



DÍOSPÓIREACHTAÍ PARLAIMINTE
PARLIAMENTARY DEBATES

SEANAD ÉIREANN

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

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SEANAD ÉIREANN

Dé Máirt, 27 Feabhra 2018

Tuesday, 27 February 2018

Chuaigh an Cathaoirleach i gceannas ar 2.30 p.m.

*Machnamh agus Paidir.
Reflection and Prayer.*

Business of Seanad

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

The need for the Minister for Housing, Planning and Local Government to outline the expected timeframe for the publication of legislation to give effect to the proposed new local authority structures in Cork city and county.

I have also received notice from Senator Paul Gavan of the following matter:

The need for the Minister for Transport, Tourism and Sport to make a statement on CIÉ pensions schemes.

I have also received notice from Senator Jennifer Murnane O'Connor of the following matter:

The need for the Minister for Children and Youth Affairs to make a statement on funding for the child care sector.

Of the matters raised by the Senators as suitable for discussion, I have selected that of Senator Lombard and it will be taken now. The matter raised by Senator Murnane O'Connor had been selected but subsequently the matter was withdrawn.

I regret I had to rule out of order the matter submitted by Senator Gavan on the ground that the Minister has no official responsibility in the matter.

Commencement Matters

Local Authority Boundaries

Senator Tim Lombard: I welcome the Minister of State, Deputy John Paul Phelan. I requested this Commencement debate to ask the Minister for Housing, Planning and Local Government to outline the timelines for the publication of legislation to give effect to the proposed new local authority structures for local government in Cork.

We have gone through a very deep process in Cork over the last two or three years with the local boundaries and the local government structures. These are the most significant changes in local authority structures in Cork since 1965. There was an extension to the city boundary 52 years ago, and we have now gone through a similar process, which was a lengthy process, and in some regards we have come to a conclusion on the boundary. This new proposed boundary will see up to 100,000 people move from the Cork County Council area into the Cork City Council area. This would have a knock-on effect in many ways. It would have a knock-on effect in how the city and the county communicate and operate, which will have to be worked on in time.

There are 31 councillors in City Hall and 55 councillors in County Hall and there is an issue around when these new electoral boundaries are to be put in place so that councillors can plan for a local election that is 65 weeks away. Clarity is required on those boundaries. Clarity is also required for the 542,000 residents of the city and county so the authorities can work together and put structures in place. The structures may include some kind of contractual arrangements on planning and housing, for example. To put the structures in place and to see a move on the huge projects involving planning, environment and housing for these 100,000 people in less than 60 weeks will be a burden on the two local authorities.

There are many aspects that need to be considered such as the local authority structures and how the services will be delivered to the people on the ground. From the local election perspective, clarity is required on the boundaries because currently there are eight districts in the county and six districts in the city. I assume we will have completely new districts in place. That will also have to be clarified.

I have more questions than answers so hopefully the Minister of State will be able to point us in the right direction around the timeframes for these new structures. When does the Minister of State propose that the legislation will be brought before the House? When is it proposed to set out the new district boundaries so that local election candidates can plan? What does the Minister of State envisage as the system for planning and housing? Does he expect them to be moved immediately or will it happen over a period of time?

Minister of State at the Department of Housing, Planning and Local Government (Deputy John Paul Phelan): This important issue has often been discussed in this Chamber and elsewhere in recent years. Members will be aware that the issue of the local government arrangements in Cork has been the subject of much consideration over the past four or five years. The committee report in 2015 did not produce agreed recommendations, although all concerned agreed that the retention of the *status quo* in Cork was not a tenable option. An expert advisory group established to re-examine the matter and consider a wider range of options reported in April of last year and, on balance, it stated that an expanded city council area offered the best solution, particularly in terms of the structure of local government and a strong focus on the needs and demands of the metropolitan area of Cork.

This approach was accepted by the Government and an implementation oversight group was established to provide a definitive boundary configuration and to oversee arrangements for the boundary alteration. The oversight group submitted a report in December 2017 outlining the proposed delineation of an extended boundary for Cork city, which was agreed by Government. A boundary alteration can be given effect either through existing statutory procedures in Part V of the Local Government Act 1991 or by means of primary legislation. The Department has not received any formal proposals on the Cork boundary under the 1991 Act. Government approval has been given to bring forward legislation in the absence of local authority agreement under the existing procedures. The Department has, accordingly, commenced work on the preparation of the necessary legislation. Members will appreciate that primary legislation involves a number of formal processes, including drafting by the Parliamentary Counsel, Government approval and consideration by the Oireachtas. It is difficult, therefore, to be definitive about timing. The objective is for the relevant legislation to be published in time to ensure enactment before the summer recess, however. Our target, therefore, is to publish a Bill by the end of May.

