost of smoking in Ireland. Annual health care costs associated with it are €506 million; lost productivity costs are €1 billion, while the cost of litter associated with smoking is €69 million. The economic assessment undertaken on behalf of the Department of Health also estimates the costs associated with the deterioration in an individual's ability to live a full life. The loss associated with this deterioration has been estimated as being more than €9 billion annually. These costs are very significant and show how reducing the prevalence of smoking in Ireland can both improve the health and well-being of the people and reduce the cost to the taxpayer in dealing with the impact of smoking in the longer term. While work must continue to reduce smoking rates, we can be proud of what we have achieved in the past couple of decades. I refer to such measures as the introduction of the workplace smoking ban in 2004, the ban on point-of-sale display and advertising in 2009, picture warnings in 2013 and the ban on smoking in cars in which children were present in 2016. These measures have contributed to increasing awareness and reducing the harm caused in Ireland by tobacco, but we will not and cannot stop there. Standardised packaging is the subject of one of a number of recommendations set out in Tobacco Free Ireland. I am committed to ensuring we will continue to implement this policy to ensure our children and our children's children will get to experience a tobacco-free Ireland. I ask all Senators to support not only the standardised packaging measure being discussed but all future tobacco control measures implemented by my colleague, the Minister, Deputy Simon Harris, and me.

The provision included in the Bill to amend the Health (Pricing and Supply of Medical Goods) Act 2013 is also intended to benefit the health of the population. It provides that, when considered appropriate in the interests of patient safety or public health, over-the-counter medi-

cines can continue to be reimbursed for medical card holders after May 2018. This means that products such as nicotine replacement products and emergency contraception can continue to be provided under the medical card scheme. The amendment to the Irish Medicines Board Act 1995 will allow the payment of fees to members of the Health Products Regulatory Authority in line with the arrangements made in other boards in order to continue to attract experts of the highest calibre to apply for board membership at no additional cost to the taxpayer.

I thank Senators for their valuable contributions on Second Stage and look forward to further constructive examination of the Bill on Committee Stage. I reiterate that the relevant points that will not be dealt with in this legislation will be taken on board and conveyed to the Minister and the Health Service Executive.

Question put and agreed to.

An Leas-Chathaoirleach: When is it proposed to take Committee Stage?

Senator Colm Burke: Next Tuesday.

An Leas-Chathaoirleach: Is that agreed? Agreed.

Committee Stage ordered for Tuesday, 7 February 2017.

Sitting suspended at 1.55 p.m. and resumed at 3 p.m.

Knowledge Development Box (Certification of Inventions) Bill 2016: Report Stage

An Cathaoirleach: I welcome the Minister of State, Deputy Pat Breen who is becoming a frequent visitor. Before we commence, I remind Senators that a Senator may speak only once on Report Stage, except the proposer of an amendment who may reply to the discussion on the amendment, and that on Report Stage each amendment must be seconded. There is no one present to move amendment No. 1 in the names of Senators Pádraig Mac Lochlainn and Máire Devine.

Amendment No. 1 not moved.

An Cathaoirleach: Amendments Nos. 2 and 3 are physical alternatives and may be discussed together. If amendment No. 2 is agreed to, amendment No. 3 cannot be moved.

Government amendment No. 2:

In page 13, lines 8 to 13, to delete all words from and including “The” in line 8 down to and including line 13 and substitute the following:

“The Controller shall keep records of—

- (a) applications,
- (b) KDB certificates issued,
- (c) refusals to issue KDB certificates, and
- (d) reviews,

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in such manner and form as he or she considers appropriate.”.

Minister of State at the Department of Jobs, Enterprise and Innovation (Deputy Pat Breen): I have reflected on the concern expressed on Committee Stage by Senators about the keeping of records by the Controller of Patents, Designs and Trade Marks. I am seeking to address this concern in amendment No. 2 which clarifies beyond doubt the intention that the controller must keep records of all knowledge development box, KDB, applications received, issued, refused and reviewed. The only discretion available to the controller relates to the form and manner in which records will be kept. For example, they may be kept in hard copy or electronically. I trust that the amendment facilitates the withdrawal of amendment No. 3 in the names of Senators Pádraig Mac Lochlainn and Máire Devine. When Senator Pádraig Mac Lochlainn raised this issue on Committee Stage, the Minister, Deputy Mary Mitchell O'Connor, said she would seek clarification and come back to the House with an amendment to ensure all records would have to be kept. In that context, I suggest the amendment should satisfy the Senator.

An Cathaoirleach: I remind Senator Pádraig Mac Lochlainn that amendment No. 3, in his name, is being considered with this amendment. If amendment No. 2 is agreed to, amendment No. 3 cannot be moved. That might have some implications for the approach the Senator chooses to pursue.

Senator Pádraig Mac Lochlainn: Can I clarify whether the House has moved on from amendment No. 1?

An Cathaoirleach: Yes. We had to move on. I cannot go in reverse.

Senator Pádraig Mac Lochlainn: That is okay.

An Cathaoirleach: I usually try to facilitate Members, but I would be setting a dangerous precedent if I were to do so in this case.

Deputy Pat Breen: Does the Senator have concerns about these amendments?

Senator Pádraig Mac Lochlainn: We will agree to disagree and move on. It is my fault. I should have been here on time.

An Cathaoirleach: No problem. We can all be tied up. I can understand the Senator is a busy man.

Amendment agreed to.

An Cathaoirleach: As amendment No. 2 has been agreed to, amendment No. 3 cannot be moved.

Amendment No. 3 not moved.

An Cathaoirleach: As amendments Nos. 4 to 10, inclusive, and amendment No. 18 are related, and as amendments Nos. 5 to 10, inclusive, are physical alternatives to amendment No. 4, amendments Nos. 4 to 10, inclusive, and amendment No. 18 may be discussed together. If amendment No. 4 is agreed to, amendments Nos. 5 to 10, inclusive, cannot be moved.

Government amendment No. 4:

In page 14, to delete lines 18 to 39, and in page 15, to delete lines 1 to 8 and substitute the following:

“KDB report

18. (1) In this section, “KDB report” means the report required to be made under subsection (1) of section 103 of the Patents Act 1992 in so far as this Act is an enactment which falls within paragraph (b) of that subsection.

(2) The KDB report shall include statistical information in a form, and regarding such matters, as the Minister may direct.

(3) The KDB report shall not disclose details of any invention the subject of an application.

(4) The KDB report shall specify—

(a) the number of applications received by the Controller during the year to which the report relates,

(b) the number of applications deemed to be withdrawn under section 8(2), and the number of applications withdrawn under section 10, by applicants during that year,

(c) the number of applications during that year in respect of which the Controller issued a KDB certificate,

(d) the number of applications during that year in respect of which the Controller refused to issue a KDB certificate,

(e) the number of refusals to issue a KDB certificate that were subject to a review during that year,

(f) the number of reviews carried out during that year that resulted in the confirmation of the decision to refuse to issue a KDB certificate,

(g) the number of reviews carried out during that year that resulted in the issue of a KDB certificate, and

(h) such other statistical information as may be prescribed.”.

Deputy Pat Breen: Amendments Nos. 4 and 18 are designed to combine and align the annual reporting requirements under the Bill with earlier reporting requirements on the Controller of Patents, Designs and Trade Marks under the Patents Act 1992. The effect of amendment No. 4 will be to replace the existing section 18 of the Bill in its entirety. The amendment and amendment No. 18 which amends section 103 of the 1992 Act deal comprehensively with the reporting requirements on the controller under all enactments under his supervision.

Senators will recall that during the debate on Committee Stage concerns were raised that the controller’s annual report would be submitted to the Minister only. The Minister, Deputy Mary Mitchell O’Connor, indicated in response that she would introduce an amendment to ensure the wider circulation of the controller’s annual report on KDB activities. The effect of amendments Nos. 4 and 18 which align all of the controller’s annual reporting requirements will be to ensure

the Bill provides for the controller's annual report on KDB activities to be submitted to the Minister in the first instance. Importantly, the Minister, in turn, will lay the report before both Houses of the Oireachtas. I believe the amendments address the concerns behind amendment No. 5 in the names of Senators Pádraig Mac Lochlainn and Máire Devine and amendment No. 10 in names of Senators Alice-Mary Higgins and Frances Black.

Senator Alice-Mary Higgins: Perhaps the Minister of State might be able to give further clarification on amendment No. 4 because I think it is important. I recognise that amendment No. 2 was introduced in recognition of the valid points made by Senator Pádraig Mac Lochlainn on Committee Stage about the importance of keeping records. I appreciate that there was some recognition of that issue. I recognise that amendments have been proposed in a few areas of the Bill, for which I thank the Minister of State.

I am concerned about one aspect of amendment No. 4 and would like the Minister of State to elaborate on the key changes he is making in the amendment. How does he consider that they are addressing the concerns we raised on Second and Committee Stages? As I see it, the key change is that the KDB report "shall include statistical information in a form, and regarding such matters, as the Minister may direct". Does the Minister of State believe this provision will address the geographical and regional distribution question which was raised by many Senators on Second and Committee Stages and which is the subject of amendment No. 9 in my name?

I have also tabled amendment No. 10 which proposes that the KDB report include "such general information as to the operation of the scheme as may be appropriate or relevant". Will the Minister of State indicate how he sees his amendment addressing the concerns raised in amendments Nos. 9 and 10?

Does the Minister of State believe the statistical information could cover amendment No. 7 also? Amendment No. 7 reflects the fact that, under the patents regulation, when they are filed, they are categorised. There is an extraordinarily detailed set of categories in the national report on patents. We may not necessarily need to take on board the same categorisations, but what I am attempting to do in amendment No. 7 is to ensure information would be collected on the sectors involved. If pharmaceuticals and medical devices are key areas of growth or if we are looking for innovation in food production, it would be necessary for the Minister to know if research and development were taking place under these sectoral headings. Nobody is looking for precise information on the exact areas in which there is innovation. Instead, they want to know the areas in which research and development are taking place to ensure sectors prioritised by the State under the Action Plan for Jobs and other initiatives will receive funding. It would also ensure priority research areas in the higher education institutions were being complemented. The amendment would provide for the collection of useful information which could help in planning and providing the bigger picture on what was happening in the State. I have left it very wide as an amendment to allow it to be incorporated in the legislation, even in the Dáil.

Amendment No. 9 is also open in seeking figures for the geographical or regional distribution of applications. Today the Government launched the Action Plan for Jobs, one of its key points being regional distribution. To grow business, as well as an active and vibrant economy which leads to employment, we must ensure there is a regional distribution and an all-Ireland approach, without parts of the country being left behind. To ascertain whether the knowledge development box is proving to be complementary to that goal of regional action, it would be useful if we had geographical and regional information on where research and development were taking place.

These are two key points. The amendments are reasonable. As I understand they may fall, this is my opportunity to speak to them. I apologise for speaking to them at some length. Will the Minister of State clarify how he sees these specific points being addressed? Does he see them falling within the remit of statistical information? Will the statistical information the Minister will be able to direct or require be qualitative as well as quantitative?

An Cathaoirleach: I call Senator Pádraig Mac Lochlainn. Once the Minister of State comes back in, there can be no further debate.

Senator Pádraig Mac Lochlainn: I did not protest about the first amendment because we are revisiting the issue now. It is desirable to incentivise and encourage innovation. Today there was a presentation in the Oireachtas on innovation hubs in different parts of Ireland. The problem is when reduced corporation tax rates and responsibility are introduced. We have seen where it has, unfortunately, been abused, with loopholes emerging. The taxpayer and the citizen want to see the maximum level of accountability in this matter.

Coming from the regions, the Minister of State will appreciate that balanced regional development is a significant issue for people living there. When significant tax incentives are given to companies, we must ensure the benefits and job creation are spread geographically across the State. In fairness, the Government's amendments show that it has listened to the concerns expressed on Committee Stage and attempted to address the issues raised. The wording of amendment No. 4 is too vague. It states, "The KDB report shall include statistical information in a form, and regarding such matters, as the Minister may direct". On the last occasion we debated this issue the Minister stated the Government did not want to give away some of the sensitive commercial information on some of the companies applying. Accordingly, one might not want to give a specific address, for example. However, if one used one's imagination, there is a way of identifying how the incentive benefits the region without giving away sensitive commercial information, but it has not happened.

Our core concern has not been addressed. Therefore, I cannot support the amendment. It is too vague and will not give us the information we require. If the Minister of State indicates that he would be willing to address this issue in the Dáil to ensure statistical information will be provided which will clearly demonstrate how the incentive will be availed of across the regions, we could look at that measure. However, if no such guarantee is given, unfortunately, we cannot support the amendment.

Senator Lynn Ruane: For the purposes of clarification, why will amendments Nos. 7, 9 and 10 fall if the Government's amendment is passed? Can it be explained why they are not complementary?

An Cathaoirleach: I understand from the Clerk that they physically overlap. If the Government amendment is agreed to, it will remove the provision the other amendments address.

Senator Alice-Mary Higgins: As amendments pass, line numbers and so forth change in the legislation as otherwise, every later amendment should fall accordingly. Amendments Nos. 7 to 10, inclusive, are not seeking to amend text but to insert it. We often have a case where a new section is inserted into a Bill on Report Stage and subsequent amendments are accepted.

An Cathaoirleach: I understand that if the amendment is agreed to, all of this block will fall.

