



DÍOSPÓIREACHTAÍ PARLAIMINTE
PARLIAMENTARY DEBATES

SEANAD ÉIREANN

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

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SEANAD ÉIREANN

Déardaoin, 8 Feabhra 2018

Thursday, 8 February 2018

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 Grace O’Sullivan that, on the motion for the Commencement of the House today, she proposes to raise the following matter:

The need for the Minister for Communications, Climate Action and Environment to outline his plans to ban oil and gas prospecting in the Irish exclusive economic zone and to consider conducting an environmental impact assessment of oil and gas activities, including exploration, in the Atlantic Ocean, following the publication by the Irish Wildlife Trust of the report Protecting Our Ocean’s Wealth.

I have also received notice from Senator Maria Byrne of the following matter:

The need for the Minister for Employment Affairs and Social Protection to allocate additional resources to address the delays in processing social welfare applications.

I have also received notice from Senator Tim Lombard of the following matter:

The need for the Minister for Housing, Planning, and Local Government to make a statement on the effect the Flemish Decree will have on once-off planning in rural Ireland.

The matters are suitable for discussion and will be taken now. I will allow Senator Maria Byrne to go first.

Commencement Matters

Carer’s Allowance Delays

Senator Maria Byrne: I welcome the Minister of State, Deputy Andrew Doyle, to the House. I acknowledge this is not his area of expertise but I appreciate that he is here to consider my worthy request.

Many people applying for the carer's allowance are coming to my office. A lady whose ten-year old daughter is very ill told me it took 17 weeks for her application to be assessed. The husband of a woman with pancreatic cancer who applied for a carer's allowance was told it would take up to 17 weeks just to process his application. A man caring for his wife, who cannot go out on her own, was not awarded the carer's benefit for one year. It seems to be taking an awfully long time. Many of those affected are very ill. They are very dependent on their loved ones for care. The carers are saving the State money because the people being cared for are in their own homes and being looked after by their loved ones. Sometimes, however, there is no income in the household while an application is being considered. Is it possible to address this? Is there a shortage of staff? What is the problem? What is occurring is another hurdle to be overcome by people who are at a certain stage of their lives and who are very ill.

Minister of State at the Department of Agriculture, Food and the Marine (Deputy Andrew Doyle): I am very happy to be able to address the Senator's concern. The issue arises regularly in our constituency offices.

I assure the Senator that the prompt processing of applications remains a priority for the Department of Employment Affairs and Social Protection. Each scheme area is continually monitored and reviewed to ensure customers are responded to as quickly as possible, and their applications are processed as expeditiously as possible.

Schemes that require a high level of documentary evidence from the customer, particularly in the case of illness-related schemes, can take longer to process. Similarly, means-tested payments can also require more detailed investigation and interaction with the applicant, thereby lengthening the decision-making process. Delays can also arise where information is required from social security organisations in other jurisdictions and where additional information has been requested from the applicant but remains outstanding. This means that processing times vary across schemes, depending on the differing qualification criteria. For example, in December 2017, it took on average one week to award a jobseeker's benefit payment, which is based on social insurance contributions, but two weeks to award a jobseeker's allowance payment, which is means-tested. In the same month, it took on average ten weeks to award an application for carer's benefit, which is based on a medical assessment as to care requirements, an assessment of the level of care being provided and social insurance contributions, whereas it took an average 17 weeks to award an application for carer's allowance, which has similar medical and care provision conditionality but which is means-tested.

As part of the Department's programme of service delivery modernisation, a range of initiatives aimed at streamlining the processing of claims, supported by modern technology, have been implemented in recent years. Operational processes, procedures and the organisation of work are continually reviewed to ensure processing capability is maximised. For example, staff have been reassigned within the carer's allowance area to work on claims processing, and it is expected that this will improve the processing times for this scheme over the coming weeks.

The staffing needs for all areas within the Department are continually reviewed, taking account of workloads, management priorities and the competing demands arising, to ensure that the best use is made of all available resources with a view to providing an efficient service to

those who rely on the schemes operated by the Department.

As with all Departments and agencies, the Department of Employment Affairs and Social Protection is required to operate within a staff ceiling figure and a commensurate administrative staffing budget, which for this Department has involved reductions in staff numbers. Reducing waiting times is a key priority. With this in mind, the Department will continue to prioritise efficient turnaround times of applications and for the filling of critical posts.

Senator Maria Byrne: I thank the Minister of State. It is good that the Department has acknowledged there are problems in certain areas. I note that it is putting additional staff into certain areas to alleviate those problems. We will have to monitor this. We will note in our own offices the expediency with which the applications are being processed. I appreciate that the Department is aware of the matter and that it is trying to do something about it.

Climate Change Policy

Senator Grace O'Sullivan: Today the Dáil will vote on the Petroleum and Other Minerals Development (Amendment) (Climate Emergency Measures) Bill 2018, introduced by Deputy Bríd Smith. It is similar to a Bill the Green Party has put forward on this issue. That Deputy Smith's party and mine have produced these Bills indicates the groundswell of public support for a sea change in politics recognising the need to keep fossil fuels in the ground. The Minister of State might have noted today that the singer Cher has personally asked our Taoiseach, Deputy Leo Varadkar, to support the Petroleum and Other Minerals Development (Amendment) (Climate Emergency Measures) Bill. It is time to believe in life after oil.

To map the seabed for fossil fuel exploration, sonic cannons, also known as seismic airguns, are towed behind boats to create dynamite-like blasts, which are repeated every ten seconds for 24 hours per day for days and weeks at a time. The blasts reach acoustic levels 100,000 times more intense than a jet engine. The tests are conducted every summer without ever being subject to a comprehensive environmental impact assessment.

In July 2017 when the Minister of State, Deputy Seán Kyne, granted consent to drill in the Porcupine Bank area, I spoke to the Seanad about how fossil fuel exploration was deadly for Ireland's sealife and how drilling and seismic airgun testing led to deafness and disorientation among dolphins, whales and porpoises for up to 100 miles. A deaf whale is a dead whale. In fact, over Christmas I helped with the removal of a dead bottlenose dolphin which had been stranded on Tramore beach. We sent the remains to University College Cork for an autopsy to discover why it had died. The number of strandings recorded has increased by 30% since 2016 alone. I have spoken about how in June 1991 the Government made Ireland a whale and dolphin sanctuary. I inform the House that new research from the ObSERVE programme, commissioned in 2015 by the petroleum affairs division of the Department of Communications, Climate Action and Environment, shows that, as amazing as our seas were to warrant protected status, we have actually overlooked just how incredible they are.

A few days after making my speech and mere weeks after consent to drill in the area was given, Ireland's deepest cold water coral reefs were found in the Porcupine Bank. Also in late 2017, UCC, from research commissioned by the Department's ObSERVE programme, released information which showed that every summer 250,000 bottlenose dolphins came to Irish waters; that last year Ireland had the highest numbers of blue and fin whale sightings ever

recorded; and that there were 50% more whales and dolphins in our waters than we had ever thought possible. The blue whale is the largest mammal on the planet, while the fin whale is second largest and they are both to be found in Irish waters.

To give an example of this incredible ocean wealth, let me focus on the Porcupine Bank area off the south west coast of County Kerry, near the Cathaoirleach's homeland. The Porcupine Bank is home to some of the deepest and most unique cold water coral reefs ever found. Along the cliff face in 2015 the *Celtic Explorer* found near vertical habitats full of species of coral, sponges, crab and fish. Last year the *Granuaile* found reefs at depths of 1,600 m in areas of the Porcupine Bank and continental shelf which had already been licensed for oil and gas exploration. Coral reefs are the building blocks of a healthy and flourishing marine ecosystem. They provide food and shelter and are breeding grounds and refuges for fish. They balance the ecosystem at a time of increased ocean acidification due to climate change. They are also essential in providing support for krill and plankton – the basis of the marine ecosystem. However, since 2013 the level of oil and gas exploration in the Porcupine Bank has intensified to the point where it is now the primary focus of fossil fuel exploration in Ireland. The surprise is that the Department of Communications, Climate Action and Environment in the first place risks seismic exploration or drilling in the Porcupine Bank area when it is the home of healthy mackerel spawning grounds and, formerly, large migrating tuna populations. Ireland's biggest fishing quota and thus our biggest industry under the Common Fisheries Policy is for mackerel. As I have stated before, seismic testing kills 100% of krill, or zooplankton, larvae and 64% of adult krill for a distance of up to 0.7 miles. Fishermen are reporting a dramatic fall in the tuna and whale populations in the Porcupine Bank area and that certain species no longer live there. This is most likely due to the kill-off of krill larvae as a result of the five years of oil and gas exploration and seismic testing.

I ask the Government to carry out as soon as possible an environmental impact assessment of the area of the Porcupine Bank where it is conducting research to ensure we will have the evidence to prove to the Minister of State and the Government that we must keep oil in the ground. We have to support the Bill before the House today. I ask the Minister of State for his answer to that question.

Deputy Andrew Doyle: I thank the Senator for raising this very topical issue. The Government is fully committed to tackling climate change and protecting the oceans, but it has no plans to ban oil and gas prospecting offshore. Ireland's transition to a low carbon energy future will involve progressively moving to lower emission fuels, for example, moving initially from peat and coal to natural gas and, ultimately, towards an even greater reliance on renewable energy. In that regard, the Government has introduced a range of policy measures and schemes to incentivise the use of renewable energy and deliver energy efficiency. However, oil and natural gas will remain significant elements of Ireland's energy supply in the transition period.

The Corrib gas field demonstrates the impact indigenous supplies can have on Ireland's import dependency. It went from importing 89% of its overall energy needs in 2015 to 70% in 2016. However, production from the Corrib gas field will peak and decline from 2019 onwards. Thereafter we will become increasingly dependent on imports of gas and be dependent on imports for 100% of our oil.

I note that the Minister of State with responsibility for natural resources has invited the joint committee to hold a broad policy debate on national energy policy to consider issues of competitiveness, sustainability, security of energy supply and Ireland's offshore exploration policy.

Such a debate would inform future legislation in this area.

The Government was not in a position to support the Solidarity Bill debated in the Dáil yesterday evening. If passed, it would not reduce Ireland's greenhouse gas emissions or change or reduce our use of fossil fuels. It would, however, lock Ireland into permanent dependency on imports to meet our future fossil fuel needs after the decline in supplies from the Corrib gas field.

There are several elements to regulating the industry's exploration activities offshore. In 2015 the Irish offshore strategic environmental study, IOSEA5, process was completed with the adoption of a plan underpinning IOSEA5 and publication of the IOSEA5 statement. The objectives of IOSEA5 were to inform the Department of Communications, Climate Action and Environment of specific environmental considerations in its future petroleum activities in licensing rounds in the Atlantic margin basins, as well as informing the award of licences in the Celtic Sea and the Irish Sea and providing exploration companies working offshore with an operational baseline against which they could conduct their work and ensure the protection of the marine environment.

Applicants to the Department are required to submit an environmental impact risk assessment and a Natura impact screening appropriate assessment statement in support of their application to commence surveying or exploration drilling activities. A review is undertaken for the Department by an independent consultancy appointed for its expertise in ecological and conservation marine biology. The review of the application considers, *inter alia*, the effects of seismic sources on adult fish, as well as eggs and larvae, based on the information provided in the application and additional scientific sources. There are also other steps, including consultation with fishing representative bodies, a requirement to have marine mammal observers on board vessels and engagement with fishery liaison officers.

An Cathaoirleach: I know that the Senator is very passionate about this issue, but we are well over time. I will allow her to ask a brief supplementary question. I am sure the Minister of State's answer does not meet with her approval.

Senator Grace O'Sullivan: I will be brief. The Minister of State and the Government are swimming against the tide, but they have every opportunity to embrace renewable clean energy sources. This is an opportunity to back out of the Porcupine Bank and move towards the use of renewable energy sources. As I said, the Government is swimming against the tide. It is driving us down a big abyss which will not do the country or future generations any good. I will be pursuing this issue because it is the reason I am in the Seanad. I will pursue it with the Minister of State and the Government for as long as I can until they develop some sense on the issue.

Deputy Andrew Doyle: I take issue with the Senator's use of the words "some sense". I was Chairman of the Joint Committee on Communications, Natural Resources and Agriculture in the last Dáil when it discussed energy policy. I was also a member of the previous committee on climate change and energy security and we did a lot of work on renewable energy. There is resistance all over the country to every type of renewable energy that is available. People say they do not want it. They do not want wind energy, solar energy, anaerobic digestion or biomass. We are saying one thing and doing another. People do not want wind energy or pump storage. I can see Turlough Hill from my kitchen window. The water is pumped up at night with energy generated from off-peak wind. It is the most clean and effective of all types of renewable energy but that would not be allowed to be developed nowadays. In the late 1960s

it was considered a miracle. Environmentalists would not let us do it anymore. We must be honest.

In the previous Dáil we were criticised for not harnessing enough of a share of the exploitation of natural resources so we did a big study on managing the offshore oil and gas resources with a profit resource rent tax. A lot of work was done on an all-party basis on how it should be configured. I accept there were no Green Party Members in the previous Oireachtas. The work sought to ensure there would be benefit to the State from profits accruing. I accept that we have moved on and we continue to make progress. As the opening statement outlined, this is a transition period but if we just do what the Bill suggests we will only increase our dependence on imported energy as we would be locked into that until we find alternatives. We are all at one in terms of trying to get alternatives as quickly as possible.

An Cathaoirleach: To coin a phrase, the Minister of State is between the devil and the deep blue sea.

Deputy Andrew Doyle: That is a very apt phrase.

Planning Issues

An Cathaoirleach: I welcome the Minister, Deputy Eoghan Murphy, to the House. It is good to have the senior Minister present. I am sure Senator Lombard will be grateful for that. He has four minutes.