All matters necessary for successful implementation of the boundary alteration will be addressed in the context of the work of the implementation oversight group under its terms of reference. Given the extent of the change involved and the range of organisational, financial and other implications, the implementation process will involve a substantial body of work. The role of the oversight group will be crucial to this but, above all, the key to successful implementation will be the role of the two local authorities, working with the oversight group, in terms of effective planning, organisation, co-ordination and co-operation. I am confident that this work will be rewarded by giving Cork a more robust and rational local government structure which will help to maximise its success as Ireland's second city, particularly in the context of the recently published national planning framework as part of Project Ireland 2040. Once the heads of the Bill are published which, all things being equal, it is hoped will happen in April, the intention is that instructions will be given to the committee considering local electoral area boundaries within Cork to commence the work and receive public submissions. The Cork boundaries will be part of the overall package to be published nationally at the end of May or start of June.

On the services being transferred, that is a matter for the implementation group. It caused some controversy and I saw it was reported in the national newspapers today that I issued a response to the chairman of Cork County Council stating I did not want to meet him to discuss those matters. I do not want to meet him at the moment because there is a process in train under the oversight group. It is not a slight on him or the membership of Cork County Council but it would be a severe slight, on my part, of the independent oversight group which is charged with implementing the boundary change if I were to engage in a parallel process with the local authority while its work was ongoing.

An Cathaoirleach: I think Senator Lombard will want to come back in again.

Senator Tim Lombard: We might get it all sorted in one go, so we will have a crack at it. I thank the Minister of State for his comprehensive response. Will he clarify the electoral boundaries issue again for me? I did not pick it up clearly. Is he proposing to seek submissions from April onwards with a view to the boundaries for the proposed new districts in Cork county being announced in June or July?

Deputy John Paul Phelan: The end of May or the start of June.

Senator Tim Lombard: That is a very positive step because that will give the prospective and sitting candidates a 12-month run-in.

Deputy John Paul Phelan: We had a discussion about this with officials and Ministers in the Department. The Cork local election boundaries for the wards in the city and the districts in the county will be part of the national publication of the reports of the two committees that are examining local authority electoral areas. It will not be treated differently. At the moment it is being parked because there are 31 local authorities. There is plenty of work for those committees to do and Cork will be left towards the end of their work so that when the heads of the Bill are published, and I hope that will happen in April, they will be able to go into the formal process of considering drawing the local authority electoral area boundaries within Cork city and county, and then publish a request for consultation with the general public who might have observations and submissions to make. It has always been my intention, and it is that of the Government, that we would have boundaries a year out from the next local election.

Sitting suspended at 2.46 p.m. and resumed at 3.30 p.m.

Order of Business

Senator Jerry Buttimer: The Order of Business is No. 1, Public Service Superannuation (Amendment) Bill 2018 - all Stages, to be taken on conclusion of the Order of Business, with the time allocated to group spokespersons on Second Stage not to exceed eight minutes, that to all other Senators not to exceed five minutes and the Minister to be given no less than five minutes to reply to the debate, and Committee and Remaining Stages to be taken immediately thereafter; No. 2, motion for the earlier signature of the Public Service Superannuation (Amendment) Bill 2018, to be taken on the conclusion of No. 1 without debate; and No. 3., Data Protection Bill 2018 - Committee Stage, resumed, to be taken on conclusion on No. 2 and to adjourn after three hours.

Senator Catherine Ardagh: I wish to raise the abysmal delivery of apprenticeships by the Government. Last week, a well-choreographed national development plan, NDP, was rolled out in Sligo with a promise of large-scale capital projects being rolled out nationwide. The truth is, however, that these will never be delivered because there is a huge shortage of labour in the country not just in the construction industry, but throughout the health service, the Army and the education sector to name a few. The apprenticeship figures relating to the construction industry tell their own tale. New apprenticeship registrations are 58% behind 2017 targets while only 1% of all apprentices are female. My colleague, Deputy Niall Collins, reported an alarming statistic in respect of the take-up of apprenticeships. In 2017, there were only 121 bricklayers and 63 plasterers with no apprentices in floor and wall tiling. With these numbers in the pipelines, the Government must take us for fools. Where will it get the labour to build all the ambitious projects in the NDP? I would like a Minister to come to the House to describe how it will do same.

The second issue I wish to raise relates to the Government's strategic communications unit. The Taoiseach confirmed during Leaders' Questions earlier today that departmental officials were in charge of the advertising spend for the 2040 development plan. I would like to know why Department officials authorised Fine Gael election candidates to be included in Depart-

ment advertising across national and regional newspapers nationwide. It is hard to accept that the Government's strategic partnership arrangements form some sort of arm's length political advertising transaction between the Government and newspapers. I know the Leader has in his possession today various articles from Fianna Fáil Governments and the Fianna Fáil-Green Party coalition, but these are in fact identified clearly as advertising articles, which is completely contrary to what the current Government is doing with the strategic communications unit. It is clear the Government is using State funds to fund the Fine Gael political machine. This is wrong; it is not right. State funds should not be used as a public relations vehicle for An Taoiseach, Deputy Leo Varadkar, or the wider Fine Gael Party.