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Senator Alice-Mary Higgins: I am not clear on why that is the case. I do not believe that is correct.

An Cathaoirleach: That is the expert advice.

Senator Alice-Mary Higgins: It is important. I would be quite happy to support the Government's amendment, but I would like to have the opportunity to vote on the insertions to be made by the other amendments. I do not believe they need to be contradictory but can be complementary.

An Cathaoirleach: If amendment No. 4 is agreed to, it will remove the text the other amendments address.

Senator Alice-Mary Higgins: These are insertions.

An Cathaoirleach: Let us suppose the Government amendment is agreed to by the House.

Senator James Reilly: There is no text to be amended or added to.

An Cathaoirleach: I ensured the Government amendment was moved, as was my duty. The amendment deletes lines 18 to 39, inclusive, on page 14 and lines 1 to 8, inclusive, on page 15. If it is agreed to, all of those lines will be removed.

Senator Alice-Mary Higgins: Will my amendment not then be inserted between the new lines 27 and 28?

An Cathaoirleach: My learned Clerk tells me that it is addressed-----

Senator Alice-Mary Higgins: As I obviously have great respect for our new and wonderfully esteemed Clerk, I will bow on the issue, but I believe this is inconsistent with some other practices.

An Cathaoirleach: I know what the Senator is saying. There is some logic to her argument. However, the amendment she has tabled later in this group refers to certain lines.

Senator Alice-Mary Higgins: It refers to line numbers.

An Cathaoirleach: It is not necessarily line numbers but certain sections and line numbers. If those lines are removed which is the purpose of the Government's amendment, the Senator's subsequent amendments will have no function. The lines will have already been removed, provided the Government's amendment is agreed to.

Senator Alice-Mary Higgins: I am unconvinced, but obviously for now I will bow to the expertise of the Clerk. I will be keen to receive clarification on the point afterwards. I am surprised by it.

An Cathaoirleach: The Clerk has said he will talk to the Senator later if she wants to go through it.

Senator Alice-Mary Higgins: That is fine.

Amendment put:

The Seanad divided: Tá, 25; Níl, 13.	
Tá	Níl
Burke, Colm.	Black, Frances.
Burke, Paddy.	Conway-Walsh, Rose.
Buttimer, Jerry.	Craughwell, Gerard P.
Byrne, Maria.	Gavan, Paul.
Coffey, Paudie.	Higgins, Alice-Mary.
Coghlan, Paul.	Humphreys, Kevin.
Conway, Martin.	Kelleher, Colette.
Daly, Mark.	Mac Lochlainn, Pádraig.
Daly, Paul.	Nash, Gerald.
Feighan, Frank.	Ó Clochartaigh, Trevor.
Gallagher, Robbie.	Ó Ríordáin, Aodhán.
Hopkins, Maura.	O'Sullivan, Grace.
Horkan, Gerry.	Ruane, Lynn.
Lawless, Billy.	
Leyden, Terry.	
Lombard, Tim.	
McFadden, Gabrielle.	
Murnane O'Connor, Jennifer.	
Noone, Catherine.	
O'Donnell, Kieran.	
O'Donnell, Marie-Louise.	
O'Mahony, John.	
O'Reilly, Joe.	
Reilly, James.	
Richmond, Neale.	

Tellers: Tá, Senators Gabrielle McFadden and John O'Mahony; Níl, Senators Paul Gavan and Pádraig Mac Lochlainn.

Amendment declared carried.

Amendments Nos. 5 to 10, inclusive, not moved.

An Cathaoirleach: Amendments Nos. 11 to 17, inclusive, are related and may be discussed together, by agreement. Is that agreed? Agreed.

Senator Alice-Mary Higgins: I move amendment No. 11:

In page 15, between lines 8 and 9, to insert the following:

“Review and scrutiny

19. (1) The Minister shall, as part of the annual Budget process, produce a report on the operation of the KDB including a consideration of the intersection of the KDB with other tax expenditure measures and its impact on the delivery of an effective tax rate for

corporations.

(2) The Minister shall ensure appropriate annual information exchange between the Department of Jobs, Enterprise and Innovation and the Office of the Revenue Commissioners in order to facilitate the publication of information on the cost of this initiative, including the cost to date for the Exchequer in revenues forgone, as part of the annual budgetary process.”.

The Minister of State did not get a chance to answer my questions about the meaning of amendment No. 4 which is now part of the Bill, but I am sure he will do so at the next opportunity he gets. These amendments contain two sets of proposals. Amendments Nos. 11 to 13, inclusive, are variations. In all of the amendments I have tried to put forward several variations. The Department met me to discuss these matters, which I appreciate. Does the Minister of State consider there is any version of the amendments he could take on board? The amendments are in respect of the annual budgetary process. We know that tax measures such as the certificate issued to companies which allows them to pay at a rate of 6.25% on research and development versus 12.5% potentially have a high value, but they are also a significant cost to the Exchequer. It is very important for us to have information on the cost of the knowledge development box. The figures are available from the Revenue Commissioners.

In amendment No. 13 I ask that “The Minister shall ensure appropriate annual information exchange between the Department of Jobs, Enterprise and Innovation and the Office of the Revenue Commissioners in order to facilitate” our having specific “information on the cost of this initiative”. I understand the cost-benefit analysis may take place within the Department of Finance or the Revenue Commissioners, but in this amendment I ask that the Minister ensure the exchange of information will happen and that it will be made publicly available as part of the annual budgetary process to enable us to assess the cost of the knowledge development box certificate, whether it is €20 million, €200 million or €2 billion, and rank and set it against other measures we may wish to consider and their potential cost-benefit outcome. My colleague and I, for example, support the idea that we need to invest in third level and research institutions, particularly the institutes of technology which are underfunded for research. We may wish to support greater partnership for innovation in these areas, especially at a key moment of opportunity and when there is a change in the world of higher education globally. This is to ensure we and all those who support the knowledge development box, can stand over the value it gives and its cost when we make budgetary decisions.

One of my amendments concerns the information exchange, while the other refers to a report, but I would be willing to withdraw it, if necessary, because I understand there is another report. I recognise that in amendment No. 18 the Government is going some way towards producing a report, but I am concerned that the amendment refers to accounts of moneys received and paid under this Bill but does not cover revenues forgone in respect of the value of the tax reduction from 12.5% to 6.25%. We are speaking ahead to amendment No. 18, but it relates very directly to this amendment. If the Minister of State’s interpretation of amendment No. 18 is to ensure we would have that information, it would make it easier for me not to press amendment No. 12.

Amendment No. 11 is a combination of the two. I am asking the Minister of State to indicate if he will support amendment No. 11 which includes both proposals, amendment No. 12 or amendment No. 13 which is a very mild amendment in terms of pure information exchange.

Amendment No. 14 is in respect of the report which I acknowledge the Government has included in amendment No. 18. It provides that the report would be presented to the Joint Committee on Jobs, Enterprise and Innovation where it would be discussed. That is a very useful and appropriate forum for its scrutiny. I am not demanding that we have a full Oireachtas debate on it annually, but it would be appropriate to have it discussed at the Joint Committee on Jobs, Enterprise and Innovation. It is not clear in amendment No. 18 if the report will include a consideration of the intersection of the KDB with other tax expenditure measures and the delivery of effective tax rates for corporations, which is an ongoing issue of concern for the Government, as it has made clear. It is important, especially since we have sought and achieved OECD compatibility with this measure, to ascertain how it relates to other measures and how we can ensure it will become part of a wider standard setting narrative in of all of our tax expenditure measures and pushing it forward.

The proposals made in amendments Nos. 15 to 17, inclusive, are almost a separate topic. I apologise for speaking at such length, but the grouping of the amendments by the Bills Office requires it. Amendments Nos. 15 to 17, inclusive, are three variants of the same essential demand. I would appreciate it if the Minister of State indicate if he could support any of them. I have tried to frame this as widely as possible to give as much scope and discretion to the Government on the issue. This is part of the Action Plan for Jobs, about which we talked, and the fact that, as a small nation, we need a joined-up approach in what we do in the areas of enterprise and innovation. We need to make sure every major cog in the wheel, especially a cog that potentially carries significant costs such as the KDB, fits into the wider strategy and picture, the action plan and the measures to which the Government claims to be very committed in the action plan. If there is a lacuna of knowledge of where the KDB fits into things and if we do not have a joined-up approach, it will be hard to track what is happening with companies and our investment in enterprise and innovation. The amendments ask that any company applying for the KDB certificate be asked to indicate whether they are in receipt of other grants, subsidies, tax incentives or any similar enterprise or research and development support from a public or semi-State body. We are not asking for detail on what supports are provided, where and how they were applied for or the amounts. This is a very simple request to know whether they have received support in the past. The second part asks that companies applying for such supports in the future and other enterprise and development supports indicate if they had previously received a KDB certificate. It is a two-way measure. It is about joining the dots. We want to know if companies receiving enterprise grants into which we are putting money are going on to deliver research and development, thereby benefiting from the KDB certificate. It will be valuable to the Government to know whether companies that go to Enterprise Ireland or IDA Ireland and move into a phase of production, for example, a scaling up of operations, have previously benefited from the KDB certificate. It will strengthen the hands of anybody who wants to defend the KDB certificate if he or she can show a connection between companies the research and development of which have been supported and that they are now being supported to move into a period of production. To my mind, that information is very simple and valuable that will allow us to chart the route.

The proposals in amendments Nos. 15, 16 and 17 are almost a separate topic. I apologise for speaking at such length but the grouping of the amendments by the Bills Office requires that. Amendments Nos. 15, 16 and 17 are three variants of the same essential demand. I would appreciate if the Minister would indicate if he can support any of them. I have tried to frame this as widely as possible to give as much scope and discretion to the Government in respect of it. This is part of the action plan for jobs, which we talked about earlier, and the fact that as a small

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nation we need a joined up approach in what we do in the areas of enterprise and innovation. We need to make sure that every major cog in the wheel, especially a cog that has potentially significant costs such as the KDB, fits into the wider strategy and picture and the action plan and the kinds of measures the Government claims to be very committed to in the action plan. If we have an absolute lacuna of knowledge of where a KDB fits in to things and if we do not have a joined-up approach, it is hard to track what is happening with our companies and with our investment in enterprise and innovation. These amendments ask that any companies applying for the KDB certificate indicate whether they are in receipt of other grants, subsidies, tax incentives or any similar enterprise or research and development supports from a public or semi-State body. We are not asking for detail on what supports, where and how they were applied for or the amounts. This is a very simple request to know whether they have received those supports in the past. The second part asks that companies applying for such supports or other enterprise and development supports in the future would indicate if they had previously received a KDB certificate. It is a two-way measure. It is about joining the dots. We want to know if companies receiving enterprise grants, who we are putting money into, are then going on to deliver research and development, thereby benefitting from the KDB. It will only be valuable to the Government to be able to know that if companies go to Enterprise Ireland or the IDA and they move into a phase of production, for example a scaling up of operations, did those companies previously benefit from the KDB certificate. It will certainly strengthen the hands of anybody who wants to defend the KDB certificate if they can show a connection between companies whose research and development has been supported and the fact they are now being supported to move into a period of production. To my mind, that information is very simple and valuable information that allows us to chart the route.

We have limited time on Report Stage. I still have serious concerns about the end stage in the current trajectory for companies. I have also mentioned this to the Minister, Deputy Mary Mitchell O'Connor, in the context of the 10% capital gains tax rate for those selling their companies. I worry that we are taking companies on a long journey and then encouraging a cash-out culture. It is a kind of start-up to cash-out culture, which is a real danger. If we want to encourage real innovation, not simply entrepreneurship and speculation but entrepreneurship that is innovation, we need to encourage companies to move to production and grow. That is the practice we should be rewarding and supporting. Prizes for innovation have recently been won in Europe by long-established companies. Sky Tec has been established since the 1990s and has now moved to a new phase of innovation. Companies that are long-established are often also capable of innovation. It is companies such as Sky Tec that are winning European innovation awards 20 and 30 years into their existence on this island. They are the kinds of company we need to be nurturing. I worry that under the current regime, companies such as Sky Tec could have been sold and would have been encouraged to be sold at an earlier stage and not reached the scale at which they are now as one of the main companies used by NASA and others. That is a wider point.

Information on the level or frequency of the intersection with the knowledge development box or the other enterprise or research development initiatives might be made available to the Minister. I do not mean that it should be publicly available, but it should be made available to the Minister in order to inform overall jobs, enterprise and innovation strategies. I am asking that the Minister have the information that she needs on where the overlap is between the many schemes administered in this country in respect of enterprise and innovation in order that it will inform the big picture and form part of a national strategy.

These are extremely reasonable amendments. If there is a problem with the third part of the amendment, it is separated. I would appreciate an indication from the Minister of State as to which of the amendments he wishes to support and in which form he wishes to support it. I do not really see how there can be any case against having this information provided in a useful manner.

An Cathaoirleach: Is Senator Pádraig Mac Lochlainn seconding amendment No. 11?