Senator Tim Lombard: You are correct, a Chathaoirligh. I acknowledge the presence of the senior Minister this morning. It is a great honour to have him here. I compliment him on the good work he has done, in particular the work he is doing with the national planning framework in recent weeks and months.

I tabled this Commencement debate on the Flemish decree made in 2013. It is a European Court of Justice ruling that has been rolling on and has been debated in many quarters ever since. Employment is a big issue in rural areas but housing is even more significant. This decree has brought uncertainty to one-off rural housing and who can apply for it. The issue has been debated in many local authorities, communities and households because of the fear that it could go one of two ways. It could open up such housing to everyone, which could have a major impact on the environment, or it might restrict it too much. I believe there is a middle ground that must be explored. The Flemish decree affects the “locals only” designation, which is a significant issue for rural areas. If we do not have a thriving one-off housing market that allows people who were born and bred in a locality to live there then communities will become eroded. We must ensure that communities are fostered. In order for that to happen we need to make provision for the development of one-off housing so that people who are from a community can live there.

The decline of rural areas is a significant issue. The sustainability of rural areas and such housing are crucial issues for society. Clarity is required. Before the national planning framework, NPF, is announced the Government must make its views clear on housing policy for one-off housing and whether only people actively involved in farming will be granted planning permission or if permission for such housing will be based on social and economic grounds. The latter is the key to ensuring rural communities survive. If social and economic grounds are

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not accepted then, unfortunately, the knock-on effect will mean the decline we have seen in the past two or three decades will continue. I urge the Minister to provide clarity on this important issue in order that we can move on together. Clarity on one-off rural housing is necessary for councils and people in rural communities.

Minister for Housing, Planning and Local Government (Deputy Eoghan Murphy): I thank Senator Lombard for giving me the opportunity to outline the current position regarding the impact of the Flemish decree case on one-off housing in rural areas, and to provide an update on the revision of the 2005 planning guidelines on sustainable rural housing issued under section 28 of the Planning Act and also to clarify some misconceptions regarding rural policies on the issue contained in the national planning framework.

Under the 2005 guidelines planning authorities are required to frame the planning policies in their development plans in a balanced and measured way that ensures the housing needs of rural communities are met, while avoiding excessive urban-generated housing and haphazard development, particularly in those areas near cities and towns that are under pressure from urban generated development.

The guidelines also aim to ensure that sites being developed for rural housing are suitable with regard to vehicular access, wastewater disposal and also from landscape and design perspectives. The guidelines suggest a number of criteria to be taken into account in local authority development plans for the purpose of assessing whether planning applications for rural housing are intended to meet a rural-generated housing need. That need will only increase as the population grows in the future. Those criteria primarily relate to familial or occupational ties of planning applicants to the rural area in question. The European Commission issued an infringement notice against Ireland in relation to the rural housing guidelines in 2007, which was subsequently deferred pending the outcome of the European Court of Justice, ECJ, Flemish decree case against Belgium. The decree linked the transfer of property in certain Flemish communes to the condition that there should exist a sufficient connection between the prospective property buyer and the relevant commune. This connection had the practical effect of precluding non-locals from purchasing property in the Flemish communes in question.

In 2013, the ECJ ruled that the Flemish decree constituted an unjustified restriction on fundamental freedoms under the EU Treaty, in particular that it breached Article 43 of the treaty on the freedom of movement of citizens. Further to the ECJ judgment, the European Commission re-engaged with my Department on the 2005 guidelines. Arising from that and further subsequent engagement between my Department and the European Commission, a working group - comprising senior representatives from my Department and planning authorities - was established last May to review and, where necessary, recommend changes to the 2005 guidelines, to ensure that rural housing policies and objectives contained in county development plans comply with the relevant provisions of the EU Treaty without undermining rural communities. The working group concluded its deliberations in September 2017 and my Department is now consulting with the European Commission on the matter, with a view to issuing revised guidelines to planning authorities, as soon as possible after the finalised national planning framework is adopted and published. Planning authorities, and where appropriate, An Bord Pleanála, will be required to apply the revised guidelines in relation to the assessment and determination of planning applications and appeals in respect of rural housing proposals. Pending the issuing of the proposed new revised guidelines, planning authorities were advised by way of circular letter issued by my Department in May 2017 that the existing 2005 guidelines remain in place, and that they should not amend the rural housing local needs policies in their development plans

until the revised guidelines have issued.

In relation to broader rural policies, the Senator is no doubt aware that the national planning framework is currently being finalised by the Government - he has championed a number of policies in it - and while its remit goes much further than rural settlement, today's debate gives me a good opportunity to quell any misplaced fears that may have been generated that the framework will present some sort of clampdown on rural housing. That is far from the truth. It is in fact unhelpful and detracts from wider and more strategic messages in the NPF around linking our planning vision with our capital investments and new tools to deliver sustainable development, both urban and rural. I wish to make it clear that the NPF fully supports the concept of living in the countryside. Nothing in it suggests any sort of a policy shift from what local authorities are supposed to be doing at the moment in terms of implementing the rural housing guidelines, which is broadly to apply a general siting and design-based policy across the country for the purposes of determining rural housing planning applications and in some limited areas around the main cities and towns that are under genuine pressure from significant unco-ordinated and ribbon type development, to ensure that in such areas, housing need should be determined by social, economic or occupational linkages to the rural area in question.

Moreover, while the framework endorses a more rigorous approach to assessment of housing needs in general, the reference to a housing demand need assessment, HDNA, is very simply a local authority-led comprehensive assessment of the housing needs of its area, in other words assessing the housing expected to be built within the area, including in rural areas. In a nutshell, what the NPF is really calling for is a properly planned approach to identifying, meeting and managing the real housing needs arising in rural areas. There is nothing to fear in it. Like Senator Lombard, I believe in balance when it comes to planning throughout the country.

An Cathaoirleach: If I ever go back to college I will do a thesis on rural planning.

Senator Tim Lombard: I was thinking as much. You have a great knowledge of it, a Chathaoirligh.

I compliment the Minister on his comprehensive statement which hits all the key points. In particular, I welcome his determination that social and economic links will be very much a part of the national planning framework. That is a welcome statement from the Minister this morning. It provides the necessary clarity and it gives certainty to those people who are concerned. I thank the Minister for his contribution.

An Cathaoirleach: I thank the Minister and Senator Lombard. The Minister gave the Senator a comprehensive answer which has made him smile. I hope he is happy with it as well.

Sitting suspended at 11 a.m. and resumed at 11.30 a.m.

Order of Business

Senator Jerry Buttimer: Today's Order of Business is No. 1, Data Protection Bill 2018 - Order for Second Stage and Second Stage to be taken at 12.45 p.m., with the time allocated to group spokespersons not to exceed eight minutes each and all other Senators not to exceed five minutes each.

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Senator Mark Daly: Will the Leader ask the Minister for Health to come to the House to deal with the allegations of some interference with the capital plan by the HSE in what it was putting together? While there is considerable input, the restructuring of the capital plan to benefit some and not benefit all is an issue of concern. There is lack of clarity about this. I do not want to go further on it; I just want to ask the Minister to come to the House to provide clarity and to discuss the capital plan.

Obviously those of us from Kerry welcome the announcement of a new hospital in Cork to provide acute care. Regarding that acute care, as the Leader knows very well, simple systems failure, which we frequently discuss in this House, can lead to up to six ambulances waiting to hand over patients at the accident and emergency department in Cork. Paramedics tell me that they can be there for two or three hours.

Senator Jerry Buttimer: Which accident and emergency department?

Senator Mark Daly: It is in Cork.

Senator Jerry Buttimer: Which one?

Senator Mark Daly: It is Cork University Hospital.

It happens time and again. The paramedics are sitting around with acute-care patients sitting in the ambulances waiting to be handed over. It is a pure systems failure. Meanwhile people are in dire need waiting for an ambulance to come to them. That is a systems failure that needs to be rectified. It does not require money; it just requires improved systems.

I know the Tánaiste and Minister for Foreign Affairs and Trade, Deputy Coveney, is working on issues relating to Stormont today. Of course, the issue of the Border has come up again. The UK Cabinet, which we know is split, seems to be rowing back on the agreement on the Border that it signed up to in December. The British do not want to be in the customs union; they want to have their cake and eat it. It now appears that the Irish Government will have to fight again.

The legislation that is supposed to come from Europe to put into legal effect the agreement signed up to by the UK in December which will clarify what is meant by having by no divergence is supremely critical to the Border. I have explained, as many others have, that many Westminster Members of Parliament and Members of the House of Lords have come over here and asked us for our ideas; they simply do not have any because they do not know where they want to get to in this Brexit journey.

Whatever agreement and legal text on what happens with the Border comes out of Europe in March is absolutely critical because that is the framework for the remainder of the negotiations between the EU and the UK. The British were asleep at the wheel because they thought there would be a fudge allowing them to rumble on and solve it later. However, there are Border issues on how trade will be conducted and what will be in or out of any agreement between the North and the South. The DUP's insistence that there be no divergence between Northern Ireland and Britain would mean that there would be no divergence between Ireland and the UK which means in essence there would be no divergence between the UK and the EU. At that point one has to ask what the purpose of Brexit is if it is for no divergence on all the issues and the UK has to sign up for all the issues and the customs union.

Time and again it startles me when I meet Members of Parliament from Westminster who do not even know the basics. To see the British Cabinet meet for two days over what its position is on Brexit is nothing short of startling.

I want the Minister for Health to come to the House to discuss the capital plan and the allegations. We all know that allegations are made by the media and others all the time. We want clarity on issues raised yesterday in the newspapers about interference.

Senator Jerry Buttimer: By whom?

Senator Paul Gavan: Who are the alligators?

Senator Mark Daly: The media.

Senator James Reilly: If the Senator has something specific to say, he should say it.

Senator Jerry Buttimer: What is the Senator saying?

An Cathaoirleach: He wants a discussion on the plan.

Senator Jerry Buttimer: He said allegations.

Senator Mark Daly: It is in relation to interference by people in the HSE.

An Cathaoirleach: Time is up now.

Senator Jerry Buttimer: By whom?

Senator Mark Daly: I think under the-----

Senator Jerry Buttimer: By whom?

An Cathaoirleach: Please-----

Senator Mark Daly: For once-----

An Cathaoirleach: Listen-----

Senator Mark Daly: -----I want to respect the rules of the House and I think the Chair would tell me I am not allowed to make any allegations.

An Cathaoirleach: Please, Senator.

Senator Mark Daly: For once, I shall obey the rules of the House.

An Cathaoirleach: I thank the Senator. He should not be tempted to name people.

Senator Mark Daly: Despite provocation by the Leader to break the rules, I will not do so.

Senator Jerry Buttimer: The Senator wants us to debate an allegation or a rumour. What is it? That is the best Kerryman joke I have heard in a long time.

An Cathaoirleach: For a start, Senator Mark Daly should not name people.

Senator Mark Daly: Thank you.

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An Cathaoirleach: I ask the Leader not to provoke Senator Mark Daly.

Senator Mark Daly: I want to respect the rules of the House.

Senator Jerry Buttimer: The Senator talked about a rumour and an allegation.

Senator Máire Devine: No more than anybody else.

An Cathaoirleach: I think Senator Mark Daly has suggested the Leader read yesterday's newspapers.

Senator Mark Daly: I can send him a copy.

Senator Jerry Buttimer: Please do.

Senator Rónán Mullen: I raise an issue that Senator Colm Burke raised the other day that I think is very important. I am not sure whether a specific response was given, which can happen, and I apologise if I am mistaken. I refer to the emerging issue of the troubling over-prescribing of addictive and habit forming drugs. Those of us who have been to the United States have often noted and been a little disturbed by the predatory way drugs are advertised on television. When we learned about the opioid crisis in America I must confess - perhaps due to an unconscious or accidental prejudice - that, frankly, I associated it with people who lived in trailer parks or were not discerning. Recently, I had a conversation with a friend of mine who is both fortunate and successful in life and who comes from a very successful family. He described how his mother had slipped into an addiction to prescription drugs and really struggled for a long time to be free of the problem, but even then I thought it was probably something that would not happen in more regulated and perhaps sensible European societies, yet, almost unknown to us, we have seen prescription drugs, by which I mean habit forming drugs, such as sleeping pills, pain relief tablets and anti-depressants being massively over-prescribed. Senator Colm Burke focused mainly on the financial dimension, but there is the much more significant human dimension of people becoming addicted. People are unaware of the trap because these are legal drugs. We are talking about people who seek medicines to treat their conditions.

In 2016 President Trump described the American opioid crisis as a national emergency. Where are we at in Ireland? The number of prescriptions for one drug, Oxycodone, increased by 159% in the ten years from 2006 to 2016. It is the very drug that is behind the opioid crisis in America. It is a crisis that some say is killing up to 180 Americans a day, or perhaps a minimum of 100. We need to examine closely the over-prescription of drugs in this country. Dr. Emmet Curran, president of the National Association of General Practitioners, has said there is definitely over-prescribing. As we have all seen what has happened in America, we cannot be complacent. There is a money dimension. Dr. Shari McDaid from the organisation Mental Health Reform has claimed there is a lack of talk therapy at all levels of the mental health service. Loneliness in our society is another dimension about which we need to talk as part of our discussion on the issue. I would be grateful, when it is convenient for him to do so, if we could hear from the Minister for Health what is being done to identify the extent of the problem and the way it is going to develop, what has happened and what will happen into the future and how we are going to tackle what is an emerging problem.