The final issue I would like to raise concerns the storm which we know is on its way from the east. We need to ensure that the Government has made plans for those who are most vulnerable, particularly the elderly and those living alone. We need to ensure that there is adequate emergency accommodation for rough sleepers, that there is grit on our roads for those who have to use our road services, that emergency waterworks provisions are in place and that proper instructions on working times are given to the public. I understand one Minister of State asked people to keep their heat on full blast for the period. However, this is a big call when one does not have the money to pay one's heating bills. In this vein, I call on the Government, as many of our colleagues in the Dáil have done, to commit to provide an extra week of the fuel allowance on foot of this bad weather in order that people, if they are directed to leave their fuel on by Government Ministers, have the money to do so. This is a very important issue and I would like to hear the Leader's response to it. I also call on the Minister to direct the local authorities to leave the heating on for those living in local authority housing schemes who have communal heating schemes.

Senator Victor Boyhan: I wish to raise three issues. The first is the annual report of the Data Protection Commissioner for 2017. The watchdog has clearly criticised Tusla over its record-keeping. I was particularly interested in reading an article about this today not because of Tusla, but because I was conscious and mindful of the Data Protection Bill that will come before us, which is a really important piece of work. I am also mindful of the fact that Tusla would come under the designation of what are called public bodies. An Garda Síochána, the HSE and Tusla are three that come to mind that hold an awful lot of sensitive information about citizens. Because they are public bodies under the legislation that, it appears, will be approved by both Houses of the Oireachtas - though let us wait and see - there will be no penalty, no compensation for any breaches in this regard. The legislation we are considering will give them a slap on the hand if they breach data but, unlike other organisations and private bodies, there will be no sanction. It will be a poor day's work if we let this through the House. I am putting that down as a marker and I intend to raise it later. It is a very important point. I wish to put it on the record of the House that we have to be seriously concerned that there will be no sanction regarding the HSE breaches or An Garda Síochána or Tusla.

Getting back to what the watchdog said about Tusla, he has issued 59 findings against Tusla and is asking the agency to report back on them. Let us see what happens. This is a serious issue. To put it in context, he received 2,642 investigations and complaints in 2017. This represents a major rise in complaints, but I suppose we can tie that down to the amount of knowledge about data retention and data protection.

I thank the Leader for arranging for the Minister of State with special responsibility for local government to come before the House tomorrow to discuss councillors' pay, remuneration and conditions. The Leader did give an undertaking that he would do this. I am delighted that

the Minister of State responsible for this area, local government and councillors, will be here tomorrow and I think this will give us a great opportunity. I saw a few emails sent around today to elected members, city and county councillors, from all sides of the House, so I look forward to hearing what those Members of this House will have to say tomorrow in line with that communication to those members.

Finally - and I will be very brief on this - I said I would stand up every week in the Seanad to raise the National Rehabilitation Hospital in Dún Laoghaire until I finish here. In January 2017, 12 beds were closed. We were given a commitment they would be open within the year but they were not. We had the Taoiseach and the Minister for Health out turning sods for the new phase 1. As we also saw all of this being announced as part of Project Ireland 2040, I do not know what they are talking about. There seems to be double-counting there and we need to look at this. I have arranged for a parliamentary question to be asked on it. I spoke to the hospital this morning and six of the beds remain shut, at a time when people waiting for rehabilitation services are holding up beds in acute hospitals. Will the Leader make it a priority to talk to the people who matter? I intend bringing this up once a week as long as I am here.

Senator Niall Ó Donnghaile: I will begin by referring to the weekend's march for truth that took place in Belfast. I flagged it when the event was first announced by victims' families and campaigning groups, and I encouraged Members and those available to attend it. I went on Sunday. There were thousands of people on the streets of Belfast, the vast bulk of them victims and survivors - people who have lost loved ones during the course of the conflict in the North. Some of them are very well known in the public discourse and many of them are lesser known. People carried portraits of mothers, brothers, sisters and fathers. The striking thing for me was to see people my age and younger carrying portraits of grandparents, great-aunts and great-uncles. Sadly, those young people of my age and younger must again lift the mantle for their families in campaigning for truth and justice. Many of them simply want an inquest into the murder, killing or loss of their loved ones. I noted that thanks was given from the stage to the Irish Government from the families for its steadfast support for the campaigning groups for victims. On Sunday, they urged the Irish Government to remain steadfast in championing the rights of victims who have lost loved ones in the conflict, many of whom came on Sunday from every and all backgrounds, including people who had lost loved ones at the hands of the British state, republicans and loyalists. It was heartening to see but it is a great shame it had to happen.

I also noted the call from the stage for the Irish Government to publish the Crowley report into the murder of Aidan McAnespie.