Senator Pádraig Mac Lochlainn: Yes. I support all of the amendments. I commend Senator Alice-Mary Higgins. One of the primary responsibilities of legislators is to scrutinise legislation and strengthen accountability. I cannot see how the Government can object to any of the amendments. Regardless of its position on Apple and other things that have come before us, there is serious concern in Ireland, elsewhere in Europe and globally about how tax incentives materialised and how accountants who work for companies or corporations influence decision-making and legislation. The evidence is available internationally. It is our responsibility in these Houses to be sure of the intent. The intent to incentivise businesses looking at research and development to create jobs which are very important to an economy is good, but there needs to be a balance. The legislation, as presented, does not have it. It goes further than the original, but the commitments are too vague. Senator Alice-Mary Higgins has done tremendous work in trying to ensure as much as possible that the intent of the legislation and the initiative will achieve its objectives and that companies will use them well.

I look forward to the Minister of State's response. I assume he will support all of the amendments.

Deputy Pat Breen: Before I speak to amendments Nos. 11 to 18, inclusive, I wish to reassure Senator Alice-Mary Higgins in the light of the comments she has made. One does not want to be too descriptive on the issues about which she spoke. That is important. If one is too descriptive, one confines oneself. Two years down the road, things could be very different and different information could be needed. In that regard, I draw her attention to the catch-all provision about which I have spoken and which is provided for in section 18(2). Subsection (2) provides for the KDB Bill report to include information on such matters as the Minister may direct. In addition, section 18(4)(h) provides for the KDB report to include such other statistical information as prescribed by the Minister. I wish to allay fears about this because I know the Senator has done much work on the Bill and been in constant contact with the Department.

I move to amendments Nos. 11 to 17, inclusive, which are quite interesting. I have listened to the rationale for the amendments tabled by Senators Alice-Mary Higgins and Frances Black, but I do not propose to accept them and will explain why. It might be useful to remind Senators of the intention behind the Bill. The Bill proposes the introduction of the KDB certification scheme for SMEs. The scheme is to be administered by the Patents Office. The process before the office involves the examination of applications to ensure the invention, the subject of the application, meets the criteria of being novel, non-obvious and useful. At the end of the process, if the application meets these criteria, the office will grant a certificate. If not, it will not issue a certificate. A certificate provides the gateway for SMEs to apply for the 6.25% corporation tax rate on profits arising from the invention. The granting of a KDB certificate does not, however, guarantee that the SME will qualify for this lower rate of corporation tax. The Revenue Commissioners will have to consider taxation returns on the basis of the provisions that apply to the KDB scheme introduced by the Minister for Finance in the Finance Act 2015 which came into effect on 1 January 2016. Revenue will, as always, have the ability to obtain the necessary

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information on the KDB to provide reliable information for the Government on the use of the KDB, including information on revenue forgone to the Exchequer.

I fully understand the Senators' desire to ensure ongoing monitoring and evaluation of existing schemes in the areas of research, enterprise and taxation. This is necessary to protect taxpayers' money and ensure new schemes introduced provide the State with value for money. It is extremely important that we get value for money. I assure the Senators that the process of monitoring and evaluating all research, enterprise and taxation schemes is ongoing, with regular reviews. It must be as it is in the interests of taxpayers to have that transparency. In the case of the KDB, I remind Senators that the report on the taxation expenditures published with the budget in October 2015 provides for an *ex ante* evaluation of the KDB scheme. The evaluation outlines the basis of the best estimate of tax forgone of €50 million. The €50 million is for all aspects of the KDB, not just the certification scheme aimed at SMEs.

On 18 January my Department published a report on the economic and enterprise impacts of public investment in research and development in Ireland. The study presents evidence that points to a clear link between company engagement in research and development and stronger sales, exports and employment performance. This includes both Irish and foreign-owned firms supported by the enterprise agencies.

I remind Senators that this is a good Bill because it will increase Ireland's attractiveness for foreign direct investment, which is extremely important. I have just come back from a two-day trade mission to Dubai and the interest in Ireland in terms of foreign direct investment and the interest in indigenous companies is second to none. Research and development, about which Senators have spoken, are extremely important in every area because of the types of industry we have in Ireland, whether in med-tech, information technology or whatever else. The Government is investing in research and development. The Bill is important because it benefits small businesses, about which Senator Pádraig Mac Lochlainn spoke. Small businesses are very important in his constituency in County Donegal. They are the backbone of the economy in rural Ireland. Giving small businesses this access is extremely important because we must ensure innovation is the top priority. I have seen in my job that entrepreneurship is ripe. If all of these elements are in place - the Bill and the companies that come in, irrespective of from where they come - it will increase investment in the country. What is also very important is that this will create jobs, which I think most Senators want. I can go into a little more detail afterwards if Senators have further questions about this issue.

Senator Alice-Mary Higgins: I refer to jobs that would be created in order that we could have evidence-based policies, which I believe is a priority. I am literally looking for evidence. I ask the Minister of State to address how the evidence might be tracked.

Deputy Pat Breen: I might as well read the rest of the response.

An Cathaoirleach: Yes. The amendments are grouped. Nobody will be allowed to speak again on them, except the proposer.

Deputy Pat Breen: I have also taken some notes.

All tax expenditures are reviewed regularly in line with the Department of Finance guidelines for tax expenditure evaluation published in October 2014. These rules apply to the knowledge development box. The evaluation will take place within five years of the introduction of the scheme. That is important for Senators. I think it was a concern for Senator Alice-Mary

Higgins specifically. It is also important to point out that the review of the overall KDB scheme will be a matter for the Minister for Finance.

On amendments Nos. 11 to 14, inclusive, I remind Senators that the controller will publish annually information on the activities of the Patents Office regarding the KDB certification scheme. This information will be laid before the Houses of the Oireachtas and will, therefore, be in the public domain, which is something about which I think Senators had concerns. Revenue will have access to the controller's report to the Minister. The information will, however, be statistical and not financial in nature and relate to the KDB certificates only. Information on linkages with other tax measures and revenue forgone will not be known to the controller or the Minister. Such matters are, I believe, the responsibility of the Minister for Finance.

I move to amendments Nos. 15 to 17, inclusive. Given the nature of the process I have just described before the Patents Office, the amendments do not have any place in the Bill. It is open to SMEs to avail of support and incentives that apply under various research and enterprise programmes. As Minister of State with responsibility for employment and small business, I fully encourage SMEs to avail of the available supports in place, build capacity and provide jobs, which is what we are talking about and which is very much central to the Bill.

As I mentioned, evaluation of research and enterprise effectiveness occurs on an ongoing basis. This is the appropriate manner in which to undertake such evaluations. Requiring a company to indicate if it has ever received a grant subsidy or other support is part of the KDB certification scheme. The amendments would add to the burden on such companies and would not add value. The reality is that the focus should be solely on the project in front of the controller. If the project is good enough, it will be approved on the evaluation of the controller. The facts in front of the controller should be sufficient for him or her to decide if the project should receive a patent and a certificate. The less of that-----

Senator Alice-Mary Higgins: To clarify, the amendments were not suggested as criteria for consideration under the KDB scheme; rather, it is simply a question of knowing whether KDB certification has been previously received, etc. It is not for the controller but for the Minister to have that information in order that they can-----

Deputy Pat Breen: However, it is important that the information before the controller be the information on which he or she should work. That is important. As the amendments are not appropriate to the Bill, I do not propose to accept them.

An Cathaoirleach: Does Senator Alice-Mary Higgins wish to respond? She moved the amendments.

Senator Alice-Mary Higgins: I will respond very briefly. I heard the Minister of State say something which is of concern. Am I right in saying he said a cost-benefit analysis of the knowledge development box scheme would be considered within five years? I wish to clarify if that is correct.

Deputy Pat Breen: Yes. It will take place within five years of the introduction of the scheme.

Senator Alice-Mary Higgins: I believe five years is far too extensive a period and also somewhat contradictory to the Government's commitments regarding equality budgeting, for example, because-----

Deputy Pat Breen: It will take place within five years.

Senator Alice-Mary Higgins: Perhaps the Minister of State might follow it up and indicate the current policy of the Government in terms of when it envisages carrying out the evaluation. If it is in five years, that would be of concern. I again point out that there is a real concern about our commitment to equality budgeting and ensuring we know the cost-benefit balance to which we have committed. Even the Government has committed to a two thirds to one third ratio, for example, for expenditure, tax measures and so forth. I presume that information will be made available annually, even if a full cost-benefit analysis takes longer. I was concerned by this and would like clarification on the matter. Obviously, we would need to know if, for example, the knowledge development box was to result in billions being taken out of the Exchequer because that would be of high relevance to the annual budgeting process, both in terms of the ratio between expenditure and tax measures and the commitment to equality budgeting. It is important to clarify the matter.

I appreciate that the Department has come some way to meeting us and that it is putting forward the report. Again, I suggest that before it goes to the Dáil, it might be good to give an indicative list. Unfortunately, our group is not represented in the other House, but it would be valuable to produce an indicative list with the kind of statistical and other information the Minister would require or expect in the annual report. It is certainly not comforting to me that the Government regards it as excessive to have a simple test. It could be as simple as having a box to be ticked stating “Yes” or “No” with regard to whether a company has availed of previous expenditure measures.

When we talk about jobs, we need to be rigorous. I want jobs and this to translate into jobs. The Minister, Deputy Mary Mitchell O’Connor, was very clear that this was for research and development and not directly related to jobs but that it was believed it had that outcome. However, we are denying ourselves the evidence to show that there is a link between the knowledge development box and the creation of employment. If people go to Enterprise Ireland or IDA Ireland and say they want to open a factory and produce a device, we have no way of knowing that the factory and that production have in any way benefited from the knowledge development box. I know that I will be told that the knowledge development box has contributed to the creation of employment and enterprise, but I will be told it hypothetically and not based on evidence. It is a bad sign if a company’s commitment to research and development is so slight that the idea of ticking a box to indicate that it previously received grants is too onerous or a disincentive, particularly given the supposed commitment to working with Enterprise Ireland and all of the many robust and important benefits and systems we have in place to encourage companies to grow. It would be a very mild measure.

I note that when the Government will seek to defend the knowledge development box in the future by refusing the amendments, it will have denied itself the evidence. It will not be good enough to say research and development leads to jobs based on some figures from other countries when we have a significant research and development initiative that we are funding and subsidising from the Exchequer but we have not bothered to make a link with other areas of employment or enterprise and anything that leads to production or jobs. The knowledge development box will be floating, separate from any joining of the dots with other enterprise measures. Any Minister who will say we believe the knowledge development box led to this or that employment will have denied himself or herself the evidence. The hypothetical will not be good enough in the future. It is unfortunate that the Minister of State and the Department seem to be willing to deny themselves evidence for this important platform. If we are serious

about the economy, enterprise and innovation, we need to be serious about the evidence and the measures in place. We need to ensure the building blocks fit into each other and work together. I want Ireland to be a centre for research, development and innovation, but to achieve this, we cannot simply be throwing pennies into a wishing well and accrediting good things that may or may not happen to the pennies we have thrown into the wishing well. This is an important and simple proposal which would strengthen the hands of the Minister of State and future Ministers who support it. I regret that the Minister of State is not able to support the amendments, in particular, any of amendments Nos. 15 to 17, inclusive, which I believe are very reasonable.

An Cathaoirleach: Before I call the Minister of State, I welcome to the Visitors Gallery seven lovely young people who are studying for their masters degrees in Queen's University, Belfast. They are doing a project as part of their placement at Stormont. I am sure some of my colleagues would be interested in something similar happening in this Parliament. I met the delegates earlier. I hope they will enjoy their visit to Leinster House and that they will gain some benefit from how this and the Lower House work.

Deputy Pat Breen: Senator Alice-Mary Higgins has said she wants Ireland to be a centre of excellence for innovation. Ireland is already a centre of excellence for innovation. That is why it has been so successful on the world stage and entrepreneurship is alive and well. It is why *The Wall Street Journal* has stated Ireland is now the best centre in the European Union for entrepreneurship. That is something of which we should be very proud. It is that entrepreneurship and innovation which are driving job creation in the country. The research and development that are ongoing, whether at indigenous company or multinational level, are extremely important. The Bill will complement what we are all talking about. We should keep talking up the country because we have a good thing about which to talk. Our reputation is enhanced all over the world, wherever we go. This is the fastest growing economy in Europe. The unemployment figures have come down to 7.1% today and I believe they will continue to fall. The 2017 Action Plan for Jobs was published this morning, with the aim of creating 45,000 jobs this year. That will be done through the innovative companies that continue to strive, even with the challenges and difficulties in the economy.

On accountability, the Senator asked that the annual report go before the Joint Committee on Jobs, Enterprise and Innovation. I suggest the proper place in which to scrutinise such things is the Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach, at which there will be an opportunity to scrutinise it with the Minister for Finance, given that this issue relates to taxation.

On amendment No. 15, I reiterate that we are trying to cut down on red tape and bureaucracy. We have to put faith in the controller who has vast experience. It is only right that he see what is on paper in front of him and make his evaluation on the information available. Some of the information could be on that issue, but it is important that we keep it as tight as possible.

Senator Alice-Mary Higgins: I want to clarify that I have not suggested it be part of the controller's evaluation.

Deputy Pat Breen: That is fine. That is where I am coming from in that regard. I hope the Bill will progress further because it is important legislation. It is an important part of the vision we have for Ireland. We need to ensure there will be more research and development and that we will encourage more people to get involved in research and development, particularly in the patent and invention sector.

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Amendment put and declared lost.