Senator John Dolan: On Tuesday the Leader easily accepted that implementation of the UN convention had to be led from the top. To that end, the Taoiseach has a critical role to play. Yesterday the Oireachtas Joint Committee on Transport, Tourism and Sport heard from two

people, one of whom was Ms Alannah Murray. She said:

My documentary on disability with the screen media industry toured the festival circuit and finished its festival run with an award win. Another one of my films recently premiered in Portugal and was also award nominated. I am a TEDx speaker. I am also fluent in Irish. I am about to graduate with a BA in film and production and have my eyes set on a Master's degree. Like others like me, I am the future of our country.

Mr. Padraic Moran also spoke at the meeting. He works for Sky Ireland as a service specialist. He also works for East Coast FM as a production assistant, sports reporter and broadcast co-ordinator. He spoke about his successful international career as a paralympian.

The Minister for Transport, Tourism and Sport, Deputy Shane Ross, also attended the meeting. He said transport boards must specifically include those with "raw personal experience of disability." He also said he would ensure the transport boards under his jurisdiction would include somebody with that experience and that they would be present and bang directly on the table, not others, if one likes, as proxies. The committee is chaired by Deputy Fergus O'Dowd who took over from Deputy Brendan Griffin. I acknowledge and thank my fellow Senators, Frank Feighan, John O'Mahony and Pádraig Ó Céidigh, who strongly participated in the discussion yesterday. There was also a strong turnout of Members of the Lower House for the debate.

The Minister learned about what routinely happened to people with disabilities in using public transport. He also got it that he was the boss of the public transport service in Ireland and that he needed to act. Yesterday he set out a list of actions. He is one of 15 Ministers. We are about to ratify the UN convention and the first part, the slow half, of the work is over. At this stage it is all about implementation. I say again that Ireland can get ahead and close out the game to finish the job of providing for emancipation, but we need leadership and direction from the top. Every Minister must set out his or her action plan after he or she has listened to people with disabilities, in the process showing respect for their experiences which will still be difficult for many years to come. Together we can all make great strides in tackling the issue.

Senator Rose Conway-Walsh: I listened with interest to Senator Mark Daly's contribution and agree with everything he said. In the first instance, I suggest he have a serious and indepth conversation with his party leader, Deputy Micheál Martin, who has repeatedly refused to engage in anything proactive to do with the North.

Senator Mark Daly: He was there during the week.

Senator Rose Conway-Walsh: Yes, but he probably attended a DUP conference.

Senator Mark Daly: No, it was the SDLP. We are in negotiations.

Senator Rose Conway-Walsh: Deputy Micheál Martin has repeatedly been asked to-----

An Cathaoirleach: I urge Senators not to engage with each other.

Senator Rose Conway-Walsh: We certainly will not.

An Cathaoirleach: Will they, please, speak through the Chair?

(Interruptions).

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Senator Rose Conway-Walsh: I ask Deputy Micheál Martin to rethink his refusal to participate in the United Ireland conference to be held in Cork. He has no problem sharing a platform with the DUP. Whether he likes it, he needs to understand there are many thousands of citizens in the North who are represented by Sinn Féin. He also has no problem engaging with the anti-Brexit party. Confusingly, his Senators have talked about the dangers presented by Brexit and said we must do something about same. If their party leader will not engage seriously in proper indepth discussions to find ways to protect the whole island and demand special status for the North, they should not speak out of both sides of their mouths. I encourage Deputy Micheál Martin to participate in talks because we know that the discussion of the possibility of a united Ireland and the possibilities for the island as a whole-----

Senator Mark Daly: I will send the Senator a copy of my report.

Senator Rose Conway-Walsh: There are more and more reports, but actions speak louder than words. I genuinely think the Senator's party leader has not only let down the members of his party-----

Senator Paul Gavan: Well said.

Senator Rose Conway-Walsh: -----but also citizens across the island with his approach towards having discussions on the issues mentioned. We need to have conversations across all communities. That was not what I had intended to speak about today.

An Cathaoirleach: The Senator used up a lot of time in doing so.

Senator Mark Daly: She has been thought-provoking.

Senator Rose Conway-Walsh: I think it is very important.

An Cathaoirleach: What leaders of the various parties do or do not do in respect of their parties is not a matter for the Order of Business. The Senator's time is up, but I will give her ten seconds to mention what she was supposed to.

Senator Rose Conway-Walsh: I have ten seconds.

An Cathaoirleach: The Senator used up her time arguing with Senator Daly.

Senator Rose Conway-Walsh: I think he facilitated me in making some very important points, and I will finish with that.

(Interruptions).

An Cathaoirleach: I appreciate the Senator's respect for the Chair.

Senator Aodhán Ó Ríordáin: On the floor of this House last week, I raised the issue of religious orders selling off to private developers lands forming part of school properties, with boards of management in certain parts of this city being abolished as a result. The Cathaoirleach facilitated a debate during Commencement matters between the Minister and me to discuss the issue in some depth. I would like to put a letter I have received from a developer on the record of the House. It is quite disturbing. Developers in this country used to own people in the Oireachtas and councillors up and down this land. They used to stuff envelopes full of cash. They now send what I would consider to be threatening letters to people who want to defend the rights of communities to engage in the planning process, and to object or give observations

on planning applications. I will read one paragraph, if I might. It states:

I am prompted to write to you following remarks you made in Seanad Éireann on January 30th in relation to our proposal to deliver 536 housing units on lands at St Paul's School, Raheny.

You stated that our proposed development would “destroy St. Anne’s Park” and would result in a loss of playing pitches and community facilities.

Your remarks are fundamentally inaccurate and are the latest example of a catalogue of misinformation being dispersed through various mediums and by various people about our development. As you may appreciate, if such inaccurate and flawed information is not corrected in the same public manner in which it was transmitted, it is likely to have a negative impact on our development, which, in turn, will have ramifications for those responsible.

I would like the Leader of the House to restate in the strongest terms the following: that Members of this Oireachtas are not to receive threatening letters from developers; that those days are gone; that no-one in this House is beholden to a developer any more; that in a republic, one is quite entitled to stand up for one’s local community; and that for any developer to send any Member of the Oireachtas, councillor or public representative a letter threatening “ramifications” is bang out of order.

Senator Rónán Mullen: They are entitled to go to law, just like any other constituent. Whether they are right or wrong is another matter.

Senator Martin Conway: We often discuss the environment here, and there are many practical things we can do as citizens to help. It came to my attention recently that the levy of 22c on plastic bags has reduced the number of plastic bags used in this country by 98%. This is a remarkable success. We have a similar problem with coffee cups. I have been guilty of buying coffee in a takeaway cup and disposing of it. I ask that the Houses of the Oireachtas, and we as Members, show leadership in that regard by using recyclable cups. I suggest that the Houses of the Oireachtas catering service sources a cup that Members can carry to and from the canteen. Every day I go into the canteen in the Houses and I see people coming out with takeaway cups. We would all be quite happy to pay a small donation towards the cost of a proper cup.

This is happening in a lot of places. I want to commend the businesspeople around the country who run coffee shops that give discounts to people who bring their own cups. It is the right thing to do. The 218 Members of the Oireachtas could show leadership in that regard, and the catering service here could certainly assist us in showing leadership by sourcing recyclable cups.

An Cathaoirleach: Perhaps if the Senator wrote to the Houses of the Oireachtas Commission on that matter it could be dealt with.

Senator Martin Conway: I presume that the powers that be watch the Order of Business and take note of it. I will make it a proposal.

An Cathaoirleach: That is not guaranteed.

Senator Robbie Gallagher: Today, and on many other days, we discuss the current state of our health services in both Houses. In particular, I refer to the difficulties we have in attracting and retaining professional health care staff to work in our hospitals, whether as doctors, nurses

or whatever. We constantly read about the incentives put in place to attract and retain nurses or doctors in other countries.

I was contacted by a young lady who was born and reared in County Monaghan, and emigrated to the UK to study to become a nurse. She successfully overcame that hurdle, and is now working in a hospital in Belfast. She has a desire to return to her native county of Monaghan, and is considering applying for a job in Cavan General Hospital. She has told me that she has to pay two sets of fees in order to be taken on board by the health authorities here. The total amount concerned is almost €500. This is a time when we are trying to encourage our young people to come back home.

This is one example of a young nurse who has to come up with €500 before the health authorities here will consider her application. It is something we seriously need to look at. I ask that the Leader brings this to the attention of the Minister of Health, Deputy Harris, so that this fee is not a burden on a young person trying to return home, and so that the Department of Health covers whatever registration fees are required. If we are serious about attracting young people, we need to put incentives in place and certainly not obstacles. This is one such obstacle that has to be removed.

Senator Maria Byrne: I would like to refer to the bus crash that took place in Limerick yesterday. I wish to pay tribute to all involved, including the ambulance services, the fire services, An Garda Síochána, the council, the mid-west community health care units, John the Baptist Community School and the teachers for their very fast response. Counselling and support was offered to all families and to the children involved in the accident while they were in hospital yesterday. I wish to commend the students who got back on the bus this morning and went to school. Only two students have been kept in hospital. Everybody else has been let out of hospital. It is very appropriate to pay tribute to all involved, because it was a horrific accident.

I welcome the fact that 4site expanded its business yesterday in what has been described as the first fibre centre of excellence in Ireland. Established in 2002, the company had 70 employees. It is now creating an extra 20 jobs, growing to 90 employees over the coming months. One thing that I want to highlight about the company is that it has a successful graduate programme. 4site has designed a training programme for its graduates, who are graduates of the University of Limerick and Limerick Institute of Technology. The fact that they are working on constantly upskilling and retraining their employees is to be commended. It is great to see a company going to great lengths to make sure that its employees are at a very high standard of training.

Senator Máire Devine: I would like to point out to Senator Conway that I have my own cup. Perhaps we could all bring our own cups in the interim to try to protect the environment.

Sinn Féin has raised several parliamentary questions about home help hours. In the area overseen by Community Healthcare Organisation 7, home help hours have dropped by almost 90,000 hours since 2014.

It is a vital service to the elderly, the vulnerable, those on disability and those recently discharged from hospital. Home help allows people to stay in their homes and be part of their communities. The Government's ideology of privatisation, enforced by the HSE, is working well. It places an awful financial burden on people who are in no position to afford it. Home

help is pertinent in alleviating pressures on secondary health care. It is short-term thinking to cut these hours which will contribute to hospital overcrowding.

It is also a major factor in the incarceration of those in unsuitable and unacceptable places in nursing homes. For example, Senator Dolan has spoken several times about 1,200 people with disabilities under the age of 65 who are incarcerated in nursing homes. All the other residents are almost twice their age and it can reduce their lifespan by two years. This is indicative of the lack of community care. I hope the Leader can give some time and space to this to discuss it further with the Ministers responsible.

Senator James Reilly: On Senator Conway's suggestion, Young Fine Gael ran a campaign for reusable plastic cups for coffee etc. It advocated a 25 cent charge to raise awareness of the damage plastic does to our environment. We have all seen the television programmes showing thousands of tonnes of plastic in the sea, as well as whales and other sea mammals opened up with plastic inside them.

This morning, *The Irish Times* had an article on the national development plan and the need for day hospitals. I have raised this issue here before, specifically concerning the north Dublin area. Swords, near the M50, would be an ideal location for such a hospital because it can serve not just north Dublin city but the whole of Dublin. The national development plan also contains a proposal for metro north which could link such a hospital to our public transport system in a meaningful way.

Day hospitals are a real tool to allow us address the long waiting times for health care. The beds are available when the patient comes to use them. There is no accident and emergency facility, meaning nobody is admitted the night before to the bed for the patient who needs a procedure. Procedures for hernias, gall bladders, plastic surgery, cataracts and so forth can all be done in day hospitals. There are examples of many of these procedures being done in model three hospitals, such as Nenagh, St. John's Hospital in Limerick, Louth County Hospital and many others. It brings the service more available to the patient in a much more calm and settled environment and is successful.

We need at least two such hospitals in Dublin as one third of the population of the country resides here. I appeal to the Government and the Minister for Health to consider putting in two such hospitals in Dublin.

Senator Diarmuid Wilson: On Tuesday last, an earthquake with a magnitude of 6.4 hit the Taiwanese city of Hualien, killing ten people and injuring more than 240. I raise this on the Order of Business because, like many Members in this and the Lower House, I have visited Taiwan. It is a vibrant and progressive democracy and its people are welcoming. We should recognise Taiwan diplomatically and do much more trade with it. However, because of the One China policy, some people are afraid to do so. That is for another day. Today, I want to remember those affected by this earthquake and send them our best wishes. I hope the Leader will also do so through his office. I know he has family and other ties to the country. It would be nice to recognise them at this time of need.

At the end of 2017, 40,000 people were on outpatient waiting lists for eye care procedures. Recently, however, I have seen posters and leaflets from various Deputies and Senators, not always from the Leader's side of the House, telling people there is no need to wait and how to get faster knee, hip and cataract operations. The posters tell people to ring the Member's of-

fice and it will be dealt with. Quite a number of people in counties Cavan and Monaghan have contacted my office on this.

The reality, however, is different. To be treated, one has to get from the waiting list to see a consultant. Some people have been on waiting lists for more than three years. They must see a consultant before they can be referred on to a health service provider in the North or another EU member state. If one manages to be referred on, one must come up with the money to pay for the treatment. Some of these operations can cost up to €40,000. While it is well and good for the HSE to say it will reimburse the patient, the operation has to be paid for upfront. There is no facility within financial institutions in this State which will give a loan to a patient for such an operation guaranteed by the HSE.

People should be made aware of this. Will the Leader use his good offices to impress upon the Minister to contact the financial institutions to ensure the people in question, who are desperately waiting for surgery, are given the money upfront because they cannot afford to pay for it themselves?

I acknowledge the recent passing of John Sheridan, former Cavan and Killinkere football player. He was a member of the 1952 Cavan All-Ireland winning football team. Ar dheis Dé go raibh a anam dílis.