Senator David Norris: Hear, hear.

Senator Niall Ó Donnghaile: It is something I and colleagues from Fianna Fáil have raised in the House. I have no doubt we will continue to raise it. I referenced it last week so I will not go into it in any great detail at this stage.

I note too, with regard to the broader issue of victims and where it sits in the current political discourse in the North, that the victims' commissioner in the North was on the BBC this weekend and restated that no political agreement *per se* from the latest round of talks was necessary and that an Executive was not necessary in the North for the legacy money to be released, for which the Lord Chief Justice in the North has been calling. I call, through the Leader, on the Irish Government to reiterate to the British Government that there does not need to be any delay in releasing the funds for legacy inquests and that the call from the Lord Chief Justice, who is

impartial from politics and sits separate from everything else that is happening in the current context, should be heeded and fulfilled.

I welcome, and I am sure the Leader noted it also, the call from more than 100 voices from within civic unionism to come together in a space around equality and a discussion on equality and rights. Many of them are very eminent figures within the unionist tradition. They stated issues of rights and equality are not issues for nationalism or unionism, as they are just issues for all of us. We are here to try to create a space in institutions such as ours, and perhaps we should consider, through the Committee on Procedure and Privileges, creating space for representatives of that civic body of unionism to come to the Seanad and address us on some of the issues they raised.

Senator Ray Butler: I wish to speak today about Permanent TSB and the sale of mortgages to vulture funds. It was announced over the weekend that Ulster Bank proposes to sell 7,000 mortgages. There is now a stampede by the banks to sell mortgages before legislation is enacted. I welcome that the Government proposes to abstain in the vote tomorrow on Deputy Michael McGrath's Bill. I thank Deputy McGrath for introducing that Bill and I also thank Deputy Durkan for the Bill which he proposes to bring to the Minister on this issue. It is about time something was done.

Last week, when people contacted Permanent TSB to find out if their mortgages were to be sold they were told that they would receive a letter in due course if their mortgage is to be sold, which is very nice of them. It cannot be legal for these lenders to sell loans to vulture funds without the permission of borrowers. That could not stand up in a court of law. The vulture funds have been getting their own way in this country over the last five or ten years. Legislation to address this issue must be enacted.

Permanent TSB previously sold off mortgages to Springboard Mortgages Limited. In cases where borrowers were paying interest only, Springboard increased the interest from 3% or 3.5% to 6.5% and it dragged those who could not pay through the court system. If, owing to the sale of these mortgages, people lose their homes it will be the taxpayer who will foot the bill.

Senator David Norris: The taxpayer will also have to pay the cost of eviction.

Senator Ray Butler: Yes. A constituent of mine whose loan was sold to a vulture fund offered to repay €500 per month but it was refused and she and her family were evicted, following which she was housed through the housing assistance payment scheme at a cost to the taxpayer of €700 per month. The State owns 75% of Permanent TSB yet the taxpayer is to be left to clean up its mess again. I would like the Minister to come to this House after the vote tomorrow or early next week to discuss the way forward.

Senator Jennifer Murnane O'Connor: I want to address a very serious problem in our child protection system and, in particular, the Health Information and Quality Authority, HIQA, report which suggests that we are not doing our job in terms of child protection in Carlow, Kilkenny and Tipperary. Young people are being left at risk because standards in these counties are very weak.

Last November, HIQA undertook an inspection of these services which are operated by Tusla, the Child and Family Agency, in respect of which it identified five failures. At that time, the service had a waiting list of 213 children and families in need of initial assessment. Even worse, HIQA inspectors discovered that the waiting lists were not being effectively managed,

leaving children at risk. The report outlined that the systems in place to alert gardaí are not robust enough and it also called into question the quality of the screening of families that are referred to the services. Network checks with other professionals and appropriate contact with parents were not routinely undertaken as part of the screening process. The report identified a failure to carry out background checks and, most worryingly, there was a lack of speed in following up some allegations of physical abuse of children.

I have heard from service users that the system is broken but to read in a report that there was concern about multiple referrals of the same children but there was no joined-up response from Tusla, the Child and Family Agency, was shocking. These vulnerable children did not receive a consistent response in line with the national and local area procedures. They were not given a family response and their safety was compromised. This is an incredible failing. It is absolutely disgraceful. The Minister is not doing her job if she does not throw her whole weight behind sorting out this problem. There needs to be an immediate spotlight shone on the services in these areas, including my own county, Carlow, as a matter of urgency. The plight of these families has to be highlighted and standards need to be radically improved. We are not looking after those in need when we are not listening properly. There must be change and an urgent audit nationwide of these services.

Like other speakers, I encourage everyone to check on their elderly neighbours over the next few days. It is important that we do not forget to call on them and on people with mobility issues. In addition, I call on the Minister to provide additional funding to these vulnerable people.