Senator Alice-Mary Higgins: I move amendment No. 12:

In page 15, between lines 8 and 9, to insert the following:

“Review and scrutiny

19. The Minister shall, as part of the annual Budget process, produce a report on the operation of the KDB including a consideration of the intersection of the KDB with other tax expenditure measures and its impact on the delivery of an effective tax rate for corporations.”

Senator Pádraig Mac Lochlainn: I second the amendment.

Amendment put and declared lost.

Senator Alice-Mary Higgins: I move amendment No. 13:

In page 15, between lines 8 and 9, to insert the following:

“Review and scrutiny

19. The Minister shall ensure appropriate annual information exchange between the Department of Jobs, Enterprise and Innovation and the Office of the Revenue Commissioners in order to facilitate the publication of information on the cost of this initiative, including the cost to date for the Exchequer in revenues forgone, as part of the annual budgetary process.”.

Senator Pádraig Mac Lochlainn: I second the amendment.

Amendment put:

The Seanad divided: Tá, 13; Níl, 23.	
Tá	Níl
Bacik, Ivana.	Boyhan, Victor.
Black, Frances.	Burke, Colm.
Conway-Walsh, Rose.	Burke, Paddy.
Craughwell, Gerard P.	Buttimer, Jerry.
Gavan, Paul.	Byrne, Maria.
Higgins, Alice-Mary.	Coghlan, Paul.
Humphreys, Kevin.	Conway, Martin.
Mac Lochlainn, Pádraig.	Daly, Mark.
Ó Clochartaigh, Trevor.	Daly, Paul.
Ó Ríordáin, Aodhán.	Gallagher, Robbie.
O’Sullivan, Grace.	Hopkins, Maura.
Ruane, Lynn.	Horkan, Gerry.
Warfield, Fintan.	Lawless, Billy.
	Lombard, Tim.
	McFadden, Gabrielle.

	Noone, Catherine.
	O'Donnell, Kieran.
	O'Donnell, Marie-Louise.
	O'Mahony, John.
	O'Reilly, Joe.
	Reilly, James.
	Richmond, Neale.
	Wilson, Diarmuid.

Tellers: Tá, Senators Alice-Mary Higgins and Lynn Ruane; Níl, Senators Gabrielle McFadden and John O'Mahony.

Amendment declared lost.

Senator Alice-Mary Higgins: I move amendment No. 14:

In page 15, between lines 8 and 9, to insert the following:

“Committee Scrutiny

19. An annual report on the operation of the KDB including a consideration of the intersection of the KDB with other tax expenditure measures and its impact on the delivery of an effective tax rate for corporations should be presented and discussed by the Joint Oireachtas Committee on Jobs, Enterprise and Innovation.”.

Senator Pádraig Mac Lochlainn: I second the amendment.

Amendment put and declared lost.

Senator Alice-Mary Higgins: I move amendment No. 15:

In page 15, between lines 15 and 16, to insert the following:

“Intersection with wider enterprise and innovation strategy

20. (1) Companies applying for the KDB certificate should be asked to indicate at the time of application whether they are presently or have been previously in receipt of grants, subsidies, tax incentives or other enterprise or research and development supports from a public or semi-state body.

(2) Companies applying for grants, subsidies, tax incentives or other enterprise or research and development supports from a public or semi-state body should be asked to indicate whether they are presently or have been previously granted a KDB

certificate.

(3) Information on the level or frequency of intersection between the KDB and other enterprise or research and development initiatives is to be made available to the Minister for Jobs, Enterprise and Innovation in order to inform overall jobs, enterprise and innovation strategies.”.

Senator Pádraig Mac Lochlainn: I second the amendment.

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Debate adjourned.

Amendment put:

The Seanad divided: Tá, 15; Níl, 24.	
Tá	Níl
Bacik, Ivana.	Boyhan, Victor.
Black, Frances.	Burke, Colm.
Conway-Walsh, Rose.	Burke, Paddy.
Craughwell, Gerard P.	Buttimer, Jerry.
Gavan, Paul.	Byrne, Maria.
Higgins, Alice-Mary.	Coghlan, Paul.
Humphreys, Kevin.	Conway, Martin.
Kelleher, Colette.	Daly, Mark.
Mac Lochlainn, Pádraig.	Feighan, Frank.
Nash, Gerald.	Gallagher, Robbie.
Ó Clochartaigh, Trevor.	Hopkins, Maura.
Ó Ríordáin, Aodhán.	Horkan, Gerry.
O'Sullivan, Grace.	Lawless, Billy.
Ruane, Lynn.	Leyden, Terry.
Warfield, Fintan.	Lombard, Tim.
	McFadden, Gabrielle.
	Noone, Catherine.
	O'Donnell, Kieran.
	O'Donnell, Marie-Louise.
	O'Mahony, John.
	O'Reilly, Joe.
	Reilly, James.
	Richmond, Neale.
	Wilson, Diarmuid.

Tellers: Tá, Senators Alice-Mary Higgins and Lynn Ruane; Níl, Senators Gabrielle McFadden and John O'Mahony.

Amendment declared lost.

Convictions for Certain Sexual Offences (Apology and Exoneration) Bill 2016: Second Stage

Senator Gerald Nash: I move: "That the Bill be now read a Second Time."

I will be sharing time with my colleague, Senator Aodhán Ó Ríordáin.

I am pleased to introduce the Convictions for Certain Sexual Offences (Apology and Exoneration) Bill 2016. Less than two years ago the people of this republic came together and declared that all citizens should be treated equally no matter who they loved. On 23 May 2015

this became the first country in the world to allow same-sex couples to marry. That day we all reflected on how far we had come as a country and a society. We were also allowed a brief moment to pat ourselves on the back. The world stood and watched the good news coming from Ireland being beamed into their homes. It was a powerful expression of who we were - an open, free and tolerant country and people, able to celebrate and embrace the richness of human diversity.

On that day I also thought of people who were gone; people who had passed on. I thought of gay friends of mine who had passed away and not lived long enough to see that day of days. I thought of those who, for the bulk, if not all, of their lives had been isolated, alienated, discriminated against, persecuted and, in some cases, prosecuted for being who they were. I also thought of colleagues like Senator David Norris, whose personal courage and, at times, sheer bloody-mindedness helped to usher in legislative changes and changes in societal attitudes and opinions. He cannot be here today, but I know that he is following the debate attentively.

The State inherited from Britain the draconian laws we applied to sexual acts between consenting men. As a state, we applied and enforced those laws, with varying levels of enthusiasm, for decades. It is impossible to be certain of the number of convictions that took place under what I have described as anachronistic legislation related to acts of “gross indecency” and so on. Such phrases are now, thankfully, in the past. It is most likely that the numbers are in the high hundreds, perhaps more. The point is not, ostensibly, the number of people convicted of offences but the chilling effect the criminalisation of LGBT citizens had - the paralysing fear of being found out, always having to look over one’s shoulder and having to pretend to be someone one was not so as not to bring shame on one’s family. That completely destroyed countless lives in this country. I often wonder how many good people were lost through emigration, not as a direct result of economic misery but of the deep-seated and suffocating conservatism of post-independence Ireland and its official policy of hostility to gay citizens. It is impossible to know.

While we cannot right the wrongs of the past, we must acknowledge that as a society we have come a long way in a relatively short space of time and made Ireland a better, more equal and tolerant place. Many Members of this House are responsible for that, including Senator Aodhán Ó Ríordáin when he was Minister of State at the Department of Justice and Equality with responsibility for equality issues, as well as Senators Ivana Bacik, David Norris, Jerry Buttimer and others.

When I sat the leaving certificate examinations in 1993, sexual acts between same-sex couples were illegal. By the time I got to college in September of that year, gay men had finally been liberated and were no longer made into criminals simply for having a sex life. Shortly after that, the employment laws were amended and we have seen a raft of other legislative changes in the past 24 years that have objectively made the country a much better, more tolerant and inclusive place.

An important element of the drive towards equality is the need to come to terms with our past. I firmly believe those Irish citizens - our brothers, fathers, uncles, cousins and friends - who were harassed and tormented by a State culture that officially treated them with cruelty, hostility, derision and ridicule are owed an apology. As was done in the United Kingdom, we should apologise to and exonerate those who were convicted of sexual offences before the decriminalisation of homosexuality in 1993. They would be innocent of committing any crime today. Turing’s law, as it has become known in the United Kingdom, was passed yesterday, but

unlike the proposition before us, it provides for a pardon. We have not provided for such for a very good reason. We believe that to do so would imply that what gay men did was wrong and it was not. The Bill provides for an apology and an exoneration. It also goes much further than that. It will, if accepted by the Government and passed in both Houses, officially acknowledge that the offences and prosecutions involved were “improperly discriminatory, contrary to human dignity and in breach of personal privacy and autonomy”. I appeal to the Minister of State, Deputy David Stanton, and his senior colleague, the Tánaiste and Minister for Justice and Equality who has a very strong track record as a legislator in this area and a campaigner and advocate for equality, to not just agree not to oppose the Bill but to accept it, its central ambition and the manner and spirit in which it has been tabled. If the Minister of State and his ministerial colleagues are concerned about elements of the Bill, I suggest we take it to Committee Stage with the minimum of delay. We were 26 years behind the United Kingdom in decriminalising homosexuality. Let us not be left far behind again and let us act now. If there are technical issues with the Bill, let us discuss them in a spirit of openness in order to achieve what most of us in this House would wish to achieve. I acknowledge that nothing we do today can make up for the hurt and cruelty visited on LGBT citizens throughout our history. Moreover, there is still some way to go before we can say with certainty that we have reached what we might term “full equality”. However, in apologising for what we did in the past and recognising that it was wrong, we can go some way towards righting those wrongs and healing those wounds.

Senator Aodhán Ó Ríordáin: I am proud to support Senator Gerald Nash’s Bill. I congratulate him on the work he has done to bring this important legislation before the House. At its heart is an essential understanding of what equality really means. Equality is not a sense that one privileged group in society can hand down rights to another in society. That is not what equality means. It is not in the gift of one group to allow another to be themselves. Equality is very different. It is an understanding we are all equal in every sense and that if any group are deemed or perceived to be lesser, we will do everything in our power to override, undermine, fix and change that understanding.

In the past few years when the Labour Party was in government with Fine Gael, we managed to achieve quite a number of things in the sphere of LGBT rights. Marriage equality is an obvious one, as is the Children and Family Relationships Act. There are now mandatory anti-homophobic and anti-transphobic policies in all schools and we also passed the Gender Recognition Act and amended section 37 of the Employment Equality Act. These were five commitments made by the Labour Party which were achieved in government.

What we are doing is acknowledging that while we have achieved a huge amount in the recent years, we must right the wrongs of the past. We have to admit that our legislative provisions before 1993 were wrong and that they undermined people’s rights. We have to acknowledge this as a state and apologise for it. The legislative provisions at the time and the constitutional provisions, until very recently, made people feel that they were lesser beings. They made people feel second best, not full and complete parts of this republic. I say this in the context of the current situation worldwide because often we can be quite complacent about the advancement of human rights and the equality agenda in this state and across Europe. As we look around the world today, we see the new political dispensation in Russia and the new political situation in the USA, where the Vice President has stated openly his belief LGBT people can be corrected by some bizarre form of medical intervention. That is the new political dynamic we are facing in the United States of America. We are saying quite clearly in Seanad Éireann today that this republic, on the edge of Europe, believes not only do LGBT people not need to be corrected

but that the fact that LGBT people were not full, complete and equal members of this republic in the past is something for which we must apologise. We must be absolutely determined to ensure we will advance this agenda further. It is not correct to suggest that because we had a successful marriage equality referendum or because other legislation has been passed - even this valuable Bill - it will make it easy for members of the LGBT community to come to terms with themselves and come out to their family and friends in various parts of Ireland. There is, unfortunately, still a very dark road ahead for many young and not-so-young people who still feel as if they are living in an Ireland that does not accept them. It is like saying that because the Civil Rights Act was passed in America in the 1960s, African Americans are completely equal in the eyes of all citizens and states in America. That is not the case.

What we must do in this republic and the Houses of the Oireachtas is ensure every single Bill that we can pass or Act that we can correct is so passed or corrected. We must also apologise for the wrongs of the past. Just like Senator Gerald Nash, I sat my leaving certificate examinations in the early 1990s. It is unbelievable to think that at the very same time my contemporaries or people older than me were criminalised for being who they were and for the love they felt. I know that the younger generation - those younger than us - find that absolutely unbelievable. What was remarkable at the time of the referendum was the fact that young people, regardless of background, gender or from where they came, found it remarkable that before 1993, engaging in homosexual activity was a criminal act. I know that the Minister of State feels strongly about this issue. I congratulate him for the work he has done heretofore in his equality brief. We have met on a number of occasions to discuss various issues. He is a person with a deep commitment to equality. As Senator Gerald Nash said, when issues such as this come before the House, there is often a temptation for Governments to pick holes in things. There is sometimes a temptation for Opposition parties to play politics. In this instance, the Minister of State will acknowledge that Senator Gerald Nash has brought forward legislation that is well crafted and has the right motivation behind it. What the Minister of State and his office can do is take it in that spirit and if it needs to be tweaked, changed or improved, that could be done at a different stage of the legislative process.