Senator Ray Butler: I want to raise the concerns about the introduction of the cult of Scientology in Ireland and the opening of a rehabilitation centre in Ballivor, County Meath. The cult has purchased a site in Ballivor for €1 million and has got planning permission to open it as a nursing home. It can use this to come in as a drug care centre. There is no regulation of drug rehabilitation centres.

Some three weeks ago the Taoiseach told the Dáil, “I am absolutely of the view that the only people who should provide addiction services are those who are appropriately qualified and licensed to do so.” Narconon proposes a drug rehabilitation facility that does not meet HIQA or HSE standards. Basically, the patient gets vitamins and minerals as well as spending long times in saunas. This is brainwashing of the most vulnerable people. Articles in America highlight how Scientology has destroyed families. It has cost people millions of dollars trying to get family members out of this organisation. It has destroyed families and communities. The group behind the centre is Narconon, which is part of Scientology, a cult, which is concerning. If it happens in Ballivor today, it will happen in many other towns later. Narconon has millions of euro because it uses the people it has brainwashed to work for nothing.

The drug rehabilitation centre will be right in the centre of the town where 400 children are based in a national school, a child care centre, a Montessori school and a new playground. The centre will have a significant impact on neighbours and the community. The people of the Ballivor are fearful what this cult will do to their community and to Ireland. They will come to the Oireachtas on 6 March with a petition against this facility. I want the Minister responsible for local government to meet these people. Let us do something about this centre in Ballivor. This is the start of scientology coming to Ireland. We do not want this cult in this country.

Senator Paul Gavan: I want to raise awareness this morning of a demonstration taking place today at 1 p.m. outside Leinster House. People from the Movement of Asylum Seekers in Ireland, MASI, will be outside calling on the Government to uphold the Supreme Court decision to give asylum seekers a right to work in Ireland. In May of last year the Supreme Court

ruled that a blanket prohibition on asylum seekers working in Ireland was unconstitutional. It took until November for the Minister for Justice and Equality, Deputy Flanagan, to indicate how the State would respond to this ruling. As we all know, his response was entirely unacceptable.

Under the Government's new chosen regime, if an asylum seeker wants to enter PAYE employment, the job must not be one that an EU citizen can take up. It must pay more than €30,000 per year. Asylum seekers have been blacklisted from over 70 sectors of our economy, including those of hospitality, retail and health. These are ridiculous limits. Everyone can acknowledge that these are ridiculous limits - that is exactly why they have been set. This is the clearest indication from the Government that it does not want these people here, does not want them to work and wants to encourage them to leave.

If the Supreme Court's focus was on the dignity and inherent right of the individual, then we should all agree that the Government has once again failed to uphold our Constitution. No one here should be surprised when we have over 4,000 people living in detention camps throughout our country. They are living on €20 per week with no cooking facilities and no prospect of employment, education or integration into our society.

Rather than simply driving past these people, I encourage colleagues to take five or ten minutes to have a conversation with them, link in with them and understand the horrendous conditions they are suffering. Let us be clear. The rules suggested by the Minister for Justice and Equality, Deputy Flanagan, indicate one thing and one thing only: racism. It is a racist response from the Government. It is a disgrace and I will be asking for a debate on the issue.

Senator Michelle Mulherin: I wish to voice my support for, and stand in solidarity with, section 39 health and social services workers who provide essential health and social services in our community. In particular, I support their call and case for pay restoration. Their circumstances have been highlighted. Basically, the situation is that they took cuts to their pay, the same as their counterparts working directly for the HSE. Those in the public service working directly for the HSE can have pay restoration under the financial emergency measures in the public interest legislation. However, because these workers work for organisations that get a block grant from the HSE, they have no guarantees on pay restoration. It would seem from listening to the workers that some have received some or partial restoration, but others have not received any. It is altogether haphazard.

While I understand that it is complicated because they are not in the direct employment of the HSE, we cannot lose focus on what is fair in this. They are doing similar work to people in direct HSE employment. They should be paid a fair wage and should benefit from the uplift in the economy, the same as public services workers. I call for the Minister to be invited to the House to set out the pathway whereby the issue can be clarified and these workers can be given their fair pay.

Senator Brian Ó Domhnaill: I call on the Leader to have some form of rolling debate on the issue of health. Perhaps we could dedicate a day or two days to discussing health and allowing Members to make submissions beforehand that could be discussed. It could even allow us the opportunity to make suggestions to the Minister that would allow him to respond to those suggestions.

Numerous issues have to be addressed in health and they should be discussed in the House. My proposed debate would give us an opportunity for that. For example, the cross-border

scheme under the EU directive, which was mentioned by my colleague, Senator Wilson, is an excellent scheme. I have assisted many people in obtaining funding from that scheme. I commend the staff who work in the unit in Kilkenny. They are highly efficient. However, there are questions around the efficiency and effectiveness of the scheme. For instance, let us consider the cost of a hip operation in the public unit at Letterkenny General Hospital. The cost to the taxpayer is approximately €5,500. However, if someone goes across the Border to obtain the same procedure in a private hospital in the North, the cost is between €9,000 and €15,000. In other words, it can be between two and three times the cost.

Major issues around cost efficiency arise within our health sector. Some, including those in the Department of Health, have argued that we are spending more than any other OECD country. That is not actually true because we are on the lower scale of OECD health expenditure. That is factually the position.

Senator Jerry Buttimer: It is not.

Senator Brian Ó Domhnaill: This year we will spend less on health than in 2013 as a percentage of gross domestic product.

Senator Jerry Buttimer: Senator Ó Domhnaill is wrong.

Senator Brian Ó Domhnaill: We are reducing our health expenditure as a percentage of gross domestic product. The facts and the figures show it.

Senator Jerry Buttimer: They do not.

Senator Brian Ó Domhnaill: They do. We may be spending more in euro but actually as a percentage of GDP we are spending less.

We need to have a debate about how we are spending that money. Let us take Letterkenny General Hospital as an example which was allocated €122 million in expenditure last year. Almost €10 million of that expenditure went on agency staff. That is far more expensive than employing local staff. It is more complicated than that, but I am keen for the opportunity to discuss it because we all have suggestions. Will the Leader arrange a full day dedicated to health to allow us to have a rolling debate in which we could come in and out of the debate along with the Minister?

Senator Tim Lombard: If possible at some stage I would like a debate on Irish Water, in particular on where the Houses of the Oireachtas fall into the debate. This week I put down a Commencement matter about Belgooly water scheme. It was ruled out of order, and rightly so, because it was deemed inappropriate for the Minister to respond.

There is no clinic in Leinster House at the moment for Irish Water. Previously, the Houses of the Oireachtas had an Irish Water clinic where we could meet officials from Irish Water. We need a review of how we are dealing with the Irish Water project with regard to the consultation and the ability for public representatives to get information. We have a helpline but one might question whether it is a helpline at all. This issue needs to be raised either by the commission or the Leader to ensure that we have a proper chain of command in order that we can get answers from Irish Water.

I have been raising the issue all week because a 3.5 km pipeline or water main was put in two years ago to Belgooly with no water flowing through it. The people in Belgooly have no

water. I cannot get a response from Irish Water on when this will be sorted and when the reservoir will be built. We have issues regarding a chain of command and getting information in order that public representatives can know and, more importantly, the public can know.

It is important to bring the Minister for the Housing, Planning and Local Government, Deputy Eoghan Murphy, before the House to discuss not only issues like Belgooly water scheme but other issues relating to Irish Water. I can only speak for myself in that I am not getting the information I require. It is information the community is badly looking for.

An Cathaoirleach: Thank you, Senator. Your time has trickled out.

Senator Kieran O'Donnell: I join with colleagues in remarking on the bus crash that took place in Connolly's Cross between Caherconlish and Herbertstown yesterday. I compliment the staff in University Hospital Limerick and those in the school for getting the emergency incident team up and running. I compliment the staff of Bus Éireann for their reaction as well as those in the ambulance and emergency services.

The school bus ran again today. Children were taken to school today, although not a large number travelled. Luckily enough, next week will be mid-term break. The bus will operate again tomorrow. At this stage most people have been discharged from hospital. I have spoken to several parents. They are relieved. People were very lucky. The bus was going relatively slowly and the dyke it fell into was dry. I think people realise how lucky they are that everyone is safe. A number of people are still in hospital, but only a few. We need to ensure that safety procedures on the school bus service are up to par. I would expect they are. We should request the Minister to conduct a review of the safety procedures. I compliment everybody on the handling of this bus crash.

I support the comments made by my colleague, Senator Lombard, on Irish Water. In many cases, the work of Irish Water is seconded out to staff in the local authority. The lines of responsibility are not clear. Let me give some examples. There was an issue with a water main and Irish Water dug up the road. Having dealt with the issue, it did not reinstate the road. A complaint was made to the council, but the local authority believes it is the responsibility of Irish Water to reinstate the road. This is becoming a problem. I suggest that we invite the Minister for Housing, Planning and Local Government to the House to discuss these issues in depth. The protocols are weak and if we do not deal with that now, it could prove to be a major problem in the future. I certainly support Senator Lombard's call. Conflicts are coming up too regularly on whether it is the responsibility of Irish Water or the local authority to reinstate areas where work has been carried out.

An Cathaoirleach: I now call the Leader, with all the answers.

Senator Kieran O'Donnell: Do we need to do a Healy-Rae on it?

Senator Jerry Buttimer: I thank the 19 members of the House for their contributions. I join Senator Wilson and all Members in offering our sympathies to the bereaved families, the Taiwan representative in Ireland, H.E. Representative Tu and President Tsai Ing-wen, on the tragic deaths in the earthquake in Taiwan. As Senator Wilson said, those who have visited Taiwan recognise the warmth and generosity of the people, and we offer the people, those who have been injured and the bereaved our sympathies and support. I will revert to Senator Wilson's remarks on Taiwan.

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I am seldom speechless, but I have no answer to Senator Daly's-----

Senator Mark Daly: The Leader has never been speechless.

Senator Jerry Buttimer: I have no answer to Senator Daly's remarks.

An Cathaoirleach: Perhaps the Leader would consider the issue and come back to him next week.

Senator Kieran O'Donnell: I think the Cathaoirleach has given the Leader advice whether he uses it or not.

Senator Jerry Buttimer: I am not sure whether it is a Kerryman's joke or a riddle, but he wants the Minister to come to the House to comment on speculation and allegation about something he did not see. Good man, Senator Daly.

Senator Mark Daly: The problem is that this is happening in his Department. I am just assisting him in making him aware of it.

Senator Jerry Buttimer: It would be a good trailer for a drama along the lines of "Yes, Minister".

Senator Mark Daly: It sounds like it. It is most certainly "Yes, Minister" in the Department of Health.

An Cathaoirleach: The Leader should not start wandering.

Senator Jerry Buttimer: The Senator is looking for a debate on an allegation of an allegation and speculation. I can impart some good news to Senator Daly on the capital development plan, and I hope that we will have a new hospital in Cork. We badly need one. It is long overdue. We have three tremendous hospitals in the city serving the catchment area beyond Cork city and county. I sincerely believe there is a need to have a new hospital for Cork along with-----

An Cathaoirleach: Kerry.

Senator Jerry Buttimer: Kerry, as an add on.

An Cathaoirleach: I should remind the Leader that many good Kerry footballers were born in Cork.

Senator Jerry Buttimer: That is true too. The Cathaoirleach is dead right. When I listen to Senator Daly and his colleagues speaking about his party's record on health, I wonder where I am and what I was doing for more than a decade. I recall that his party leader fled from the Department of Health and Children and left poor Mary Harney *in situ saecula saeculorum*. There are challenges in the health system that need to be met. The Sláintecare report which is committed to the future development of our health system is based primarily on moving people from acute hospitals and having them treated in the community by the primary care team. This is a model we should all support.

I agree with the Senator on the issue of Brexit and the expressions, however one would describe them, emanating from the UK.

Senator Mark Daly: Confusion is the word I think the Leader is looking for.

Senator Jerry Buttimer: That is a polite way of saying it. Senator Richmond, who chaired a Brexit committee of the Seanad, is continuing with the work of that committee. I hope that as part of that committee, we will be able to have further engagement. It is important that we have ongoing dialogue between Members of the Oireachtas and members of the UK Parliament, be it the House of Lords or the Commons, to explain and to influence the situation. It is equally as important, and I am not sounding a partisan note, that we have devolved government in Stormont, with the politicians representing the communities from which they come, rather than having direct rule from the Government in the UK. I commend the Minister for Foreign Affairs and Trade, Deputy Coveney, on his work.

If I may, a Chathaoirligh, I wish to take this opportunity to wish Deputy Adams well in his retirement. I wish the party well on this weekend because political parties reinvent themselves, and for the members of Sinn Féin, this is a weekend for members to say good luck and say hello to a new leader. I wish Deputies Adams and McDonald well.

There is a duty now on the political parties in the North to come to the table and to have the voice of the North of our country heard by politicians in Brexit. I agree with Senator Daly. The Government has been quite clear. The Taoiseach and the Minister for Foreign Affairs and Trade, Deputy Coveney, spoke last week about our role and what we want from the talks on Brexit. We have not demurred from any of the positions yet.

I have already responded to the issue of overprescribing when I addressed the comments of Senator Burke. Senator Mullen is correct in saying that overprescribing has increased disproportionately in a decade. I agree that overprescribing has a human consequence that does not get noticed until death, dependency or the need to access treatment or services to deal with it. We need to highlight the issue of dependency to create awareness of how it has grown.

Prescribing is an issue for doctors and medics. An independent case was taken by an individual doctor. I agree with Senator Mullen and also with the report in *The Sunday Business Post* that Senator Colm Burke referenced. The issue was raised at the Committee on Health yesterday. I would be happy to arrange to have a debate on it in this House. We are sleepwalking into a problem and we must take a proactive role in reducing dependency on prescription drugs and overprescribing. Prescribing is a matter for individual doctors. We need to have a conversation on the issue and I am happy to arrange it.