Senator Gerard P. Craughwell: Before I came to the Chamber today I noted that the President of the United States, Mr. Donald Trump, has announced that he intends to stand for re-election in 2020. In any democracy it is great that the people know in advance that their President intends to run for a second term. We all know that I have decided to put my name in the ring in the forthcoming presidential election in Ireland but until such time as we know-----

An Cathaoirleach: That is news to me, but the Senator may continue.

Senator Gerard P. Craughwell: The truth of the matter is that the people of this country are entitled to know the direction in which this country is going. They are entitled to be told in advance and in plenty of time. Playing cuties with dates in July when people are on holiday and dropping rumours-----

An Cathaoirleach: In terms of protocol, we have a long-standing rule in this House that the President's office is above reproach. Any criticism of what he may or may not wish to do should not be enunciated in this Chamber.

Senator Gerard P. Craughwell: I am drawing on a statement that the current President made in 2004.

An Cathaoirleach: I ask the Senator to be careful not to trespass onto forbidden ground. We have a long-standing protocol in that regard and I ask the Senator to be cautious in what he says.

Senator Gerard P. Craughwell: Everybody knows that I hold the President in the highest esteem. He has done a wonderful job but that should not prevent us from discussing the position. It should not prevent us from discussing the need-----

An Cathaoirleach: I will have to rule against the Senator if he persists.

Senator Gerard P. Craughwell: I will not push the Cathaoirleach to rule against me. I have made my point.

The Leader will no doubt be aware that a group of retired Defence Forces personnel have come together to express their concerns about the Defence Forces. I have met the Minister of State and he has been quite forthright in what he is trying to do but we need to have a debate with him on some of the issues of concern to the aforementioned group. I will leave that in the Leader's capable hands.

Senator Maria Byrne: I note that the engineering and technology event, Limerick for Engineering, that was to be held in Shannon Airport this coming Thursday and Friday has been cancelled due to expected adverse weather conditions. However, it has been rescheduled for next week.

Over 2,500 primary and secondary school students have been encouraged to attend this event which is related to innovation and entrepreneurship. It is being hosted by Shannon Airport and the Shannon group to whom I wish to pay tribute. The fact that there is a shortage of engineers has been discussed at the Oireachtas education committee and in other fora. At the aforementioned showcase event more than 30 businesses will outline to students what they can achieve if they choose to become engineers. This is very important for the future development of these students. Under the auspices of the Irish Technology Leadership Group, ITLG, many American based companies will interact with students with regard to innovation and developing new solutions, which is to be welcomed.

Senator Fintan Warfield: I wish to propose an amendment to the Order of Business that we take No. 22 before No. 1. Item No. 22 is the Sinn Féin Bill entitled the Arts (Dignity at Work) (Amendment) (No. 2) Bill 2018, which is, "an Act to enable the Arts Council to ensure that funding is contingent on compliance with employment law and for that purpose to amend the Arts Act 2003; and to provide for related matters".

I commend the women in the arts who have come forward and told their stories and who have contributed to a watershed moment. I commend Grace Dyas for her bravery. However, we should be crystal clear about the fact that unacceptable behaviour, toxic masculinity and the abuse of power are not solely confined to the arts. Those who suggest this and paint this as a picture facing artists alone are mistaken.

Everybody deserves a safe culture and environment at work. We are told by Government that laws are already in place but there are legislative opportunities for us to explore, of which this Bill is one. The national and global conversation that is ongoing has not been followed up by action. In that context, Sinn Féin believes that by attaching the allocation of funding to compliance with the law, we can fast-forward a change in culture and in harassment. When the State gives contracts or funding to organisations, it should expect the highest levels of workers' rights. Irish Actors Equity released a survey of the theatre sector in which 60% of those surveyed stated that they were bullied and 75% of that number expressed a fear that reporting such bullying would jeopardise their employment. I respectfully ask that the Government support this Bill. The State must do more than simply provide workshops on governance. Those who exploit workers will not be swayed by the presentations announced by the Department of Culture, Heritage and the Gaeltacht. I again respectfully ask that the Government support this Bill.

An Cathaoirleach: That proposal must be seconded in due course. I call Senator Davitt.

Senator Aidan Davitt: I want to talk today about a town the Cathaoirleach himself knows quite well - Mullingar. Quite an unsavoury piece was written in today's edition of the local newspaper, the *Westmeath Examiner*. To build the background, and as the Cathaoirleach knows, when one comes into Mullingar from the Dublin road one passes the Mullingar Park Hotel, which has a fabulous convention centre - one of the finest in the midlands - and a health club and spa. Having passed the hotel, one sees the new National Science Park, which was previously the tobacco factory. We talked about that factory 18 months ago. It was closed and has been reopened by the businesspeople of Mullingar. Gary Moore and the guys from TEG and Mergon are in there. They are hoping to create 100 jobs there in research and development. It really is a flagship building and a flagship project for Mullingar. After that, one passes the new Curraghmore school, which is being built, and the new local shopping centre, which is also being built on the way into Mullingar, before one reaches the town itself where the canal is. As we are aware, in the town there are three fabulous hotels and there are approximately 20 restaurants and 20 coffee shops within the canal which encircles the town.