The Members of this House can stand together proudly, collectively and across party, in this republic and send a message to the rest of the world. Let us not pretend that this agenda is going in the same direction in every single part of the world because it is not. It is going backwards. It is going backwards in America, Russia and across the world in many respects. If this House was to restate its absolute commitment to equality for our LGBT brothers and sisters across this land, it would be a powerful symbol at this time. I commend Senator Gerald Nash for the work he has done and my Labour Party colleagues for supporting the Bill. I commend Senators across the House who are standing in solidarity with the Bill and the Minister of State's endeavours to bring this issue to the fore. It will mean an awful lot for people who lived in the shadows before 1993. None of us can understand what a measure such as this passed in the House today will mean for people who lived in those dark days.

Senator Martin Conway: I welcome the Minister of State, Deputy David Stanton. He is a Minister of State and a politician who is deeply committed to the principles of equality, as he proved in the work he did as Chairman of the Joint Committee on Justice, Defence and Equality. I commend Senators Gerald Nash and Aodhán Ó Ríordáin for bringing forward what I think is very important legislation. Senator Aodhán Ó Ríordáin spoke about the 1990s, which was when we sat our leaving certificate examinations. I shared the campus at Belfield with Senator Gerald Nash when we were both student activists and it was quite shocking. Senator Alice-

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Mary Higgins was also there. It is amazing. It is like a UCD *alma mater*-----

Senator Catherine Noone: It is like a reunion.

Senator Lynn Ruane: I was not born.

An Leas-Chathaoirleach: The Senators plan to meet up here. Is that it?

Senator Martin Conway: Yes. Former Senator and Leader of the House Maurice Manning was our lecturer at the time.

This is exceptionally important legislation. It is funny when one talks about an apology because the word “sorry” is only one word but it means so much to so many. It is not a difficult word to say or a difficult concept to express. We saw the Taoiseach in one of his proudest moments when he stood up in Dáil Éireann and made a heartfelt and sincere apology to the victims of sexual abuse. There are certain things we need to do as a society. I tabled a motion last week on the teaching of history and believe that in order to look to the future, one has to understand the past. The wrongs that happened in the past need to be acknowledged and a proper structure put in place to rectify them. I agree with what has been said about the principle of a pardon because it would not be appropriate because it would, in a sense, be acknowledging that somebody did something wrong. It is absolutely appropriate that there should be an apology. I am absolutely delighted, on behalf of the Fine Gael group of Senators, as their spokesperson on justice, to fully endorse the Bill. My understanding is the Minister will not oppose it. If there is tweaking to be done, it will only be of a technical nature to ensure everything will stand up to whatever scrutiny the Attorney General and others may give it. There may not even be any.

What a week it has been in world politics. We have seen what only a couple of years ago one would have thought was a dream or a horrible nightmare. That is the reality. Politicians are regularly accused of not fulfilling their promises, but what is going on in the United States is over-fulfilling promises. It is creating a new definition of political promise and delivery and rhetoric and all that is going on. The people who will suffer as a result are those on the margins. The people who suffered bigotry and all that goes with it in the past are the ones who will suffer most from what is going on. What we achieved in the marriage equality referendum was world renowned. We set a standard and a template for what Ireland, as a small country, could achieve. When we talk, we might only be throwing a pebble into a big ocean, but pebbles can have ripple effects. Doing the right thing is always a must. Ripple effects can change society, lives and world thinking. This is a small country, but it is a country with a proud tradition and record. The referendum on marriage equality had an impact. It had a ripple effect throughout the world. Doing the right thing is what we should always strive to do. Setting international standards in terms of equality, recognising what happened in the past and putting the structures in place to say the simple word “sorry” is something on which we should definitely come together and unite in this House. I sincerely hope the work Senator Gerald Nash has done to bring this Bill to the floor of the House will receive unanimous support and that we will see the Bill becoming an Act signed by the President and part of who we are and the structures of society. I wish the Bill well. I look forward to engaging on it on both Committee and Report Stages. I hope I will be here to welcome its passing when it is passed by the House.

Senator Ned O’Sullivan: I welcome the Minister of State, Deputy David Stanton, and commend the Labour Party group for bringing forward the Bill which my party, Fianna Fáil, will be happy to support. I was glad to hear Senator Gerald Nash mentioning our colleague,

Senator David Norris, who cannot be with us and remembering the great work he did for decades when he was a lone voice in championing people who had an alternative view of sexuality at the time. Someone wrote, “The past is a foreign country: they do things differently there.” It is very hard to retrospectively forgive or understand people for committing what were considered crimes at the time. Members have talked about when they sat their leaving certificate examinations. I sat my leaving certificate examinations in the 1960s. Anyone of my generation growing up in rural Ireland, of which the Leas-Chathaoirleach is one-----

An Leas-Chathaoirleach: Not far off it.

Senator Ned O’Sullivan: We are about the same age. We remember how people who were different or gay in the community were treated abominably. They were laughed at and shunned. What miserable, horrible lives many of them had to live. Many of them left the country because of the way they were treated. That is the way things were at the time. It was very unfortunate and wrong. This Bill will give some comfort and redress to those who were on the wrong side of things in those days. The poet Philip Larkin said sex came to Britain sometime between the end of the ban on *Lady Chatterley’s Lover* and the Beatles’ first LP. I do not think it came to County Kerry quite as fast.

My party has a good record in terms of the general thinking behind the Bill.

In 1989 a Fianna Fáil Government steered through the Prohibition of Incitement To Hatred Act 1989 which made it an offence to stir up hatred against a group or persons on a number of specific grounds, including their sexual orientation. It was a Fianna Fáil Minister, Máire Geoghegan-Quinn, who in 1993 brought forward the seminal Criminal Law (Sexual Offences) Act which finally brought to an end the unfair criminalisation of homosexual practices. It is worth noting that this legislation was introduced in the teeth of a poll conducted by *The Sunday Press* which showed that over 50% of the population were opposed to a change in the law. We also resisted attempts to set a discriminatory age of consent which ensured effective equality, regardless of sexual orientation.

The Employment Equality Act 1998 prohibits discrimination in employment on grounds of sexual orientation. It was closely followed by the ground-breaking Equal Status Act which was initiated by Fianna Fáil and took effect in October 2000. There is a long list of other Acts to which my party contributed and of which I am proud. I am proud to support this Private Member’s Bill which is progressive. Other Members have said we are entering into an unknown political scenario. The regressive, backward-looking approach in the largest and most powerful democracy in the world must concern us. It is extraordinary that in the country which gave us Abraham Lincoln, Thomas Jefferson, Roosevelt and John F. Kennedy President Trump was elected. We must admit that he was democratically elected, but I hope, like many big storms, the wind will peter out after a while. It is early days yet and we live in hope.

It is great to support the Bill. It is frightening to think that great Irish people like Oscar Wilde who was a genius were criminalised. He had such a horrible end to his talented life because of the narrow-mindedness which obtained in his day. We welcome the Bill which we will support on every Stage.

Senator Fintan Warfield: On days like today, when we meet in a space perceived to be safe to discuss my identity and politics, we should be mindful of the fact that many of our broth-

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ers and sisters across the globe still literally have to put their lives on the line to do likewise. I refer particularly to members of the lesbian, gay, bisexual, transgender, queer or questioning, and intersex, LGBTQI, community in Uganda and Russia who face horrific levels of oppression and violence. I express my solidarity with LGBT Americans who have taken to the streets of their cities. Our brothers and sisters, friends, allies and communities, wherever they are in the world, should know that they are not alone. Their persecutors should also know that we do not accept their violence or hate which we will overcome with love and compassion.

On Friday, 27 June 1969 members of the LGBT community engaged in physical action on the streets of New York City to assert their rights to equality and justice. Contrary to a white-washed narrative, the Stonewall riots were led initially by women, black, trans and homeless citizens. Seven weeks later, on 14 August 1969, the government in London deployed British troops to the streets of Derry and Belfast and soldiers would soon shoot 26 unarmed civil rights protesters off the streets of Derry. I am a proud beneficiary of the LGBTQI community. I am also a republican, a socialist, an internationalist, a feminist and an environmentalist. These are struggles that interconnect and parallel, sharing a demand for self-determination. When we talk about LGBT rights on this island, we are talking about partitioned rights. The rights of the LGBTQI community, like all other communities which transcend the Border, continue to be partitioned.

Our national outlook is islandwide and global in that it is inclusive of the diaspora across the world. Marriage equality must be extended with immediacy to citizens and residents across the Border. No thinking person in this Chamber could stand over the fact that LGBTQI people can marry in Dundalk but not in Newry. If anyone in this Chamber is in any doubt as to why the lights are off in Stormont, just look this way. All-island marriage equality is alongside a Bill of Rights and an Acht na Gaeilge, as well as respect, diversity and equality. The civil marriage referendum redefined what it meant to be Irish. It told the world that there was no single proposition for Irish identity, only diversity. It is in that spirit we can build a new Ireland, a reunified Ireland, not only at peace from the gun but also one in which citizens would be at peace in their lives, free from scapegoating and the search for the other. We cannot escape from the fact that partition continues to place a ceiling on imagination for this island. It crushed a cultural movement and split the national movement from the labour movement. It triggered a counter-revolution and copperfastened two deeply conservative states in which religious control and censorship were the order of the day. The political establishment in the State facilitated that grip to control our laws, the education system, the health care system and even our consenting sex lives.

In 1993 I was 15 months old when homosexuality was decriminalised. I cannot give personal expression to the impact of criminalisation on the LGBTQI community, but I can understand the taboo it created. It created an unwillingness on the part of establishment politicians to deal with the likes of the Hirschfeld Centre in Dublin city's cultural and social space for lesbian and gay men. One thinks of issues such as giving a real and a genuine response to the HIV crisis, homophobia and public beatings of gay men. One thinks of various sexual offences, including rape, that were allowed through a legal get-out clause because of the laws criminalising gay men and that air of criminality. Both before and since the referendum on civil marriage equality, my boyfriend and I spoke and have spoken about what prospects would be if the referendum were to fail or had failed. Our discussion centred on whether we would stay in Ireland. Thankfully, I cannot answer that question. How many people have we lost to Ireland because of criminalisation? Can anyone tell me how many lesbians and gay men left the State because

of that air of criminality?

We still do not seem to consider the consequences of criminalisation. Take, for example, the individual who is addicted to drugs and dealt with in the justice rather than the health system, which plays into the hands of individuals who seek to marginalise and feel comfortable in calling someone a “junkie”. We need to think about the impact of criminalisation on certain sections of our society and the impact it creates for all of us. We need to redefine it in the interests of the public good.

Irish women and the LGBTQI community share, in the most unfortunate commonality, the historical and contemporary criminalisation of their bodies and lives. Today women who seek out what should rightfully be theirs are also considered criminal. Young people, particularly after the marriage referendum, identify with that shared sense of oppression and marginalisation. A message is emerging loud and clear that Irish women and our society deserve better. Older generations are advancing a narrative which lays bare the misogyny and deeply ingrained sense of prejudice faced by women since the foundation of the State. There was the horror of institutional abuse in the industrial schools and the Magdalen laundries, as well as the symphysiotomy scandal, the Neary scandal and the Bethany Home scandal. There were cases like those of Louise O’Keeffe and Senator David Norris which were pursued all the way to the European court by the State which also intimidated other victims to drop their court cases. For me, the referendum on civil marriage equality acted as an apology to the LGBTQI community. I believe the repeal of the eighth amendment would do the same for women.

I welcome the Bill and thank Senator Gerald Nash for bringing it forward. The fearlessness, enthusiasm and energy of LGBTQI people who were forced to endure criminalisation have empowered my activism and that of others of my generation. In everything I do I attempt to acknowledge their struggle, for which I thank them.

Senator Lynn Ruane: I thank the Labour Party Senators for bringing this important Bill to the House.

I fundamentally support the measures contained in the Bill to undo some of the damage inflicted by the State on the LGBTQI+ community. While an apology and exoneration will do little for the men prosecuted under the relevant Acts, it would be an important step for us to recognise the indefensibility of those prosecutions and attempt to rectify the damage done by the State to gay men and those close to them. It seems surreal at a time of such increasing acceptance of the LGBTQI+ community that it was only in 1993 that homosexual acts were decriminalised in Ireland with the passage of the Criminal Law (Sexual Offences) Bill 1993 which passed its Final Stages in this House only 24 years ago in June. It is the sad reality that Ireland’s record on LGBTQI+ equality issues has been a noticeable stain on our commitment to human rights. However, in what is surely one of the most welcome political developments of recent years, we have seen a reversal of this trend and increased recognition of the equality of LGBTQI+ citizens, as evidenced by the major legislative initiatives in recent years such as the legislation on civil partnership in 2010 and the passage of the historic Gender Recognition Bill in 2015, not to mention that incredible day for politics two years ago when Ireland became the first country in the world to enshrine civil marriage rights for same-sex couples in its Constitution by popular vote.

Of course, I am not the first person in this House to pay tribute to what happened on that day in May. I often hear my colleagues in both Houses of the Oireachtas paying tribute to what hap-

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pened on that day and the positive and progressive shift it showed, hailing it as a landmark day for Irish politics and the true achievement of equality for LGBTQI+ citizens. While in many ways I share that sentiment and fully recognise what a special day it was for many people, I often feel that, because there is such a strong perception that equality was secured for LGBTQI+ people in the marriage equality referendum, the urgency of the fight for advancement and our ongoing commitment to always look for avenues to improve the lives of LGBTQI+ citizens have dissipated somewhat.