Senator Dolan raised the issue of public transport for people with disabilities. As I said yesterday, it will require a whole-of-government approach and leadership from the top. It is also important to recognise and to give credit to the public transport bodies. There have been improvements and progress has been made around accessibility, but we have more road to travel. The point was made yesterday at the joint committee that it is not just about the buses, Luas or DART service but also about the bus stop, ramp, lighting, and accessibility to the railway or DART station or to the bus stop. The testimonies given at yesterday's committee meeting were powerful. They showed that we need to treat people with respect and with dignity and we have to continue to do that. It is unacceptable that people would have such a dreadful experience, as outlined to the committee. I know from my work in Cork with the disability groups that it is a frustrating and terrible experience. We should consider how, as Members of the Oireachtas, we can engage with each other on how we can make the issues highlighted by Senator Dolan more visible. I would be quite happy to work with the Senator in that regard and to have that

debate in the House. Senator Rose Conway-Walsh spoke about Deputy Micheál Martin more than anything else. One point she did not make, however, was that we should invite everybody to attend the united Ireland conference in Cork and to participate in the discussion. It should not just be about one group of people who want a united Ireland. I am a republican and a nationalist. I want to have a united Ireland. Let us include everybody. Let us not wrap the theme around just one group.

Senator Máire Devine: That is not the point.

Senator Jerry Buttimer: It is about all of us having that conversation and being involved in that movement. I saw the list of speakers for the conference in City Hall in Cork. It is one-dimensional. It only has one side. Let us make it broader. That is my opinion. While I agree with the Senator, it is a conversation which we must have in all of the communities of our country - north, south, east and west.

Senator Ó Riordáin referred to his comments on the Order of Business last week and he read a letter into the record of the House. I will not respond other than to say that it is the right of all Members to represent their communities and their constituencies and to campaign and advocate on behalf of people. That is a fundamental right given to all of us. Equally, a developer, and I am not referring specifically to this case, is entitled to his or her good name and to have any facts and information put out about him or her to be accurate. To be fair, this is a Chamber of the Houses of the Oireachtas. Democracy is about freedom of expression and the ability to come to the House and make contributions.

Senator Conway spoke about the important issue of takeaway coffee cups and Senator Reilly referred to the Young Fine Gael campaign on non-compostable coffee cups. This is an issue we should all be involved in. We were educated on the plastic bag levy and on other things such as seat belts. It is a gradual progression. I know Senator Devine mentioned bringing one's own cup. That is something we should look at. We should think about how we can change. The reusable cups are probably a matter for the Houses of the Oireachtas Commission and I am happy to defer to it on that matter.

On Senator Gallagher's contribution, we are bringing people home and recruiting them to work in our health care system. The Senator is right that we must do more to retain people but also to attract people back. We need to incentivise that and ensure that our best and brightest health care professionals return to our country. That is a debate which we need to have and I would be happy to facilitate it.

Senators Byrne and Kieran O'Donnell referred to the bus crash in Limerick yesterday. I join them in paying tribute to the first responders, gardaí, ambulance personnel, fire brigade personnel, county council staff, and health and hospital staff who worked so hard yesterday. We should be thankful that there was no loss of life. As Senator O'Donnell said, the bus was back today and there were people on it. That is a wonderful thing to say but there is a need to have a review of our school bus transport system. Some of it is franchised out to private operators. There is a need to uphold standards and ensure that they are not minimal but exceptional, because we are talking about young children.

I welcome the new jobs for Limerick the company 4site announced yesterday which Senator Byrne spoke about. It is good to see more jobs in Limerick. I am sure all Members of the House will agree that it is wonderful to see unemployment falling and more people back at

work.

Senator Devine raised the issue of home care packages and home help hours, on which I fundamentally agree with her. There is a need to do more and provide more. The Government is committed to it. The Minister, Deputy Harris, secured €25 million in funding for social care as part of the health budget this year. This includes funding for home care supports, new home care packages, and a move away from acute hospitals into transition care beds, which is important. We must work on that. The HSE is developing a policy in respect of home care packages. I fundamentally agree with the Senator. We need to invest more of our health budget in health care packages to keep people at home, keep them out of our hospitals and, as the Deputy rightly said, avoid people being lonely and suffering from isolation. It is a fundamental task which we all must aspire to deal with. I make no apology for agreeing with the Senator on that issue and working with her on it. It is an important issue. I wish that the HSE and some in the Department of Health would recognise the importance of home care packages and the benefits they bring to people in our communities.

Senator John Dolan: Hear, hear.

Senator Jerry Buttimer: Members of our families, our friends and our neighbours benefit from these packages. They are not anonymous or invisible. They are citizens of our Republic. The HSE has a duty to provide care and to work with people.

Without wanting to strike a discordant note, in developing a package around home care, we must bear in mind that it is not about creating an industry for some. It cannot be that. It is about caring for the people who need that help. That is being lost in some cases. I am not saying that it is lost on Senator Devine. I fundamentally agree with her on that particular point. I am not familiar with the area she referred to. If she wants to give me the information, I will forward it to the Minister. I am sure the Minister of State, Deputy Catherine Byrne, is well aware of it, but I would be happy to take it up with her or with the Minister, Deputy Harris, on the Senator's behalf.

Senator Reilly referred to the issue of the national development plan and day hospitals. This goes back to my comment to Senator Devine. It is about taking people out of our acute hospitals, building transitional care beds and creating day hospitals in which people can have procedures carried out and which will have step-down facilities. That is fundamental to what we are trying to do as a Government in respect of the Sláintecare report. It is about making services easier for people to access. Senator Mark Daly referred to the emergency departments. If we referred fewer people to emergency departments and had more primary care centres, it would also reduce the burden on the emergency departments. It is part of an ongoing process that we must work through to eliminate overcrowding and to ensure that we have day care beds.

Senator Wilson raised the issue of Ireland, Taiwan and the One China policy. I agree with him. There is a fundamental need to review how we deal with many different nations and governments. The Taiwanese yearn to do more trade with us and to engage more with us from cultural, economic and social points of view. We have seen successful Irish companies in Taipei and in many parts of Taiwan bringing in and creating jobs. I understand the size of China and its importance but the One China policy could be looked at in the context of developing further economic and industrial links with Taiwan. We have a very good representative of Taiwan in H.E. Simon S.K. Tu. He works hard in reaching out through the chambers of commerce and in visiting different parts of the countries. This is about having a two-way street. I would be

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happy to have a debate in the House on that relationship. This is an issue which, as Senator Wilson rightly illustrated, can bring benefit to our country.

I also agree with Senator Wilson with respect to the cross-Border initiative and on the need for people to be able to access the finance at the outset. I know they can get 90% of it back afterwards, but it is an important initiative and it has seen success. People can be referred to the North of our country by their GP in respect of eyes and cataracts. We need to see that initiative developed and I would be happy to invite the Minister in for a debate in that regard.

Senator Butler raised the issue of the Church of Scientology and Ballivor. I know that he has been very involved in this issue with Councillor Noel French. The issue is that Meath County Council has granted an exemption to the trust which Senator Butler mentioned. It is important that we have a debate about the role of the Church of Scientology and the cult-like way in which it operates.

Senator Gavan raised the very important issue of direct provision and asylum seekers being able to work in our country. The Minister, Deputy Flanagan, the Taoiseach and the Minister of State, Deputy Stanton, have been in the House and referred to the issue. The Government is committed to the EU reception conditions directive and to people being able to work. It is important to recognise that there is now an obligation on Government to transpose that Supreme Court decision into action. I hope that will happen soon. It needs to happen. I accept that.

Senator Mulherin raised the important issue of section 39 organisations. I agree with her. There is an anomaly. The Cathaoirleach and I are familiar with Marymount Hospice in Cork where the workers fall under section 39 and are being paid less than their HSE equivalents. There was a pay cut in some of the section 39 organisations which has not been restored. There is need to see the service level agreement the HSE has with these section 39 organisations changed because if people are not paid properly, the agreement must be changed. That service level agreement is about offering a suite of services which might include respite care, assessment for autism, and speech and language therapy among other things. The review exercise which the Minister has initiated is fundamental to the issue which Senator Mulherin has raised. I hope that, as a consequence of the review, staff in section 39 organisations such as those working in Marymount University Hospital and Hospice in Cork will have their pay restored. The State should increase the block grants it provides to section 39 organisations to facilitate pay increases for workers.

To respond to Senator Ó Domhnaill, the Minister for Health has been in the House multiple times. I like the Senator's suggestion of having a rolling debate. We are having a series of debates on health. The Minister appeared before the House last week to discuss emergency departments and will come to the House again to discuss other issues. This process should continue as the topic raised by the Senator is an important one.

I disagree with Senator Ó Domhnaill's analysis of health expenditure. Ireland is among the top five countries in the world for spending *per capita* on health. The health budget is higher than it has ever been. The issue is not what we spend but how we spend it and ensuring there is accountability in the system. The system must be reformed to deliver value for money, while also recognising that the patient is at the centre of what we do in the health system. We can have an ongoing debate on health.

Senators Lombard and Kieran O'Donnell raised the issue of Irish Water. Last week, I stated

that Irish Water should resume its clinic for Members of the Oireachtas. As the Senators correctly pointed out, Members are experiencing difficulties obtaining answers on specific issues that arise in communities. Senator Kieran O'Donnell also noted that Irish Water is also outsourcing work. The important issue is to ensure Irish Water resumes its clinics for Members of the Oireachtas because these give us, as public representatives, access to members of staff who can follow up on the issues we raise and revert to us with responses. I have asked Irish Water to do this. I will also ask the Minister to come to the House.

Order of Business agreed to.

Sitting suspended at 12.42 p.m. and resumed at 12.48 p.m.

Data Protection Bill 2018: Order for Second Stage

Bill entitled an Act establish a body to be known as An Coimisiún um Chosaint Sonraí or, in the English language, the Data Protection Commission; to give further effect to Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016¹ on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation); to give effect to Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016² on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA and for those and other purposes to amend the Data Protection Act 1988; to provide for the consequential amendment of certain other enactments; and to provide for related matters.

Senator Ray Butler: I move: "That Second Stage be taken now."

Question put and agreed to.

Data Protection Bill 2018: Second Stage

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

Minister for Justice and Equality (Deputy Charles Flanagan): I am pleased to have the opportunity to launch the Data Protection Bill 2018 in Seanad Éireann. I look forward to hearing the contributions of Senators and I hope they will support this important Bill. My officials are available to any Member who wishes to receive a detailed briefing on technical aspects of the legislation. In this regard, a more formal briefing will be provided for Senators on Monday morning next and I hope, if it is convenient, they will avail of the opportunity to attend. I thank the Members of the House who undertook the pre-legislative scrutiny work in their capacity as members of the Oireachtas Joint Committee on Justice and Equality. In a nutshell, this legislation will introduce stronger rules on data protection. People will have more control over their

personal data and businesses will benefit from a level playing field. Members of this House will no doubt be aware of the general data protection regulation, generally referred to as the GDPR, of which there has been a great deal of debate both in Ireland and across the European Union. The GDPR regulates the processing by an individual, a company or an organisation of personal data relating to individuals in the EU. It does not apply to data processed by an individual for purely personal reasons or for activities carried out in a person's home provided there is no connection to a professional or commercial activity.

The GDPR is a significant regulation and this Bill will give further effect to the GDPR as well as transposing the accompanying law enforcement directive into national law. Furthermore, it will establish the data protection commission to replace the Office of the Data Protection Commissioner. The GDPR enters into effect on 25 May next and the directive must be transposed into national law by early May. Accordingly, I am hopeful that with the support of both Houses, this Bill will be signed into law and enter into force next May alongside the GDPR. I believe that the GDPR and this legislation will serve to make our data protection laws fit for purpose in the digital age.

I am conscious that many people may be inclined to switch off at the mention of data protection because they see it as a technical issue which does not concern them directly. That would be a mistake for the simple reason that the updated data protection rules entering into force in May next will affect all of us in one way or another. It will affect each of us as individuals because it will increase our control over the manner in which, and the purposes for which, our own personal data is used. It will affect businesses, be they large, medium or small, because it will require them to review and update the manner in which they collect, use or store the personal data of their customers, clients or any other individual whose personal data they retain. The same applies to Government Departments and public bodies.

The simple fact is that data protection law has not kept pace with the many technological advances and new business models such as cloud computing that have emerged in recent years. Our current data protection law, which is based on the EU's 1995 data protection directive, pre-dates mass Internet usage, hand-held devices, apps, games, social networking and data analytics, all of which involve the collection and processing of our personal data, often for purposes that are opaque and largely unknown to us. The basic data protection principles set out in the Data Protection Acts 1988 and 2003 will remain largely unchanged following the entry into force of the GDPR in May next. However, the GDPR's provisions will strengthen our control over our own personal data and the purposes for which it may be used.

Increased transparency is essential to increased control. In future, all information must be provided in a concise, transparent, intelligible and easily accessible format using clear and plain language. It will no longer be acceptable to direct users to terms and conditions written in legal jargon. The obligations placed on companies and public sector bodies that collect, use and store personal data are set to increase but will do so in a measured and proportionate manner. The compliance burden will increase for some but that will be proportionate to risks to the rights and freedoms of individuals arising from any accidental or unlawful loss or disclosure of, or access to, their personal data. By proportionate, I mean that for SMEs where data processing is not a core part of the business and where the company's activity does not create risks for individuals, some obligations of the GDPR will not apply, for example, the appointment of a data protection officer, DPO. The new obligations will inevitably pose a greater challenge for bodies, be they in the public or private sectors, that specialise in data processing and for those handling, for example, customers' financial data or patients' sensitive health data.