I was quite disturbed to read in the local *Westmeath Examiner* this morning that Mullingar has been described as unkempt, neglected and degrading by a Senator in this House. I got many phone calls about the article. I was very disappointed to read it, to be honest. Senator Norris is correct, one would not have to look any further than Senator Norris. I mean Senator Craughwell.

Senator David Norris: I have never maligned Mullingar in my life.

Senator Máire Devine: Senator Norris should have.

Senator Aidan Davitt: Senator Craughwell has described Mullingar as all these things. In fairness, Mullingar is in the top section of the Tidy Towns competition. It also has a very active town team. It has a full-time chamber of commerce and is one of the few towns that has been awarded a purple flag. As I have said, I have talked to several business leaders in Mullingar town and they have told me that they were shocked and disgusted by this article. As an active businessman and member of the business community in Mullingar, I ask Senator Craughwell to rethink his piece in the paper. It would certainly be appreciated by the people in Mullingar. I ask him to amend it or to apologise. If one cannot make a good comment about a place it is not worth making any comment at all. We are very disappointed that the Senator has seen fit to run down our town.

An Cathaoirleach: That is a matter which Senator Davitt might take up directly with Senator Craughwell. I am not sure how appropriate it is to the Order of Business. I will let the Leader deal with that in due course.

Senator Colm Burke: I wish to raise an issue referred to in an article on the front page of today's edition of the *Irish Examiner*, which reported on the measles outbreak in Limerick. It identifies 18 out of the 20 people affected as having not been vaccinated. It highlights the importance of vaccination in that whole area. The uptake of measles vaccination over recent years has decreased. We need to reach a target of approximately 95% vaccination in order for it to be fully effective. It is disappointing that the uptake has decreased by so much. What has now occurred in the Limerick area highlights its importance. It is time for us to encourage both the Minister for Health and the HSE to put an appropriate campaign in place to help highlight the

importance of this vaccination. There is also good news in respect of vaccination. The uptake of the HPV vaccination programme has increased in 2017 compared with 2016 and now stands at 62%.

There is a programme due to operate again in March and April encouraging parents to have their secondary school children vaccinated. Hopefully that percentage can continue to increase. Vaccination helps to prevent particular infections or diseases occurring and it helps to reduce demand on our health care system. It is important that we encourage everybody to avail of the vaccine when it is available. At this stage it is important that the Minister and the HSE organise a major information campaign on these two areas. I am aware that a lot of work was done in August, September and October on the HPV vaccine. This needs to be done again to continue to grow the number of people who will avail of the vaccine. It is a very important issue and is something we should be encouraging.

4 o'clock

Senator David Norris: I agree with my colleagues in Sinn Féin who raise the question of Aidan McAnespie. It is shocking that a young man on his way to play a game of football was shot by a soldier. They have tried to maintain that it was a ricochet. It was nothing of the kind. One of the British soldiers who was there said how shocking it was. This young man had to pass through that checkpoint twice a day on his way to and from work. His unfortunate mother used to go with him to try to protect him. It is utterly shocking and it displays a grotesque lack of discipline on the part of the British Army. I am disgusted by it.

Senator Gerard P. Craughwell: Hear, hear.

Senator David Norris: I also refer to Senator Butler's comments on the vulture funds. I no longer call them vulture funds. Vultures do a good job of cleaning up flesh from the corpses of dead animals. The people in Ireland who are being attacked by the vulture funds are alive. These people are living and the vulture funds are picking the flesh off them. I call them vampire funds. Will the Leader explain how these entities got charitable status within a week? When I was chairman of the James Joyce Centre it took us several years; umpteen hoops had to be jumped through and we had to produce certificates of this, that and the other before we gained charitable status. How are these people, who produce no benefit to the society or the economy of Ireland, allowed to get charitable funds? What precisely do they do that is charitable in any legitimate meaning of the word? I have already spoken at length about this matter.

This issue is also affecting people who have paid their way with their mortgages. Just yesterday I listened to Charlie Weston on the wireless. He is the financial correspondent with Independent News and Media. He has never been behind with one red cent of his mortgage yet he received a letter, which was unsigned, from one of these mortgage funds called Proteus Funding. The letter directed him to go to a Garda station with his passport to identify himself. This is a hell of a cheek. I would like to know the status of this situation and if the Government is going to do anything to remove charitable status from these blackguards, otherwise we will be paying for the evictions, we will be paying for the rehousing of people and these funds companies will not pay any income tax at all on their profits.

Senator Máire Devine: I second Senator Warfield's amendment to the Order of Business.