It is easy to look at the referendum result and think civil marriage rights for LGBTQI+ people was the apex of the fight for equality for a long marginalised community. It is much harder to view the result of the referendum as simply a significant marker in a much longer process, that while increasing civil equality is important, it is by no means the only way we can measure the true equality of LGBTQI+ people in the State. If we start to expand the markers by which we measure that equality, we can start to see just how much more work needs to be done to help LGBTQI+ citizens. For example, transgender citizens under the age of 18 years and those who identify as gender non-binary are still not adequately accommodated under the Gender Recognition Act 2015. This needs to be changed. I call on the Government to consider such changes as we approach the Act's review period.

Another issue is that while I welcome the recent decision made by the Minister for Health, Deputy Simon Harris, to lift the lifetime ban of MSM blood donations, I have to ask why he has decided to maintain a one-year deferral period when, as far as I can tell, there is no scientific evidence to justify such a deferral and many European countries do not have one in place. The continued existence of such a ban is discriminatory and stigmatising and will, in practice, exclude many MSM who wish to donate blood.

I applaud Malta for last month being the first European country to ban gay conversion therapy. It would be a significant statement of Ireland's commitment to equality for LGBT citizens if the Oireachtas were to consider enacting a similar ban.

Another issue relates to the worrying statistics for LGBT homelessness, mental health, LGBT+ sex education and suicide. Last year a paper entitled, *Swimming with Sharks*, was published by the University of Queensland. It documents the very detrimental and damaging impact the "No" campaign had during the marriage equality referendum on the mental health and well-being of those in the Irish LGBT community. In the light of this and the concern and statistics, we should be considerate and target national efforts to deal with these problems.

Another worrying statistic shows the recent increasing level of HIV among MSM, with 377 new cases in 2014, and the rise of trends such as chemsex. As a result, we should be debating how to expand the availability of and information on the preventive drug PrEP and improving LGBT+ specific sexual education in schools.

I was also contacted recently by a retired lecturer from Trinity College Dublin whose same-sex partner's pension entitlements were denied as the lecturer had not been married by the age of 60 years, despite the fact that civil partnerships were not even legal before he turned 60. I understand this extraordinarily unfair administrative anomaly will be dealt with by Senator Ivana Bacik's recently introduced Pensions (Equal Pension Treatment in Occupational Benefit Scheme) (Amendment) Bill 2016, which is welcome.

I do not raise these issues to paint a negative picture of how the State treats LBGT+ people.

I simply want to raise the point that when we are considering how we can make amends to LGBT+ citizens who were wronged by the State, as this worthy Bill does, we should also take the opportunity to consider how we can best support Irish LGBT+ people in the here and now and the future. All of the challenges that faced the LGBT+ community were not resolved on 22 May 2015. All of the challenges that face that same community today will not be resolved by the passage of this legislation. However, they represent significant markers in a process that, if coupled with concerted efforts and attitude changes across a range of policy areas, small and large, will strengthen the equality of LGBT+ citizens in the future. I am proud to support the Bill.

Senator Victor Boyhan: I thank Senator Gerald Nash and his colleagues for bringing the Bill to the House. It deals with a really important issue.

I was in my office when I heard the contribution of Senator Ned O’Sullivan. It was eloquent, well put together and thought-provoking and touched on many points. It begged me to get here quick to partake in the debate. It was my intention to come, but I was delayed. I was also present for Senator fintan Warfield’s valid contribution. They were two compelling cases for why we should be supporting the Bill.

What are we talking about? The explanatory memorandum states the Bill, in effect, is to provide for, “an apology to and exoneration of persons convicted of consensual same-sex sexual acts, on the grounds that prosecutions for such offences were improperly discriminatory, contrary to human dignity and in breach of personal privacy and autonomy”. That is what it is about; an apology is only a word. The Bill is to be welcomed, but what is needed is more than an apology. There has to be a recognition that a wrong was done and that there was discrimination. People were hurt, disappointed and let down by the State.

The explanatory memorandum further states that the Bill, “provides that a person convicted of any such offence receives an apology and exoneration and an acknowledgement that the offences concerned and prosecutions for those offences were improperly discriminatory, contrary to human dignity and infringed personal privacy and autonomy”. That is extraordinary, but what I am more concerned about and seeking clarify on is that the explanatory memorandum further states the Bill will not confer any statutory right on any person, not create a cause of action or cause the fresh accrual of a cause of action, and not impose any liability on the State or any person. What are we really saying? Is it all words? It is only an apology, but there is no liability or potential case for anyone else to seek redress. The Minister of State, Deputy David Stanton, will be familiar with the redress legislation brought forward by a previous Government. It recognised the hurt, the violation and the abuse of citizens. The State brought forward a redress scheme. It will not right all wrongs, but it is in place and has been established. That is an important point.

I am supportive. I am also mindful of the great work Senator David Norris who is not with us has done in this area. We need to recognise his work but also that of many others who silently go about as advocates and assist and support in their own quiet and private way the rights of others. All politicians, on all sides, do this in both Houses of the Oireachtas and there are various reasons for how they so operate. Ultimately we want equality, fairness and justice. An apology simply is not enough. Through legislation, offering opportunities and education, employment law and everything else, we have to demonstrate time and again that we are about equality for all people, regardless of their differences. We must celebrate that diversity that enriches our society and life. That has to be echoed through all legislation we put through both

sides of the House. At this point I am happy to commit myself to supporting this legislation on every Stage. It is positive and progressive and while it may not go far enough, it is a big start.

Minister of State at the Department of Justice and Equality (Deputy David Stanton):

I will speak on behalf of my colleague, the Tánaiste and Minister for Justice and Equality, Deputy Frances Fitzgerald, who regrets she cannot be present owing to other business, but she is very interested in this issue. I also thank Senators Gerald Nash, Ivana Bacik, Kevin Humphreys and Aodhán Ó Ríordáin for introducing the Bill.

The Bill is very interesting. Its stated purpose is to provide for an apology and exoneration of people convicted of certain same-sex sexual acts. The Bill is similar in sentiment but very different in effect from the UK Protection of Freedoms Act 2012 which provides for a disregard of such convictions and that jurisdiction's Policing and Crime Bill 2015 which I understand has been recently enacted and is known as Alan Turing's law. It will grant a pardon to any person who has a conviction disregarded under the 2012 procedures to which Senator Gerald Nash alluded. Alan Turing's life was portrayed recently in "The Imitation Game". If one saw it, one would have seen the injustice meted out to him in the end. Mention also was made of Oscar Wilde. I join in recognising the work of Senator David Norris in this area.

There is no system of disregarding convictions in Ireland. Legislation was enacted last year which enables minor convictions to be regarded as spent after a number of years, but this simply means that the convicted person does not usually but there are exceptions have to disclose those convictions, for example, when applying for a job. The record of the conviction is not deleted. The apology and exoneration proposed in the Senators' Bill appear to be purely of declaratory nature. It is, to some degree, along the lines of the Defence Forces (Second World War Amnesty and Immunity) Act 2013. However, that Act provides for an amnesty for those convicted of being absent without leave or who were dismissed from the Defence Forces pursuant to emergency powers in force at the time while fighting for Allied forces during the Second World War. The Defence Forces (Second World War Amnesty and Immunity) Act 2013's approach to an amnesty for each relevant person involved an acknowledgement that the treatment they had received as a consequence of their actions was unduly harsh, an apology for such treatment and an exoneration in respect of those acts which had occurred in the special circumstances of the Second World War.

The disregard of a conviction in the United Kingdom in such cases is of offences under the relevant legislation and involves an application that must be considered by the Home Secretary. The conditions of the disregard are that the act was consensual, that the other person involved was 16 years or older and that the act would not now be an offence under the Sexual Offences Act 2003 of sexual activity in a public lavatory. As well as the information required for such an application to be considered, the UK Act also sets out the procedure to be followed by the Home Secretary in considering it. If a disregard is granted, all records of the offence are deleted and it has the effect that the conviction never occurred. I understand the authorities in Northern Ireland are preparing to implement the 2015 Bill which has now been enacted and that their intention is that a pardon will automatically follow a disregard in a one-step system.

Turning to the detail of the Bill, it is clear that it is significantly different from the formalised approach I have outlined. Section 1 sets out the now abolished offences to which the Bill will apply. These are the Act for the Punishment of the Vice of Buggery (Ireland) 1634, section 16 of the Offences Against the Person (Ireland) Act 1829, section 61 of the Offences Against The Person Act 1861 and section 11 of the Criminal Law Amendment Act 1885. The 1634 Act was

repealed by the 1829 Act which, in turn, was replaced by the 1861 Act. The 1861 and 1885 offences which dealt with sodomy and gross indecency between men applied to both consensual and non-consensual acts and were repealed by the Criminal Law (Sexual Offences) Act 1993.

Section 2 of the Bill provides for an apology and exoneration for those convicted of an offence listed under section 1, as well as an acknowledgment that the offences occurred and prosecutions were improperly discriminatory, contrary to human dignity and infringed personal privacy and autonomy. Section 2 also confirms that the Bill will not confer any right on any person, create a cause of action, as the Senator mentioned, or impose a liability on the State.

Section 3 exempts from the application of the Bill offences where the other person involved was under 17 years of age or lacked capacity to consent.

There are a number of other points that the Tánaiste and I wish to raise on the Bill, as drafted. In drawing these points to Members' attention I am informed by preliminary advice that has been received from the Office of the Attorney General. There are aspects of the Bill which we believe require further consideration and some of which may give rise to unintended consequences. As Senators said, some of these issues can and will be dealt with on Committee Stage when the details can be tweaked. The point which gives rise to the most significant concern is that the Bill, as constructed, will extend an apology and exoneration to persons who were convicted of non-consensual same-sex sexual acts. Although the objective of the Bill, as set out in the Long Title, is to provide for an apology and exoneration for persons convicted of consensual same-sex sexual acts, the Bill will, in fact, extend beyond the boundaries of that objective in the manner outlined. This would have very serious implications, not least for the victims of such crimes. I am sure the Senators sponsoring the Bill will give careful consideration to how this issue might be dealt with. It may be that the declaratory effect of the Bill can be clarified.

The United Kingdom takes a different approach, which is to look at each case individually and ensure those convictions that related to non-consensual activity were not the subject of an improper apology and exoneration. Of course, this is in a context where the UK system will have real legal effect. However, there would be practical difficulties with this approach, not least of which would be the fact that more than 23 years and, in many cases, potentially far longer would have passed since any case was initiated and that difficulties would arise in dividing the cases into those in which consent was an issue and it was not.

The Senators' Bill also seeks to extend its provisions to convictions which took place prior to the creation of Saorstát Éireann. That brings up the very difficult question of legal theory which is unclear as to whether legislation can operate so as to grant an apology and exoneration to those convicted by courts established prior to the foundation of the State. While the Bill specifies that no rights are conferred on any person or liability imposed on the State by the provisions of the Bill, the precise legal effect of an apology and exoneration is not clear beyond a declaration of the sentiments of section 2. Despite the concerns expressed, the Government does not, of course, oppose the principle of the Bill. These issues are raised simply to highlight the areas which it believes require further consideration if the Bill is to achieve its purpose and not have unintended consequences. All legislation goes through this process, which is why we are here debating legislation. I am sure the Senators sponsoring the Bill will reflect on these issues and consider how best they might be dealt with as the Bill progresses.

It was a proud day for Ireland when the Act of 1993 came into force and decriminalised consensual sexual acts between men. It marked the beginning of a fairer and more modern

Ireland which sought to incorporate all of its citizens, with their similarities and differences, into a united and respectful society. That process of reform is continuing this evening when the Tánaiste and Minister for Justice and Equality will return to the Dáil to begin Report Stage of the Criminal Law (Sexual Offences) Bill 2015. The Bill marks a significant legislative development in the law of sexual offences and seeks to protect the vulnerable. The Bill will introduce, for the first time, a statutory definition of consent and a non-exhaustive list of situations where a person does not consent to a sexual act. These provisions reflect both the common law position and the experience in terms of issues that arise at the trial of such cases. Consent is at the heart of every lawful sexual act, which is why the Government is concerned about the impact of unintended consequences of the Senators' Bill, particularly on the victim, if exoneration was to be extended to someone who had committed rape.

The Criminal Law (Sexual Offences) Bill 2015, together with the Criminal Justice (Victims of Crime) Bill 2016, will provide victims, in particular vulnerable victims, into which category all victims of sexual crime fall, with greater protection from offences and greater support as they navigate their way through the criminal justice system. This work emphasises the Government's commitment to tackling sexual crime and improving the lot of the victim which has too often been forgotten. The Bills are a result of periods of careful reflection, together with engagement with civil society organisations representing victims and the criminal justice agencies that advise on the practical considerations of the implementation of the legislation.

I again thank the Senators for bringing forward the Bill and very much welcome the debate.

Senator Jerry Buttimer: It is an important and historic day in this Chamber as we debate this legislation. I hope the House will not divide on it, notwithstanding the Minister of State's reference to the Department's concerns about the Bill. I commend Senator Gerald Nash and his Labour Party colleagues for bringing forward the legislation. They got ahead of the Fine Gael LGBT group on this occasion, as we were drafting something similar. This is an important proposal from an historical perspective and for those men still alive and their families who will be affected by its provisions.