While large companies have been gearing up for the entry into force of the GDPR for some time, it is likely that the SME sector and micro-enterprises will continue to require assistance and support during the coming period of adjustment. Awareness-raising activities have been under way for the last year and a half involving conferences, seminars and workshops and those activities will continue. The Minister of State, Deputy Pat Breen, who has special responsibility in this policy area, has been very active in promoting awareness of the changes to come and I know he has an ambitious schedule planned for the coming months. Practical guidance is also vital and I strongly recommend the Data Protection Commissioner's web page www.gdprandyou.ie. It contains a wealth of useful information and practical guidance for both business and individuals.

High data protection standards are in everyone's interests, including the interests of business. The harmonised rules set out in the GDPR and the Data Protection Bill will ensure that the same data protection safeguards will operate across the EU. This will provide a level playing field for businesses, especially those involved in the cross-border provision of goods and services. In this context, it is worth remembering that exports are a critical aspect of our strong economy. Enhanced data protection standards will also be beneficial to the increasing numbers who avail of the Government's online services.

To make the enhanced protections meaningful, public and private enforcement of data protection law is set to increase. The data protection commission will in future have stronger supervisory and enforcement powers as well as a broader range of sanctions at its disposal, including the possibility of administrative fines. The scope for compensation claims arising from infringements of data protection rules will also increase resulting in higher levels of private enforcement activity.

This Government is committed to achieving the full potential of the digital economy and its capacity to promote innovation, create jobs and boost economic activity in the State. We already host many of the world's leading digital companies and they provide their services well beyond our shores. That number will increase in the future. The GDPR, together with the provisions of this legislation, will ensure that data processing involved in the provision of these services will meet the highest data protection standards and the establishment of the data protection commission will ensure effective supervision and enforcement of these high standards.

Following protracted negotiations, the GDPR was agreed in early 2016 and will, as I mentioned, enter into force across the EU on 25 May 2018. An accompanying directive, which establishes data protection standards for the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection and prosecution of criminal offences and the execution of criminal penalties, requires to be transposed into national law by 6 May 2018.

Both the GDPR and the directive have a legal basis in Article 16 of the Treaty on the Functioning of the European Union and provide for significant reforms to current data protection rules based on the EU's 1995 data protection directive. Both instruments generally provide for higher standards of data protection for individuals and impose increased obligations on bodies in the public and private sectors that process personal data. They also increase the range of possible sanctions for infringements of these standards and obligations.

The GDPR seeks to provide for a uniform interpretation and application of data protection standards across the EU thereby providing a level playing field for all those doing business in

the EU digital market. The European data protection board, a new entity that will replace the current advisory committee and that will be made up of representatives of the data protection authorities of all member states, will play an important role in this respect.

At the heart of both the GDPR and the directive is a risk-based approach to data protection. This means that each individual controller and processor is required to put appropriate technical and organisational measures in place in order to ensure and, importantly, to be able to demonstrate that its processing of personal data complies with the new data protection standards. I would remind Senators that the terms “controller” and “processor” apply to us too. Those of us involved in the handling of constituents’ queries, requests and representations are data controllers.

Any operator of an off-site storage facility for files containing personal data is a processor. This is an issue for the Oireachtas in a most direct way.

For the purposes of assessing the nature, level and likelihood of risks to the rights and freedoms of individuals, controllers and processors must have regard to the nature, scope, context and purposes of their data processing activities. In certain cases, this will in future require the carrying out of a data protection impact assessment in order to take steps to mitigate such risks. Where mitigation measures are not feasible, prior consultation with the data protection commission will be mandatory.

The GDPR and the directive place greatly increased emphasis on the transparency of processing, the responsibility of the controller and processor for compliance with data protection standards, and the need for appropriate security standards in order to protect against data breaches, such as unauthorised or unlawful processing and accidental loss, destruction and damage. The GDPR and the directive impose an obligation on all public authorities and bodies, as well as some private sector bodies, to designate a data protection officer with responsibility to oversee data processing operations and to report data breaches to the relevant data protection authority. The GDPR also limits the grounds for lawful processing of personal data by public authorities and bodies. For example, depending on the circumstances, an individual’s consent to the processing of his or her personal data may not provide a reliable basis for such processing by a public authority. The so-called legitimate interest ground in Article 6.1(f) of the GDPR will no longer be available to public authorities when acting in their public capacity.

The GDPR and the directive provide for increased supervision and enforcement of data protection standards by the data protection authorities of member states, including the future data protection commission. The GDPR provides for the possible imposition of substantial administrative fines of up to €10 million, €20 million or 2% or 4% of total worldwide annual turnover in the preceding financial year. I will return to the fines issue shortly.

The liability of controllers and processors will be broadened to include non-material damage such as distress. In future, an individual who has suffered material or non-material damage because of a breach of his or her data protection rights under the GDPR or this legislation will have the right to seek compensation in the courts.

I will turn to the purpose and structure of the Bill. The key purposes of the Bill are as follows: to give further effect to the GDPR in the areas in which member state flexibility is permitted; to transpose the directive into national law; to establish the data protection commission

as the State's data protection authority with the means to supervise and enforce the protection standards enshrined in the GDPR and directive in an efficient and effective manner; and to enact consequential amendments to various Acts that contain references to the Data Protection Acts 1988 and 2003.

The Bill, which is lengthy and complex in nature, comprises the following parts. Part 1, comprising sections 1 to 8, inclusive, contains a number of standard provisions, for example, citation, commencement and definitions. Section 7 makes provision for repeals while section 8 defines the residual scope of the 1988 Act.

Part 2, comprising sections 9 to 27, inclusive, establishes the data protection commission to replace the Data Protection Commissioner as the State's data protection authority. Its primary task will be to act as the supervisory authority for the purposes of the GDPR and the directive. Establishment of the commission, comprising at least one and not more than three commissioners, is a future-proofing provision to allow, should the need arise, for the appointment of additional commissioners in response to an increased commission workload.

Part 3, comprising sections 28 to 55, inclusive, gives further effect to the GDPR in a number of areas, mainly affecting the public sector, in which the regulation gives member states a margin of flexibility. In certain cases, this involves the creation of a regulation-making power that will permit the making of more detailed regulations in due course.

Part 4, comprising sections 56 to 62, inclusive, contains a number of provisions that are consequential on replacement of the Data Protection Commissioner with the data protection commission. The intention is to provide for a smooth and frictionless transition from current arrangements to the new structure.

Part 5, comprising sections 63 to 99, inclusive, transposes the law enforcement directive's provisions into national law. Part 6, comprising sections 100 to 151, inclusive, contains provisions dealing with enforcement of the obligations and rights set out in the GDPR and directive by the data protection commission. The intention is to ensure effective supervision and enforcement mechanisms, together with the necessary procedural and due process safeguards. Part 7, comprising sections 152 to 157, inclusive, contains a number of miscellaneous provisions mainly concerning the application of data protection rules to the courts and a number of related legal matters. Part 8, comprising sections 158 to 162, inclusive, contains consequential amendments to a number of Acts.

As regards substance, the explanatory and financial memorandum that accompanies the Bill contains much detail. I do not intend, therefore, to delve into all of the Bill's provisions. However, I wish to take the opportunity to highlight a number of issues and, in particular, to refer to Part 5, which transposes the law enforcement directive into national law.

Sections 7 and 8 of the Bill contain provisions concerning the Data Protection Acts 1988 and 2003. While Article 2.2(a) of the GDPR provides that its provisions do not apply to the processing of personal data in the course of an activity falling outside the scope of EU law, there has been considerable uncertainty about the scope of that exclusion in light of evolving Court of Justice case law. A detailed analysis of relevant Court of Justice case law by the Office of the Attorney General has concluded that this exclusion is essentially limited in practice to data processing in the context of national security, defence and the international relations of the State.

While national security and defence lie outside the scope of EU law, the Council of Eu-

rope's 1981 data protection convention - Convention 108 - contains provisions that apply to data processing for these purposes. The process of updating and modernising this convention is under way in Strasbourg, but that process has not concluded. Pending the updating of Convention 108, section 8 proposes to confine the scope of the Data Protection Act 1988 to data processing in the context of national security, defence and the international relations of the State. On completion of that process, it will be possible to update the content of this legislation by means of an amending Act and to repeal the 1988 Act. All key data protection standards will then be found in a single consolidated Act.

The GDPR contains a “consistency mechanism”, or so-called one-stop-shop, which is intended to streamline the handling of data protection infringements and complaints across the EU. For this purpose, it employs the concept of a lead supervisory authority, that is, the data protection authority of the member state in which a controller's “main” or only EU establishment is located. It means that complaints will be investigated by the data protection authority of that member state irrespective of the member state of origin of the complaint. That data protection authority may request assistance from other authorities for investigation purposes, but the initial decision as to whether an infringement has occurred or is occurring will be the responsibility of the lead authority.

Before arriving at any final decision in cross-border cases, the lead authority must submit a draft decision to the other data protection authorities that have an interest in the case for their views and must have regard to any objection received from them. If there are remaining objections to a revised draft decision, it may trigger a referral of the case to the European Data Protection Board, EDPB, which comprises representatives of all supervisory authorities, for a binding decision. The EDPB will make a binding decision by majority vote, which may or may not coincide with the revised draft decision of the lead supervisory authority.

This mechanism has a special significance for Ireland, since many multinational companies that provide digital services across the EU and beyond have their headquarters here. This means that the data protection commission and its handling of cross-border complaints will be the focus of particular and sustained attention across the EU.

This is the backdrop to the proposals in Part 2 of the Bill to establish a data protection commission with at least one but not more than three commissioners. While there are no specific plans at present to increase the number of commissioners, significant levels of additional financial and staffing resources have been allocated to the Office of the Data Protection Commissioner in recent years in order to prepare for the expected workload increases following the entry into force of the GDPR and this legislation. Staff resources have trebled from 30 in 2013 to more than 90 currently. Additional funding of €4 million in 2018 will bring the overall budget to approximately €11.7 million, which will facilitate the recruitment of additional staff, bringing the total to in or around 140.

In order to underline and further enhance the independence of the commission as required by the GDPR and Court of Justice case law, the commissioner will be the Accounting Officer of a separate financial Vote. This is covered in sections 25 and 156, respectively.

Commencement of these provisions will take place when the necessary procedures for a separate Vote are in place.

Article 8 of the GDPR specifies a “digital age of consent” of 16 years but allows member

states to lower it, but not below 13 years.

This means that where information services are offered directly to children, the processing of a child's personal data will be lawful only if, and to the extent that, consent is given or authorised by the holder of parental responsibility over the child. In such cases, the service provider must make reasonable efforts to verify that consent is given or authorised by the holder of parental responsibility over the child.

In late 2016, my Department launched a consultation process and invited submissions from interested parties on the digital age of consent to apply in this jurisdiction under Article 8. The Government Data Forum, which brings together legal and data protection experts and business representatives from SMEs and multinationals, in addition to sociologists, psychologists and education specialists, also carried out a consultation process. A majority of respondents, including the Office of the Ombudsman for Children, the Internet Safety Advisory Committee and the Children's Rights Alliance, recommended setting the digital age of consent at 13 years.

When appearing before the Oireachtas Joint Committee on Justice and Equality for the pre-legislative scrutiny of the general scheme of the Bill last July, the Special Rapporteur on Child Protection, Dr. Geoffrey Shannon, also recommended setting the digital age of consent at 13 years. This recommendation was adopted by the committee in its report, published last November.

The Government considers that a digital age of consent of 13 years represents an appropriate balancing of children's rights, namely, a child's right to participation in the online environment and a child's right to safety and protection, rights that are enshrined in the UN Convention on the Rights of the Child. Provision is made for that in section 29.

As regards preventive or counselling services provided for children, subsection (2) clarifies that such services are excluded from the scope of Article 8. The legal advice available to the Department points to the risks of attempting any definition of such services. Any inadvertent exclusions could risk the termination of preventive or counselling services already being provided for the benefit of children under 13 years.

I fully support the recommendation of the Oireachtas joint committee for consultation with children in regard to data protection measures. Article 57 of the GDPR requires data protection authorities, such as the Office of the Data Protection Commissioner, to promote public awareness and understanding of the risks, rules, safeguards and rights in regard to data processing, and it states activities addressed specifically to children must receive specific attention. Adequate consultation with children in regard to the content of such activities will be necessary and appropriate.

I also support the committee's recommendation that education programmes be implemented to assist children in exercising their data protection and digital rights. In this context, I want to draw attention to the webwise initiative *webwise.ie*, operated by the Professional Development Service for Teachers, which promotes online awareness and safety objectives. My Department provides funding to *webwise.ie* and I am working with the Minister for Education and Skills, Deputy Bruton, the Minister for Children and Youth Affairs, Deputy Zappone, and the Minister for Communications, Climate Action and Environment, Deputy Naughten, on the broader issue of child safety online.

Article 23 of the GDPR makes provision for possible restrictions on the exercise of data

subject rights in order to safeguard the important objective of general public interest, some of which restrictions are set out in paragraph 1. It specifies that such restrictions must comply with three conditions: they must be in a legislative measure; they must respect the essence of the fundamental rights and freedoms of individuals; and they may not exceed what is necessary and proportionate in a democratic society.

The need to apply restrictions on the exercise of data subject rights might arise, for example, where a regulatory body, such as the Legal Services Regulatory Authority or the Medical Council, is examining a complaint regarding fitness to practice or an allegation of improper conduct. It could also arise where the Health and Safety Authority is investigating a workplace accident. The objective in such cases is not to set aside permanently the data protection rights of individuals concerned but, rather, to protect the investigation or examination from access requests or requests for rectification or erasure of personal data so that the investigation or examination can be brought to a conclusion and appropriate action can be taken.