A media report today looks at the increase of primary school children enrolling in Catholic primary schools. I have brought this issue up as a Commencement matter with regard to our local Educate Together primary school at Canal Way in Dublin 8. The headlines would have

people believe that parents are choosing to enrol their children in Catholic primary schools. It is, unfortunately, because a cap has been put on Educate Together schools. Parents have no choice. My Commencement matter for the Minister for Education and Skills, Deputy Bruton, was about the issue of choice, albeit for an individual school in Basin Lane. However, the issue is not just local, but national. The cap has been placed on all developing schools throughout the country. I know of at least six or seven of them and parents have no option but to send their children to the Catholic school. Some 96% of our primary schools are run by the Catholic orders.

I would like the Minister for Education and Skills, Deputy Bruton, to attend the Chamber so that we can find out how we will accommodate the increasing and overwhelming demand from parents for their children to be educated in an Educate Together school where the ethos is that of a learning centre that values democracy for parents, pupils, teachers and the boards. I would like him to respond to how we will progress this divestment from the church to our primary schools and the plans in place, because this has been an issue for a number of years.

Canal Way Educate Together national school was given a ten-year lease and six years remain on it but it is not allowed to do any repairs even though the school is practically falling down. The church still has a hold over those buildings. Eighteen years ago I was involved in the setting up of the first Educate Together school on the South Circular Road at Griffith Barracks. This was very successful even if they were tough times. We got it from the OPW and not the religious orders. I would like to see more of those schools meet the demand of parents for an all-encompassing education.

Senator Lorraine Clifford-Lee: I know that the issue of councillors' pay and conditions will be discussed with the Minister tomorrow evening but I will not be able to attend the Chamber for the debate due to a family bereavement. Therefore, I note that I am glad the debate is to take place because it is an important matter.

Many Members of the House are in regular and close contact with our local authority members throughout the country. They do a fantastic job. Their pay and conditions were changed and these changes mean that the majority of them are out of pocket regarding mileage, making a bad situation even worse. Local authority members who stood for election for the first time on the last occasion tell me they are not in a position to contest the elections again. They cannot afford it.

These are young people with responsibilities such as those associated with mortgages, child care and the general rearing of families. They cannot afford to be local authority members any longer. This is a disgraceful situation that throws their hard work in their face and makes their situation even worse.

I hope the Minister will address the matter in a meaningful fashion. I appreciate the time he has given to the Chamber tomorrow night. Many contributions will be made across the House. I hope that we can move forward tomorrow night with these concerns being addressed fully.

Senator Jerry Buttimer: I thank the 13 Members of the House for their contribution to the Order of Business. I join with Senator Ardagh in calling for the expedition of the apprenticeship programme. Ireland has a deficit of apprenticeships that has been well documented. The Minister, Deputy Bruton, and the Minister of State, Deputy Halligan, have been to the forefront in the action plan for apprenticeships for 2016 to 2020 and 26 new apprenticeship applications

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were approved. We have an aim of having 9,000 apprentices registered by 2020. Therefore, there is a clear pathway. Eleven new apprenticeship programmes have been developed and approved since 2015.

Every time I listen to Senator Ardagh speak about apprenticeships and the construction sector, I wonder if I am living in “Dallas”. Am I like Bobby stepping out of the shower and awakening from a dream? I remind Senator Ardagh-----

Senator Catherine Ardagh: Five hundred houses a year since Fine Gael has been in government.

Senator Jerry Buttimer: I did not interrupt Senator Ardagh.

Senator Lorraine Clifford-Lee: We get the spiel every time we mention anything.

An Cathaoirleach: Allow the Leader to respond.

Senator Lorraine Clifford-Lee: The Leader has been responding with the same nonsense since-----

An Cathaoirleach: The Senator has had her say and the Leader is entitled to respond. I have to control the Chamber, so let him respond.

Senator Jerry Buttimer: It is fact, not nonsense, that the Fianna Fáil Party in government caused the collapse in the construction sector. It is fact, not nonsense, that people in the construction sector lost their jobs and thousands of men and women were forced to emigrate because there was no construction sector. That is fact, not nonsense.

Senator Aidan Davitt: There is still no construction sector under Fine Gael. Nobody has houses.

Senator Jerry Buttimer: There was no work. There was no construction sector for a decade.

Senator Lorraine Clifford-Lee: The Government has had seven years and children are being reared in hotel rooms.

Senator Jerry Buttimer: It would behove Senator Clifford-Lee to listen rather than come in-----

Senator Lorraine Clifford-Lee: I listened to the same nonsense.

Senator Jerry Buttimer: Before I responded she used the word nonsense. I know it hurts Senators over there to hear the facts, not alternative facts, the real facts.

Senator Lorraine Clifford-Lee: It does not hurt me at all. What hurts me is hearing of those children in hotel rooms.