I must, unfortunately, introduce a discordant note in pointing out that Senator Lynn Ruane's contribution was very negative, given the gargantuan changes we have seen.

Senator Fintan Warfield: Senator Lynn Ruane is not in the Chamber.

Senator Jerry Buttimer: I know that she is not. She made a negative contribution on what should be a very positive day. That was disappointing when one considers the monumental amount of changes brought forward in recent years, especially by the last Government. We have moved from a time when people were prosecuted and imprisoned to a point when we can celebrate equality. I think of friends who are living abroad and do not want to return to Ireland because of the way they were treated here. I salute them. I think of the many people who are scared to come out, older people in particular, in communities. This tremendous day is for all of them. As Senator Victor Boyhan said, it is a day for the people who quietly advocate, push and prod and make equality happen in a nondescript way. Equally, it is a day for those persons who push and advocate in a public way. I thank the people in the many organisations who do that every day. They are champions of equality.

Senator Fintan Warfield: Senator Lynn Ruane is one such person.

Senator Jerry Buttimer: My point is that on a day for celebration, Senator Lynn Ruane's

comments were somewhat negative. I am entitled to my view and express it as a Member of the House.

The purpose of the Bill is to enhance equality, fairness and justice for those who were hurt and let down, not just by the State but also by the church and society over a period of time. It is about addressing the injustice of the way in which gay people were viewed and the way we were treated by the State, the church and society. Fortunately, we have moved on and the Bill serves as another symbol of progression towards full equality. I share Senator Lynn Ruane's view that we did not put the roof on the house when we passed the marriage equality legislation. However, to focus on what this and the previous Government have not done is very unfair. Without their efforts, we would not have had the progress on the road to equality we have seen. We would not have had the changes in marriage equality, adoption, inheritance and tax law and blood donations. The Minister for Health, Deputy Simon Harris, and his predecessor, Deputy Leo Varadkar, drove the latter change. I reject any negative connotation to what we have done and are doing in that regard. The Minister for Education and Skills, Deputy Richard Bruton, as well as his predecessors, Deputy Jan O'Sullivan and former Deputy Ruairí Quinn, did important work which saw changes in the school curriculum to cover homophobic bullying and so on. These changes were achieved by the Department working with BeLonG To and other partners.

Important changes have happened and continue to happen. That is why I am passionate about being positive today. We fought for that change. I remember former Deputy John Lyons who worked quietly with me to push Ministers in the last Dáil on the issue of gender recognition. I am unapologetic in wanting to celebrate the positivity of the changes we have seen.

Senator Fintan Warfield: The Leader should say that to the young transgender people who do not have a pathway because the legislation refuses to provide it.

Senator Jerry Buttimer: This and the last Government have been the most progressive ever on the issue of equality. I challenge anybody on that assertion. The proof is in the legislation we brought forward and the way in which we went about our business. I will not be lectured about what we did and did not do.

Senator Fintan Warfield: I am not lecturing anybody.

Senator Jerry Buttimer: We worked hard, as a Government and as Government Members, to bring about change and advance equality. We did not sit quietly by; we worked hard to achieve things. That is why today is important for people like John Lyons who is no longer in the Oireachtas. The Bill is about our friends and ourselves. It is about those of us who were told we were not equal under the laws of the land and could not have relationships. We were pushed underground and told that we were lesser beings. That is why the Bill is welcome. It is a celebration of those people who have died and cannot be here. I celebrate, too, Senator David Norris and all of the work he has done, especially his ground-breaking action in going to the European Court of Human Rights to challenge the norm in the eyes of the State. I am disappointed with the tone of Senator Lynn Ruane's remarks. I see that she is back in the Chamber.

Senator Lynn Ruane: I would like to respond to the remarks made about me by the Leader while I was not in the House. He is out of order. I am being blamed for having aspirations and not being complacent about what has been done to date.

Acting Chairman (Senator Gerry Horkan): The Senator must allow the Leader to continue.

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Senator Lynn Ruane: He is dissing me for having aspirations for the future. If he had been here for the whole debate, he would know that I said nothing different from what was said by other speakers.

Acting Chairman (Senator Gerry Horkan): Please, Senator.

Senator Lynn Ruane: The Leader singled me out because he came in late and only heard my contribution.

Senator Jerry Buttimer: The point I am making is that this is a day for celebration. The Government and its predecessor have worked more than any other in the history of the State to bring about equality.

Senator Lynn Ruane: That does not mean that we should not acknowledge what remains to be done.

Acting Chairman (Senator Gerry Horkan): The Senator must allow the Leader to continue, without interruption.

Senator Jerry Buttimer: We have brought about change.

Senator Lynn Ruane: Who said that was not the case?

Acting Chairman (Senator Gerry Horkan): Will the Senator, please, resume her seat?

Senator Lynn Ruane: The Leader is incorrect that I did not acknowledge the changes achieved.

Senator Jerry Buttimer: The Bill, in tandem with the changes brought about the previous Government and the current Administration, helps us to come to terms with the past and recognise and remember those who were victims of the State. We have had progressive government, which built a platform for an Ireland where people are equal. The contribution Senator Lynn Ruane made was overtly negative on blood donations and pension provisions. The last Government changed inheritance and tax law under the Finance Acts to ensure equal treatment for all citizens.

The Bill is about making a difference in people's lives. It may not be tangible to those who do not understand but to the men like me and many others who were criminalised under the law, it draws a line at one level and gives hope to a new generation. I hope we will never have to come back to Bills and debates like these. What happened on 23 May last year made us equal by a vote of the people. It was not done by the courts or the Oireachtas; it was the people who made the decision. I salute all those who worked quietly in the past to create a movement such as that in Cork in the 1980s which led to our being able to celebrate our equality today. I speak as a gay man and Member of Parliament, conscious of the legacy of the State and recognising the improvements we have made in the lives of people. Like Senator Lynn Ruane, I am conscious that we can never be complacent because there is a generation who looks to us to continue on the road to equality. However, to infer there has been no progress is unfair.

Senator Ivana Bacik: I welcome the Minister of State, Deputy David Stanton.

I commend my colleagues in the Labour Party group, Senators Gerald Nash and Aodhán Ó Ríordáin, for proposing and seconding this important Bill. I am very proud as leader of the

Labour Party group to speak in support of the proposals. There is no need for discord in this debate because we are all on the same side, which has not always been the case on important social issues since I have been a Member of this House. It is great to see the Bill being supported on all sides of the Chamber. While we might disagree on how much or how little remains to be done or the tone of the debate, we are all in agreement on the need to ensure we will build on the equality measures already passed in successive years, another of which we are celebrating.

On behalf of Labour Party Senators, I thank the Minister of State for his very comprehensive comments on the Bill. It is fair to say we will take on board the comments he has made and look forward to the expeditious progression of the Bill through this House and the Dáil. We note his comments about the Bill's potential consequences, particularly the need to ensure victims will not in any way be compromised, which is very important.

I note also the importance of the Criminal Law (Sexual Offences) Bill 2015 which will be debated in the Dáil tonight and tomorrow and return to the Seanad next week. However, the Bill is declaratory; it does not seek to expunge convictions from the record but acknowledges the wrong done to so many men over so many decades through being convicted of acts that are no longer criminal and which were consensual and did not involve persons under the age of 17 years. The legislation is very clear in that regard and provides for an apology and exoneration for those convicted who may no longer be alive.

The Minister of State referred to Turing's law, which is coming into force in Britain this week and allows for posthumous pardons for those convicted of these offences and who are now dead and for an application procedure for those who are alive but who still carry convictions for offences which are no longer known to the law. It also allows for statutory pardons. As the Minister of State said, the law in question involves a very different and cumbersome application procedure. The Bill has a very different purpose.

The Minister of State also raised interesting procedural points about past offences under the law of Saorstát Éireann. I am sure we can debate them on Committee Stage. The important point today is to celebrate the fact that we are all here in support of the Bill and the important principle it contains which will make a real difference to so many.

Many Senators have paid tribute to Senator David Norris and his work. He has sent a personal message that he is very sorry he cannot be here. Just recently, I had the privilege of hearing him speak very eloquently about his experience of taking the famous case which led to the judgment of the European Court of Human Rights and, ultimately, decriminalisation in 1993, a matter about which others have spoken. He also spoke publicly at a meeting we held in Trinity College Dublin - I had never heard him speak about this issue before - about his work, with many others in providing character references for men who were being prosecuted in the courts in the 1970s under the 1885 Act for offences such as that related to gross indecency, about which Senator Ned O'Sullivan spoke. Subsequently, we published some of the transcripts of the hearings. It had a very real effect on so many individuals.

In the appalling judgment he delivered in the Supreme Court in the 1980s in the Norris case - a judgment recently described as the worst ever delivered by the Supreme Court - the then Chief Justice, Mr. Justice O'Higgins, spoke about the damaging practice of homosexuality and the fact that he regarded it as harmful to both the institution of marriage and the health of individuals. That was appalling language which had no place or rather should have had no place in 1980s Ireland and which, of course, has no place in the Ireland of 2017. Looking back,

we can understand the radical transformation that has come about in the lives of LGBT people in Ireland in recent decades since decriminalisation occurred in 1993 and the other statutory changes we detail in the explanatory memorandum to the Bill. The level of statutory change has been immense and culminated in the wonderful, historic passage of the marriage equality referendum in May 2015, about which we have all spoken. Ireland was the first country to pass marriage equality by way of popular vote, which was hugely significant.

There are legacy issues, to which Senator Lynn Ruane referred. The issues in question relate to anomalies in our laws. The Bill seeks to address one of them, namely, the fact that there are still people living in Ireland who carry convictions on their records that they should no longer have to carry. The State should acknowledge and address that matter. That is what we seek to do in the Bill. There are other anomalies too, about which Senator Lynn Ruane also spoke. She referred to the case of Mr. David Parris, also a colleague of mine in Trinity College Dublin, before the European Court of Justice. Unfortunately, the case did not result in the change in the law he had hoped to bring about whereby, again, an anomalous discrimination would have been cleared up. The Pensions (Amendment) Bill which I published before Christmas, which I hope we will debate in the House before too long and which I hope the Government will also support would address this anomaly and legacy issue for a very small number of LGBT individuals whose partners will not be eligible under current law to qualify for survivor's pension owing to what is called an anti-gold digger clause that requires people to have married before a particular age. In Mr. Parris's case, the Trinity College Dublin pension scheme stipulates the age of 60 years. He had reached the age of 60 years before he was legally able to marry or enter a civil partnership with his long-term partner. I hope the Pensions (Amendment) Bill will be supported by the Government.

These are legacy issues. Happily, in Ireland we have moved to a position where we can talk about huge progress, radical transformation and equality. We do have to be mindful, as Senator Fintan Warfield so eloquently said, that there are many LGBT people living in countries such as Uganda and Russia and many others where there is no such equality and people still live in fear of expressing their sexuality. Even in Ireland, my colleague in Trinity College Dublin, Professor Mark Bell, recently published on the ongoing concerns about ongoing discrimination in the workplace that LGBT persons, particularly transgender persons, in Ireland experienced. In 2013 the Fundamental Rights Agency survey of Ireland found that 20% of LGBT people across the EU had reported experiencing workplace discrimination. In Ireland the figure is 18%, but it rose to 29% among transgender people. The LGBTI Ireland report for 2016 made similar findings, with 17% of respondents saying they had experienced LGBTI bullying in the workplace. Therefore, we need to be mindful of the real-life experiences of LGBT people and the fact that legal change does not always bring about the desired cultural change or have the same impact on the ground. We must be mindful that if one looks at Equality Tribunal decisions, one will find very few cases being taken related to discrimination on the grounds of sexual orientation, despite relatively high levels of reporting of such discrimination. Clearly, therefore, there is a disconnection between people's experiences of discrimination and their willingness to take cases. We must be concerned about whether people still believe they have to be silenced in some way about their sexual orientation.

The Bill started life as Private Members' legislation to amend section 37 of the Employment Equality Act, which I introduced in the previous Seanad and culminated in the passage of the Equality (Miscellaneous Provisions) Act 2015. This is an important change that will, we hope, end the chilling effect, particularly for LGBT teachers and employees in religious-run work-

places. Clearly, however, there is still much work to be done to change the culture.

On that cautiously positive note, I again thank the Minister of State for expressing his support for this important Bill and thank all of our colleagues. Senator Gerald Nash will conclude the debate and will also thank everyone, but I thank everyone who has spoken so far for expressing the strong support of their parties or groups for this important legislation.

Senator Pádraig Mac Lochlainn: I think we all agree that 23 May 2015 was a truly historic day for the country. The declaration by the people that day was the first such popular vote anywhere in the world for marriage equality. It was a clear statement heard by the world that Ireland had progressed from a closed, judgmental and socially regressive place to an open, accepting and progressive society. Minority groups living in Ireland saw this as a hugely positive act by the people and it gave them great hope for the future that all sections of society and minority groups living in Ireland would be given an opportunity to play an equal and inclusive role in a new, modern and bright Ireland. I welcome the Bill, commend Senator Gerald Nash and his colleagues for bringing it forward. It is also welcome that the Minister of State has indicated Government support and that the House will not be divided - as I read - it at this stage.