Section 54 of the Bill provides for appropriate restrictions in order to safeguard a range of important objectives of general public interest, such as avoiding obstructions to any official or legal inquiry, investigation or process. Such public-interest objectives also include Cabinet confidentiality, judicial independence, parliamentary privilege and legal privilege. Any such restrictions must be set out in law or in regulations under subsections (6), (7) and (8), and the regulations must comply with subsection (10), which requires one to respect the essence of the right to data protection, and restrict the exercise of data subject rights only in so far as is necessary and proportionate in a democratic society. Similar safeguards apply in the case of restrictions on data subject rights under Part 5. These are provided for in section 89.

Article 57 of the GDPR confers a broad range of corrective powers and sanctions on the data protection authorities, including the Office of the Data Protection Commissioner. These range from issuing warnings or reprimands to ordering public or private bodies to facilitate the exercise of data subject rights and to bring their data-processing operations into line with data protection law. The commission will also have the power to impose a temporary or permanent ban on non-compliant processing operations. Data transfers to third countries may be suspended if data protection standards applicable there are considered inadequate by the European Union. All of these corrective actions, including prohibition orders, apply equally to the public and private sectors.

Article 83 of the GDPR provides for the imposition of administrative fines for infringements, including data breaches. It states each member state may lay down the rules on whether, and the extent to which, administrative fines may be imposed on public sector bodies. While the possibility of imposing such fines on Departments, public authorities and public bodies could have a deterrent effect, it would also reduce the funds available to such bodies for the provision of important services to the public. Any deficit arising from the payment of fines would be likely to lead to demands for replacement funding by means of a supplementary budget. This could result in a wasteful, circular flow of funding. On the other hand, the Government recognises that non-application of administrative fines could create competition distortions in those areas in which public and private bodies operate in the same market, for example, public and private hospitals, and public and private transport providers.

To ensure fair and equitable trading conditions, section 136 of the Bill provides that administrative fines may be imposed on public bodies when they act as “undertakings”, that is, when they are providing goods or services for gain in competition with private bodies. This

will ensure fair competition between the public and private sectors in the provision of goods and services.

Part 5 of the Bill, containing sections 63 to 99, inclusive, transposes the law-enforcement directive into national law. Chapter 1 contains relevant definitions — section 63 — and outlines the scope of this Part — section 64. It applies to data processing carried out by public authorities and bodies for the purposes of the prevention, investigation, detection or prosecution of criminal offences, including the safeguarding against, and the prevention of, threats to public security or the execution of criminal penalties. While it will apply in the main to bodies operating within the criminal justice system, its provisions will also apply to administrative bodies such as the Health and Safety Authority and others authorities, such as fire authorities, when they are engaged in the investigation and prosecution of offences.

Chapter 2 contains provisions outlining the general principles of data protection. I refer to section 65. The principles are broadly similar to those in the GDPR. Also outlined are the following: the need for adequate security measures in section 66; conditions applicable to the processing of special categories of personal data in section 67; and standards applicable to data quality in section 68.

Chapter 3 outlines the obligations on controllers and processors when acting within the scope of Part 5. These are broadly similar to obligations set out in Part 4 of the GDPR, including: the need for appropriate security standards; reporting of data breaches to the Office of the Data Protection Commissioner; the need for contracts with processors; the carrying out of data protection impact assessments; and, in certain cases, mandatory consultation with the Office of the Data Protection Commissioner. Section 76 imposes a specific requirement on controllers and processors to create and maintain data logs, which must record consultation and disclosures of data in automated processing systems. All public authorities and bodies must designate a data protection officer.

Chapter 4 specifies the data protection rights of individuals. These include rights in regard to automated decision-making, section 84; the right to information, section 85; the right of access, section 86; and the right to erasure and rectification of personal data, section 87. Section 89 outlines the grounds on which the exercise of data subject rights under this Part may be restricted in whole or in part. Where exercise of a data protection right is restricted, the data subject may seek indirect exercise of that right through the Office of the Data Protection Commission, section 90.

Part 6 contains detailed provisions that deal with supervision and enforcement of the general data protection regulation, GDPR, and the data protection standards set out in Part 5. These include provisions for the handling of complaints received by the commission, the carrying out of detailed investigations, and the imposition of sanctions.

I want to mention the report on pre-legislative scrutiny of the draft Bill submitted by the Joint Committee on Justice and Equality. I wish to thank the joint committee for its work and recommendations, many of which have been taken on board in the Bill before us today. I have already referred to a number of areas where it has not been possible to adopt the committee's recommendations. I also take this opportunity to thank the many other stakeholders for their inputs into the preparation of this legislation.

As I mentioned at the outset, this is a lengthy Bill and it is also complex legislation. That

should not obscure its central purpose, which is to promote and facilitate the exercise of our rights as individuals to protection of our personal data and to increase our control over it and the uses to which it may be put. Article 8 of the EU Charter of Fundamental Rights provides simply that “[e]veryone has the right to protection of personal data concerning him or her”. The GDPR and this Bill seek to make that a reality. I, therefore, commend the Bill to the House.

An Leas-Chathaoirleach: That was a *tour de force*. Can I take it I have the Members’ permission to depart from the rota of speakers in calling the next speaker, in accordance with the Members having agreed to this among themselves? Agreed. I call Senator Higgins.

Senator Victor Boyhan: What are the time slots?

An Leas-Chathaoirleach: They are eight minutes and five minutes.

Senator Alice-Mary Higgins: I will probably not need eight minutes and I apologise in advance for having to leave immediately after I finish, but I am sure I will see the Minister again on Committee Stage.

Despite the extensive focus on and debate around the GDPR, I regret this Bill is being rushed. Second Stage is being taken this week and despite the requests of a number of leaders of groups in the House, Committee Stage is being taken next week. While a briefing on it may be taking place on Monday, given the length, significance and detail in this Bill, that is not a sufficient or appropriate length of time to ensure proper oversight of it by us as Senators and for us to have a proper opportunity to work together and with the Minister and his Department around a constructive amendment process. Nonetheless, we will be tabling a number of amendments. It is a pity we will not have a better process in that regard.

The GDPR, as the Minister outlined, is both best practice and its adoption is a legal obligation on the part of the State. It is deeply concerning that the legislation that has been brought before this House does not fully reflect either best practice nor legal obligations. It is concerning that it has not incorporated, as the Minister acknowledged, many of the substantial important recommendations made by the committee during the pre-legislative stage.

The Bill crucially seeks to make exemptions for the State in respect of fines. In this the State is contravening good practice and the strong recommendation of both experts and the EU regulation. I note with concern that where there is a question of commercial concern, the undertaking question is dealt with, but is that to be of less concern, of less merit in terms of fines than the rights of individuals and their rights to privacy? It is notable that we address the concerns of business in this regard but we do not address the concerns of individuals and their right to see a full and appropriate response to situations where their data are mishandled or breached. We do not have the important deterrent that needs to be there, bearing in mind that any moneys collected in fines are returned to the Exchequer and, therefore, they are not a loss to the State. It is unfortunate we are not placing that important imperative in terms of an individual’s privacy on our public bodies.

Individuals will still have the right to seek material and non-material damages through the courts, and I am sure many of them will. If we have situations, for example, where 1,000 or 2,000 individuals suffer a breach in terms of their data, 1,000 or 2,000 cases may go through the courts. Aside from the pressures that may place on our courts system, there is also a very real concern. It is not appropriate that we, as a State, should consistently rely on individuals who may simply wish to identify a poor practice and have it dealt with but who would have only the

courts as their key source of recourse in that regard. We are relying on individuals yet again to correct mistakes that we should be identifying at the legislative point.

However, a more serious concern is the exemptions which the State seems to make in terms of data processing. It is not only bad practice but is regarded by many legal experts as potentially illegal and leaves us open to potential EU court cases and penalisation. This will not be allowed to pass. This was made clear to the Department of Justice and Equality, and it was outlined during the pre-legislative scrutiny stage, but the Department has chosen to ignore this guidance and plough ahead with what is flawed in that regard.

In 2015, in the *Bara* case, the European Court of Justice found the Romanian Government to be in breach of the Charter of Fundamental Rights and the data protection directive. The fact that the Romanian state was compliant with its own Romanian legislation did not exempt it from facing sanction by the European Court of Justice. That is why the legislation we pass on data protection needs to be fully compliant with European law. There is not a middle ground where we can produce law which gives us, individuals or states, other options. That is also a very important issue here. The Minister mentioned the question of proportionate in the context of the GDPR, and it is a key point. There is no clear test of what is proportionate within the legislation. We need to have clear guidance as to what is a proportionate use of an individual's data in any situation.

Another important recommendation from the committee was that the GDPR and the data protection legislation should be the comprehensive means of dealing with this area. It would mean repealing a number of earlier Acts. As the Minister pointed out, the GDPR requires clear and accessible information in terms of legislation. We discussed at the Joint Committee on Employment Affairs and Social Protection earlier the fact that the Social Welfare Consolidation Act, which has been amended numerous times, does not meet the test of clarity in terms of an individual's privacy. That is also an issue that will arise.

Data protection is a hugely important and crucial area for the State to address. We debated at the joint committee earlier the issue of the public services card, the single customer view database and the issues of data protection in that respect. There are increasingly more examples of how individuals' and collective data uses can lead to great damage. We have seen significant breaches in that regard. For example, there was a situation in the Department of Employment Affairs and Social Protection recently where people's individual data were being sold for €27. Of course, that was a criminal act and has been appropriately treated. The joint committee heard about the case of an individual who had her pension withheld because she required and insisted on having the legal basis for her being obliged to get a public services card. That case was taken forward but the State then withdrew from it because it realised it could not adequately prove that legal basis. That is a serious concern and it is still not appropriate that individuals have to challenge and bring forward such cases. Let us try to address that issue at the outset.

Given the spirit underpinning the GDPR, when the Data Protection Commissioner, whose responsibility will intensify - that responsibility is deeply important and, as the Minister said, crucial to Ireland's compliance with the GDPR - indicated concern and initiated a section 10 investigation into the public services card, it was extremely concerning that the State ploughed ahead with making it obligatory in many areas, including potentially for people to access college, by denying them Student Universal Support Ireland, SUSI, grants. Those are very serious issues and contravene the spirit underpinning the GDPR.

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I reiterate those points to stress we must take this issue very seriously. We will be putting forward amendments on Committee Stage. I regret we have not been given the time required for dealing with this legislation but I am sure we will have Committee Stage sittings to deal with it further.

I thank the Minister for his input. I also thank all the Members for obliging me by allowing me to contribute at this point.

Senator Victor Boyhan: I thank the Minister for coming to the House. I will start with the concluding paragraph of his report to us. He knows better than anyone else that this is very complex legislation, but, at the end of the day, it is both important and necessary. As he says, it is lengthy and complex. I acknowledge the Oireachtas Library and Research Service which has provided a very comprehensive digest on the Bill. I acknowledge its amazing support of the work we do in both Houses of the Oireachtas.

The Minister touched on a number of issues and spoke about acknowledging the work done in the pre-legislative scrutiny process and adopting many recommendations arising from it. From the digest we know that 12 of the 18 recommendations made were not included in the Bill. It is very important work, if the Minister has not seen it. I do not propose to read all 18 recommendations, although I see the Minister has the digest; I never doubted that he was one of the wiser men. That assists me because I can refer to the relevant pages of the digest. A red light was given to 12 of the 18 recommendations made. I do not propose to read all of them, but I want to draw the Minister's attention to two.

Recommendation No. 14, on page 16, deals with administrative fines. It states: "The Committee recommends that fines be administered to public bodies in breach of the new data protection legislation, where appropriate, to encourage compliance with data protection provisions in the new legislation". The second recommendation to which I wish to refer is No. 15 which is critical and deals with the right to receive compensation. I am not in the business of slapping people on the wrist - I do not think the Minister is either - and saying they have been bad and should not do something again, but there have to be sanctions. If this is to be meaningful, they have to apply across the board. I know the differences between the various authorities, on which I will touch, but recommendation No. 15 is: "The Committee recommends that an explicit right to compensation be outlined in the new legislation for breaches of data protection provisions. A consultation with the DPC, Office of the Attorney General, the European Commission could assist in the drafting of such a provision".

They are two reasonable and effective ways to deal with issues. I am aware of the subtle difference in the public authorities as defined in the legislation, which definition includes Ministers, Departments, regional assemblies, local authorities, An Garda Síochána and persons holding office established by statute. Are we saying those holding very sensitive information will not be subject to monetary sanctions? Will there be no compensation if there are breaches? If that is what the Bill states, it has huge shortcomings which I want to confirm. As the Minister knows, I am a member of the Independent group in the Seanad. We will bring forward a series of amendments based on this. The legislation, not me or the Minister, defines public bodies as State-owned companies formed under the Companies Act 2014 or its predecessors. There is a difference between public authorities and public bodies. I flag this as a concern because many public bodies hold extremely sensitive information and if they go wrong, how will we sanction them? That is a really important issue.

On the processing of special categories of personal data, what I call sensitive personal data, although the word “sensitive” is not used, there is always the issue of consent, which is very important. Chapter 2 in Part 3 of the Bill, sections 39 to 49, inclusive, provides details of the rules for the processing of special categories of personal data, defined under section 2. As previously noted, these categories include data which identify a person’s racial origin, political or religious views, genetic data and sexual orientation or activities. We need to look at that issue and be careful. It highlights the sensitivity of certain data which are being kept.

The Bill goes on to talk about exemptions. Data collected by political parties, office holders, candidates or bodies in the course of elections are exempt. The Minister will be familiar with what is called a marked register which politicians can seek. What can we glean from a marked register? There are many assumptions, but we can tell if there is only one person registered in a home. Therefore, it does not take much to say Mary Bloggs is female if she is the only person in a home. The cumulative effect of bringing all of these data and political affiliations together is highly sensitive and they could be abused. I would like to think that, when bringing forward legislation, we would bring forward legislation on how we conduct ourselves as politicians. At some point in the future I want to home in on the data held by politicians for electoral registers. Can a person opt in or opt out? There are certain areas and categories which a person can opt out of and certain ones out of which he or she cannot do so. That goes from the top of this House to the bottom and relates to how we deal with our own data in the Oireachtas. We need to get it right and be clear. We need to reassure people outside on how we are handling those data in a responsible fashion. I am not saying we are not but that we need to focus on it. If we are bringing forward legislation, we need to bring it forward for everybody and be fully compliant with it.

I have covered the issue of public bodies and local authorities. I am not happy with that provision; we could strengthen it. I will not go on at length because I am conscious and have already told the Minister that we will bring forward amendments, but I want to work with him, which is very important. It is a matter of getting it right and having good legislation. The Taoiseach said last week that he wanted Senators to be actively involved in polishing and being active in dealing with amending legislation. He saw it as a critical role in our work here and I agree with him. I thank the Minister’s Department for agreeing to have its representatives come to Leinster House next Monday for a briefing on aspects of the Bill. That is helpful because it will help Members to understand it. It is complex legislation which I want to support in principle.

The Minister makes the valid point that Article 8 of the European Charter of Fundamental Rights provides simply for everyone having the right to protection of personal data. I agree and hope he will consider accepting some amendments. This legislation is necessary, but it has to be equal across all sectors of society. I will wrap up by saying we must have sanctions for everyone involved. There must be no exemptions in the imposition of fines and sanctions.

Senator Martin Conway: I think we all agree that the legislation is very complex. The Minister’s contribution was extremely comprehensive and informative. We have all been trying to work out the legislation. I concur with Senator Victor Boyhan on the document we received from the Oireachtas Library and Research Service. I received the email confirming that there would be a briefing on Monday morning ahead of Committee Stage. I respectfully request that it be held in the afternoon because some of us live on the other side of the country.

Senator Aodhán Ó Riordáin: Here we go again with all of these rural people.

An Leas-Chathaoirleach: The Senator should remember that this is an all-Ireland assembly.

Senator Niall Ó Donnghaile: The Leas-Chathaoirleach is right.

Senator Martin Conway: Indeed. Some of us travelled for three hours to get here. Some of us are away from home most weeks from Tuesday morning to Thursday evening. I suggest a little consideration be given to this or perhaps there might be a second briefing because we do not want to inconvenience people either.

Data protection is now a fact of life. Many data belonging to people are held electronically compared to what the position was 30 or 40 years ago when there was an entirely different scenario and set of circumstances when it was effectively a paper trail. Now many things are computerised. Computer systems can cross-reference data at a tap of a button. Information can now be procured extremely quickly. This legislation is being brought forward for a good reason. It is being brought forward in order that we can comply with our obligations as a member of the European Union and to citizens. Data collection and assembly are now big business and many people are employed in the area, in which many companies make money both in the collection and dissemination of data. Therefore, the legislation is long overdue.

I am concerned about how the legislation will affect not just political parties since many involved in political parties are volunteers but also sports organisations, community groups and individuals who donate millions of hours a week on a voluntary basis and who include children, youths, sportspeople and others. I have some limited knowledge of what the GAA has been endeavouring to do to comply with future legislation in this area. It seems to be on the money. I had a discussion with Seán Kelly, MEP, on this issue. He has recommended that other political and community groups look at what the GAA is doing in this area and the safeguards and protections it is putting in place. I have no doubt it is still learning but it seems to be well ahead of many other organisations. There is not an evening when community groups throughout the country are not being briefed or doing training on data protection. A month or six weeks ago there was a big conference in Croke Park at which a lot of community groups and volunteers became aware of data protection.

I look forward to Committee Stage. Our role in the House is to strengthen legislation to ensure there is a fair and equitable distribution of requirements and obligations. I heard what the Minister said about fines, enforcement and sanctions. There is merit in it and I look forward to hearing the arguments on Committee Stage. There is a lot in this Bill to get one's head around in terms of the various aspects and requirements. The opt-outs are there for particular reasons and the Minister has shed some light on it in his contribution. We have a lot of work to do on the Bill. I suspect Committee Stage will last many hours but ultimately we have an obligation to pass the Bill. It is necessary because there have been too many breaches of people's data rights. Too many of our citizens have been exposed as a result of breaches of data. We owe it to our citizens in this world of ICT to protect them and ensure the correct protocols, procedures and protections are in place.

I thank the Minister for an enlightening and detailed contribution.

Senator Niall Ó Donnghaile: I welcome the Minister to the House and assure him we will try to work constructively and positively with him and his officials on what is at its heart very important legislation. We will table a number of amendments on Committee Stage. The

Minister will expect me to reiterate comments made by colleagues on the speed with which the legislation has come to Second Stage. There has only been a week between its publication and this Stage of the Bill. It is not the optimal way of dealing with legislation and important and substantial issues. That has been said so I will not over-egg the pudding but it is an issue that merits being mentioned.

I support Senator Conway in his request in regard to the briefing on Monday. If there is an opportunity, the Minister might explore the possibility of it happening on a sitting day.

Sinn Féin will not oppose the passage of the Bill to Committee Stage. We acknowledge there is a need to complete this work by 25 May but we have some serious reservations regarding significant sections of the Bill. We are not alone in that. If they are not addressed we may not support the passage of the Bill into law. In particular we are concerned about the far-reaching exemptions in section 54. In that section, the Minister has allowed himself a ministerial power which we do not believe would pass the proportionality test set out in the landmark case on delegated powers in *Cityview Press v. An Chomhairle Oiliúna*.

The Bill partially emanates from the general data protection regulation, GDPR, which is a regulation through which the European Parliament, the Council of Europe and the European Commission attempt to strengthen and unify data protection for all individuals in the European Union. The general data protection regulation is essentially a minimum standard expected of each member state on the threshold and rights afforded to citizens of member states and the data protection of individuals within those states. Much of it has direct effect. Some elements require legislation as there is a margin of appreciation in how jurisdictions apply them. The age of digital consent, which can be 18, is 13 in this legislation, which we welcome, as all young people's advocacy groups do.

Some of the Bill relates not to the regulation but to a related directive. Ireland has not been in compliance with EU data retention law since the Tele2-Watson case, which is significant. We have been in breach of EU law since late 2016. I am not entirely sure - the Minister might refer to it - whether this legislation rectifies that. We have observed one of the pitfalls in the protection of data protection officers from the interference of a data controller who aims to suppress a release of information on the basis that despite its release being in the public interest, it is not in the interest of a data controller for a variety of reasons that anyone can imagine. The lack of protections or avenues for addressing these concerns for such an officer is an oversight and a flaw in the Bill and the general data protection regulation. As recently as yesterday my party met with officials from the Minister's office and although they pointed to general law having already covered the potential for this, it would be beneficial for specific protections to be explicitly stated in this context. Committee Stage is the optimal time to deal with them.

The manner of the drafting is not ideal or clear. After the Bill has been passed, there will be a need to consult three Acts, the general data protection regulation and any other relevant European instruments in order to be aware of the legal position. It would have been better, clearer and more comprehensible for the provisions of the Data Protection Acts 1998 and 2003, which are still required, to have been put into this Bill and for those Acts to have been repealed in their entirety. There is potential for confusion and possible litigation.

Another gap is that the Bill does not include the requirement under Article 81 of the directive that not-for-profit groups can bring actions on behalf of data subjects. The general data protection regulation also envisaged a form of multi-party action akin to a class action but there

is nothing on it in this Bill. The Sinn Féin Multi-Party Actions Bill, which would cover it in a wider sense, goes to pre-legislative scrutiny in two weeks. I hope the Minister will get a money message so it can proceed to enactment as soon as possible. It will be relevant not only from a data protection point of view but also in a number of areas including the tracker mortgages injustices. Significantly, it has disregarded the recommendation of the Oireachtas Joint Committee on Justice and Equality on section 136(3), under which the Government is still trying to exempt public bodies from fines for breaching data protection rights of citizens.

I will not indulge in repetition. This is vast and very important legislation. We approach it with a positive and co-operative frame of mind and I hope we have responsible and co-operative engagement on Committee Stage.

Senator Aodhán Ó Ríordáin: I appreciate the comprehensive nature of the Minister's speech. This is a lengthy Bill. It will take some time to digest the Bill and the Minister's speech. I was quite impressed by the Minister's stamina and ability to get through it in the manner in which he did. This is a terrifying area, which the Minister and his officials appreciate. No matter how we try to legislate for this area, the fear is that in five years' time whatever we have on the Statute Book will be out of date. Those who are engaged in this sphere in a malevolent and dangerous way are trying to work their way around national and European legislation and will spend whatever money they can to stay ahead of the game. The danger is not only that privacy rights, which are central to what we are trying to achieve, will be lost but also that the protection of children will be undermined. We are in a dangerous area and I expect the legislation will touch on everything we do from here onwards in all spheres, whether transport, education, health, foreign affairs or another area. When I was the Minister of State with responsibility for drugs, we found that regardless of what we sought to do on the drugs issue, fashions and the ability to manipulate things changed, which meant we struggled to keep ahead of the game. I appreciate what the Minister is trying to achieve and the Labour Party will not be obstructive in seeking to achieve our aims. We will introduce amendments to strengthen and improve the Bill. We appreciate that the Minister is doing his best to do the right thing.

The issues as they relate to children frighten all of us. While most people will have questions about setting the age of consent at 13 years, from listening to media reports and the Minister's comments on the offences and bona fides of those who arrived at this age threshold, I believe it is difficult to argue with their rationale. We will also focus on this area.

On the political aspects of the issue, if we were honest about the way we use data, we could have a highly illuminating conversation. Reference was made to the marked register, which is data that all politicians who have their heads screwed on use to their benefit. The register shows who has voted and in which election or referendum they voted. When we visit a house we then know that X, Y or Z person registered at the address voted in the previous election or referendum. The data and knowledge available to people in authority and those with influence must be regulated. We need to be comfortable with this and people need to know that this information is readily available. However, we are in the middle of a digital age which will only gather pace. It will be a serious challenge for parliamentarians and legislators to keep up with it.

The Labour Party will do its best to be of assistance with the legislation. I genuinely appreciate the efforts the Minister and his officials are making. In the years ahead, it will be necessary to amend the legislation many times to make it more relevant. Éamon De Valera once spoke of being terrified by the advent of television. I am genuinely terrified by technology, even though I use it every day and it offers the potential to make much money. However, children

can also be damaged, hurt, humiliated and worse because of the age in which we live. I know the Minister appreciates that. With the support of Senators from across the House, we will get the best possible legislation for the citizens of this country.

Minister for Justice and Equality (Deputy Charles Flanagan): I thank Senators for their contributions and I am grateful for the broad support the Bill has received in the Seanad. I acknowledge that there are issues to which we will have to return on Committee Stage. I note, in particular, the comments of Senator Higgins and hope, in the spirit of being constructive, to return, at an appropriate time, to any issues Senators agree could constitute an improvement to the Bill.

I acknowledge the contribution of Senator Boyhan who referred to the briefing note available to parliamentarians through the Oireachtas Library and Research Service in the form of a digest. I acknowledge the importance of the service to parliamentarians, in particular in respect to this legislation, much of which is technical in nature. I was struck by the interest shown by an Independent Senator in the matter of the marked register. It underscores that Senator Boyhan could be described as giving due notice to the electorate of Dún Laoghaire or elsewhere.

Senator Conway referred to the briefing arranged for early next week. Monday, as a non-sitting day, was considered an appropriate time. Realising that it will not be possible to accommodate everybody on this issue, I hope the availability of my officials to deal with the technical aspects of the Bill will accommodate interested parties in any event and include as many of them as possible. I believe we can do that.

A number of Senators referred to certain exemptions under the Bill and the issue of class actions. Senator Ó Donnghaile referred specifically to the issue of data retention, which is not covered by the legislation, nor was the Bill designed to cover the issue. There is, however, a specific data retention Bill which is, I understand, subject to pre-legislative scrutiny. The concerns the Senator raises may be more appropriately directed to that Bill.

Senator Boyhan referred to the recommendations of the joint committee, in particular, to those that have not been followed to the letter, rather than those that have been followed to the letter. The actions under data protection set out in sections 112 and 113 respond to recommendation 14 on the matter of the right to compensation to which the Senator referred.

Senator Ó Ríordáin indicated that, owing to ongoing advances in technology and cyberspace, it will be necessary to keep the legislation under review. In this instance, it is important that Ireland, as an active and constructive member of the European Union, complies with its obligations and that we ensure we have legislation enacted and in force within the specified timeframe. I have no doubt this is an area to which we will return in the context of ensuring we strike a balance between citizens' entitlement to the preservation of privacy and personal data and overall freedom of information and expression.

I hope we will resume our deliberations on the Bill in the coming weeks, the object of the exercise being that we introduce stronger rules and regulation on the protection of data to ensure we and our citizens are in a position to exercise more control over our personal data and businesses can operate on the basis of a level and even playing field. I am in the hands of the Business Committee as to when such future deliberations will take place. However, I stress the urgency of this issue and, having regard to the technical provisions and nature of much of the Bill, my officials and I will be keen to assist Senators in their deliberations at every remove.

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Question put and agreed to.

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

Senator Martin Conway: Next Tuesday.

Committee Stage ordered for Tuesday, 13 February 2018.

An Leas-Chathaoirleach: When is it proposed to sit again?

Senator Martin Conway: At 2.30 p.m. next Tuesday.

The Seanad adjourned at 2 p.m. until 2.30 p.m. on Tuesday, 13 February 2018.