Unfortunately, we must be upfront and truthful about the many wrongs done by the State against vulnerable and minority groups. I could think of the women in Magdalen laundries and Bethany Homes, children in industrial schools and people with disabilities. The list could go on and on. A group of citizens who were treated disgracefully is the group at which the Bill is aimed, namely, the homosexual and LGBT community. The Bill will strengthen and reinforce the abolition of previous apparent sexual offences such as buggery and offences against the person which we know today were never criminal acts. We know that the offences outlined were discriminatory, contrary to human dignity and designedly alien to people's human rights. This treatment was wrong. It destroyed peoples' lives and, quite frankly, was abhorrent.

In 1895 one of Ireland's most celebrated wordsmiths, Oscar Wilde, was sentenced in England to two years' hard labour for the so-called crime of being a homosexual - for loving another man. It is appropriate during the debate on this important Bill to read a few lines from Oscar Wilde's great poem and rebuke to the society that had imprisoned and criminalised him. I refer, of course, to "The Ballad of Reading Gaol". That incredible poem reads:

I know not whether Laws be right,
Or whether Laws be wrong;
All that we know who lie in gaol
Is that the wall is strong;
And that each day is like a year,
A year whose days are long.
But this I know, that every Law
That men have made for Man,
Since first Man took his brother's life,
And the sad world began,

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But straws the wheat and saves the chaff
With a most evil fan.
This too I know—and wise it were
If each could know the same—
That every prison that men build
Is built with bricks of shame,
And bound with bars lest Christ should see
How men their brothers maim.

That poem still rings true today. It raises the hairs on the back of my neck. That was his incredible response in those dark days to the international global society, not just in Britain, that criminalised and condemned human beings because they loved another human of the same sex. The Bill deals with that legacy and seeks to ensure not one single Irish citizen will continue to carry a burden on his or her shoulders because of what happened in those dark days with the criminalisation by the State of the homosexual LGBT community, the only future for the vast majority of whose members was emigration. I presume the numbers of Irish citizens who were forced to move abroad or who suffered from mental health issues and died by suicide as a result of these laws are incalculable, but we must never allow a situation such as this to develop again.

What should happen now? A heartfelt State apology is an immediate necessity. We must also recognise that on a part of the island marriage equality is still not allowed. That is wrong and further proof of the need to push for a united Ireland. Citizens of the Six Counties are equally as deserving of the human right to marriage equality. All parties should support a demand for marriage equality in the North in the same way that the campaign was conducted here. It was an incredibly vibrant and positive campaign that was grassroots-led and lifted all of our hearts. I will never forget that incredible day in Dublin Castle.

Let me finish with a thought on which everybody should reflect. The ethnicity of Travellers has not been recognised, while refugees languish in direct provision centres with little hope of a change to the system. I spoke about learning lessons. I plead with the Government to ensure history is not repeated in the case of Travellers and refugees. In time the country will be judged on how we treated minorities and protected the most vulnerable. We need to deliver on the ideals of the Proclamation. We need to deliver a thirty-two county republic in which all citizens will be looked after equally.

Acting Chairman (Senator Gerry Horkan): I thank the Senator.

Senator Frances Black: With the permission of the Chair, I would like to share my time with Senator Alice Mary Higgins.

Acting Chairman (Senator Gerry Horkan): Is that agreed? Agreed.

Senator Frances Black: I thank the Minister of State, Deputy David Stanton, for being present in the Chamber. I was very disappointed by the comments made by Senator Jerry Buttimer on the contribution made by my colleague, Senator Lynn Ruane. He was unfair. Senator Lynn Ruane had every right to talk about what more needed to be done. I know that it is a day

of celebration, but, unfortunately, Senator Jerry Buttimer-----

Acting Chairman (Senator Gerry Horkan): He is not present.

Senator Frances Black: I understand that, but I would like it to be noted.

Senator Fintan Warfield: Senator Lynn Ruane was not present either when Senator Jerry Buttimer spoke.

Acting Chairman (Senator Gerry Horkan): That was pointed out, too.

Senator Frances Black: She was not present when he made his comments, but I would like it to be noted that I was very disappointed by his behaviour.

Senator Martin Conway: It was an unfortunate misunderstanding.

Senator Frances Black: Then he should have been more careful in what he said.

Senator Ned O'Sullivan: He upset the whole House.

Senator Frances Black: He did and his comments were unfair. It was not right; it was an injustice, particularly when Senator Lynn Ruane was not in the Chamber to hear them. She had every right to say what she felt. This is a democratic society.

I welcome the Bill presented by Senator Gerald Nash. I thank him and the Labour Party for introducing it. It is really appreciated. The Bill asks the State to exonerate and apologise to gay men who were convicted of sexual offences before homosexuality was decriminalised in 1993. Ireland is continually changing and we are all striving to make it a better place in which to live and work and, more importantly, to be who we are. We demonstrated in the marriage equality referendum that we were more tolerant, more open and a more inclusive nation, one that would embrace all citizens equally. It is devastating to think there were thousands of people who were unable to live their lives openly with those whom they loved with the protections offered by the State. During my campaign to be elected to this House I stated repeatedly that, as a nation, we should be judged on how we treated citizens. While it may have been a sign of the times, it was certainly not excusable. The men in question suffered not just at the hands of the law but also hostility in their communities. This was a great injustice to them, their partners, friends and families. It was heartbreaking. We know that the Bill will not change what happened in the past, but it will be a small step in acknowledging the wrongs inflicted on gay men. It will also send a strong message to young LGBT people that they will be supported by their fellow citizens and that, as a nation, we are not afraid to say sorry for past mistakes.

I commend Senator Gerald Nash for bringing forward the Bill and welcome the Government's decision not to block it, for which I thank the Minister. As we all know, it is the right thing to do.

Senator Alice-Mary Higgins: I welcome the Minister of State and commend Senator Gerald Nash and the Labour Party for bringing forward this important Bill which sets an important marker in addressing the wrongs of the past and asserting the importance of the full right to relationships and bodily autonomy, which is crucial. What happened in the past was unjust in the very particular way laws reached into the right to relationships, bodily autonomy, physical freedom and privacy of the individual. They were not simply wrong; they also represented the deep over-reach of the State. It is appropriate that we are taking the time to ensure they are fully

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addressed and that the wrong is recognised. From my reading of the Bill, it seems to be quite clear that it is addressing the rights of consenting adults. This is written into the text in different ways, including in respect of those under 17 years. The provisions of the Bill achieve a good balance in terms of nuance. I am very happy to support the Bill and look forward to supporting its passage through the House.

We need to have an ambition for equality which is not a badge we can simply wear. I am sure all Members have badges, piles of leaflets and papers from the various campaigns in which they have been involved, including the marriage equality campaign, but it goes further. If we did not have an ambition for equality, we might have stopped with Senator David Norris's landmark campaign to ensure decriminalisation, but it drove us further. There was the introduction in the 1990s of equality legislation by the then Minister, Mervyn Taylor. It is also *6 o'clock* important to mark that legislation. With respect, I suggest that was a Government that also put down an important marker for equality by introducing the very structures for the legislation now in place. We might have stopped with the introduction of civil partnership, but we were ambitious and ploughed on to marriage equality and transgender recognition legislation. We simply cannot say the parade is finished or that we have reached our goal. We need to keep seeking ways to deeply embed equality in society. It is a service to each other when we recognise and identify new ways to drive forward the equality agenda.

I believe some of the concrete and practical suggestions put forward by Senators Fintan Warfield and Lynn Ruane and others are part of that ambition. The Bill is an important step in that regard.

We talk about driving forward. The Bill is also important because it is reaching backwards. We need to ensure we reach backwards to address the wrongs of the past. We need to ensure we put down a marker that the past ground and positions held were not simply wrong at the time but were altogether wrong and remain wrong. They were not simply a product of their moment but something we can look back on and recognise as having been wrong. We need to mark the past ground as unacceptable and a place where we cannot go again. We need to be aware that things can move backwards, as well as forwards. That is why we need to put a marker down on the earth. Let us consider the situation today. These are worrying times. People have talked about the LGBT community coming under pressure globally, especially in Russia. We have seen that Russia has recently decriminalised domestic violence. That is an example of how things can move backwards. That is why it is important for us to put down this significant marker. The ILGA has listed 73 countries in which LGBTQI activities are illegal. That is a marker. Ireland can be and should be a leader in championing LGBT rights on a global level.

I am happy to support the Bill. I look forward to the next steps. I am also looking forward to our championing and marking of these issues, including in the areas of refugee rights. That is another area in which LGBT rights need to be respected and promoted in an active way. I imagine the Minister of State, Deputy David Stanton, whose work overlaps into that area, will seek to do that also.

Colleagues have mentioned the question of those who have emigrated. In many cases they felt forced to emigrate because of their treatment in society. We know that when a law is negative, it signals permission to the rest of society to discriminate also.

This is a practical measure. We have seen how a criminal measure can change things. Recently, in America we have seen how a criminal marker in the past is being used as an excuse

for future discrimination. There may be a practical component to the Bill also.

Senator Gerald Nash: I thank all of the speakers who contributed to this important debate. Depending on how we progress, this could be considered a landmark evening for the Chamber. Much of what is positive about Irish politics, including the effects on the transformation of our society in recent decades, has emanated from legislative propositions that started their journeys in this House.

I am satisfied that the Minister of State is personally committed to advancing this legislation. Not only does he understand its principle but he also fully endorses its ambition. He referred to the declaratory effect. He has got it in one. The Bill is declaratory by nature and effect, deliberately so.

I was involved in the campaign for an amnesty for members of the Defence Forces who had deserted to fight with the British Army during the Second World War. They were fighting the forces of fascism. It is a fascinating story and a fascinating period in our history. I worked with representative bodies, former soldiers, interests in the United Kingdom and the former Minister Alan Shatter to resolve the matter.

We have examined the matter closely. We have examined the impact of the legislation in considering the approach we should take.

The Minister of State raised significant concerns related to non-consensual acts. It was never the intention of the Bill that there would be an apology to or an exoneration of anyone involved in convictions pertaining to non-consensual acts. I trust that the Minister of State accepts this. I know that he and his officials will be available to address these issues. When we are drafting and crafting legislation, we have to be mindful of unintended consequences of particular provisions. That is why we have a robust legislative process. I am happy to work with the Minister of State in that regard. We have no difficulty in working with him and officials to clarify the intentions of elements of the Bill. If he believes it can be improved on the advice of the Attorney General, we are open to suggestions.

I appeal to the Minister of State, given his good nature and interest in this area, to ensure the Bill is not sent to the place where Bills are sent to die. I can never prevent myself from smiling somewhat at the phrase “new politics”. One of the unintended consequences of new politics – perhaps it is intended – is that we are suddenly submerged with a high level and a large amount of legislation that has to go somewhere. Unfortunately, sometimes it is sent to committees to die. I gather from the demeanour of the Minister of State and others that this legislation will go where it is required to go, that is, Committee Stage. The Minister of State could utilise an example involving Senator Ivana Bacik and me. Senator Ivana Bacik developed the Competition (Amendment) Bill last year. She worked closely with the Minister for Jobs, Enterprise and Innovation, Deputy Mary Mitchell O’Connor, and officials to get the legislation right to bring it to a point where it went through all Stages in the Seanad. It will be taken in the Dáil shortly and I hope it will be law by summer.

I thank colleagues for their support for the legislation. At one point, the House was in danger of seeing peace breaking out. However, Senators Lynn Ruane and Jerry Buttimer put paid to it. I mean that in the best possible way. I thank all Senators for their support. I know that Senator Jerry Buttimer is passionate about this entire agenda, as is everyone, including Senator Lynn Ruane. Senator Fintan Warfield referred to Uganda. We should be mindful of the fact that

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we can have such debates in the Chamber, as well as debates on issues, policies and principles. We live in a democratic society. Unfortunately, that is not the case in Uganda and many other countries. It is not only in Uganda where we can see how global winds in this area have been diminished. We need only look at the United States and Russia and the concerns of citizens in these places. They are concerned about the appalling vista in one of the world's largest, most significant and important democracies.

In recent years we have had a good record in coming to terms with our past. For example, I was involved in setting up the Neary or symphysiotomy redress scheme. I was proud to be part of the Government that apologised to those who had been victims of clerical sexual abuse. The Taoiseach performed a great service to the nation. One of his proudest days was when he stood up in the Dáil to express his sorrow and apologise on behalf of the people to those who had been the victims of clerical sexual abuse.

The marriage equality referendum represented a landmark for us in the country reaching adulthood. The adoption of legislation to provide for an apology to gay men who were criminalised by this society and for their exoneration would mark our maturity as a nation. I am keen for the Minister of State to consider this and engage with us positively to move the legislation expeditiously through the process. Together, we can develop it such that we can be proud to stand over it. It would send a strong message to those affected by the cruel laws that were on the Statute Book. The message is that they did not have to live in the shadows, that the country now treats them as equal citizens and that we should never have treated them in the way we did.

Question put and agreed to.

Acting Chairman (Senator Gerry Horkan): When is it proposed to take Committee Stage?

Senator Gerald Nash: Next Tuesday.

Acting Chairman (Senator Gerry Horkan): Is that agreed? Agreed.

Committee Stage ordered for Tuesday, 7 February 2017.

Acting Chairman (Senator Gerry Horkan): When is it proposed to sit again?

Senator Martin Conway: At 10.30 maidin amárach.

The Seanad adjourned at 6.10 p.m. until 10.30 a.m. on Thursday, 2 February 2017.