Senator Jerry Buttimer: Thankfully, this Government and the last Government restored our country with the help of the Irish people. There are more people back at work and there is a construction sector that is beginning to re-emerge from the doldrums of a decade, a lost decade caused by Senator Clifford-Lee’s party in government and nobody else. We had to rebrand and reconstruct FÁS as SOLAS, following the mess the Senator’s party in government created with

FÁS in respect of the construction sector. Now we are working with industry to ensure people are back at work in the construction sector. I agree with Senator Ardagh, it is absolutely important that we prioritise construction apprenticeships because skilled craftspeople and others are needed to work in that sector. That is what this Government is doing. There is an action plan for apprenticeships under the Minister of State at the Department of Education and Skills, Deputy Halligan and the Minister for Education and Skills, Deputy Bruton.

Senator Lorraine Clifford-Lee: That is what this Government is-----

Senator Jerry Buttimer: In respect of the communications unit, the Members opposite do not like good news. There are €116 billion worth of good news projects for every community, town, city and county. Which one would the Senators not welcome in their communities?

Senator Lorraine Clifford-Lee: State money is being used to pay for Fine Gael election propaganda.

Senator Jerry Buttimer: Which one would the Senator not welcome?

Senator Lorraine Clifford-Lee: That is not the question.

Senator Jerry Buttimer: Which one would she not welcome?

Senator Lorraine Clifford-Lee: The issue is State money being spent on Fine Gael election material.

Senator Jerry Buttimer: The Senator should cast her mind back.

Senator Lorraine Clifford-Lee: Senator Buttimer is purposely not responding to that comment.

Senator Jerry Buttimer: I bring her mind back to her venerable great leader's role and that of the former leader and Taoiseach in the national development plan 2000. It is the same thing.

Senator Lorraine Clifford-Lee: It was marked as advertising.

Senator Jerry Buttimer: It is a question of communicating, informing, letting people know.

Senator Lorraine Clifford-Lee: The editors of local papers have found that.

Senator Jerry Buttimer: If Senator Clifford-Lee objects, and I know she is upset about it now-----

Senator Lorraine Clifford-Lee: I am not a bit upset.

Senator Jerry Buttimer: If she objects to any of the projects-----

An Cathaoirleach: The Leader-----

Senator Jerry Buttimer: -----that are being promised for her area she should tell the people why she is against them and she should not be coming in here with a phony, fake war.

An Cathaoirleach: If the Leader is going to have an interaction I will suspend the sitting

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for 15 minutes. This is happening every day. The Leader is talking to Senators. He should address the Chair in responding and not be baited. Senator Clifford-Lee should please allow him to answer. She can come back tomorrow and condemn his answer.

Senator Jerry Buttimer: I am replying to the Order of Business.

An Cathaoirleach: Otherwise this Order of Business and our dealings will descend into disorder and that is wrong.

Senator Jerry Buttimer: I am replying to the Order of Business.

An Cathaoirleach: The Leader should try to avoid personal commentary.

Senator Jerry Buttimer: Sometimes Members do not like to hear the good news. That is understandable because we have good news to tell people but we have a very clear separation between the fourth estate and Members of the Government and of the Oireachtas, and that is how they should do their business.

In keeping with the previous national development plan, Project Ireland 2040, there was no communication with members of local media or local newspapers the way the Senator purports. It was quite the opposite. The instruction was that this was in partnership with the Irish Government, in keeping with what Fianna Fáil did when it was in government, travelling the country, advertising on the backs of buses or in newspapers. They went around the country with their policy units. Senators Clifford-Lee and Ardagh know that quite well.

I agree with Senator Ardagh and Senator Murnane O'Connor that we must encourage all the elderly people and those most vulnerable in this time of an impending cold weather alert not to be afraid to turn on their heating. We will all work to ensure, whether through special needs payments, the fuel allowance, or by whatever means we can, that people do not feel they cannot put on the heating. I appeal to all in this House to cast aside their political baggage, ideology and rivalry to ensure that all the elderly and most vulnerable have access to heat and can be properly taken care of.

Senators Boyhan and Murnane O'Connor raised the issue of data protection. The Bill will be discussed in the House later and we will be debating the issues raised by Senator Boyhan with the Minister. The issues the Senators referenced about Tusla are worrying, because it is the organisation charged with protecting the most vulnerable young people in our society and it has a responsibility to ensure the findings of the HIQA inspection report are acted upon. I understand that Tusla has responded to the issue. It is important to recognise that Tusla has made changes but it is not good enough when a report by an independent group such as HIQA highlights key issues of concern. All of us want to ensure the safety of our children and to ensure they are protected at all times. I do not have an answer on the question about the National Rehabilitation Hospital in Dún Laoghaire, but I would be happy to have the Minister come to the House to discuss the matter.

Senators Norris and Ó Donnghaile raised the issue of Aidan McAnespie's killing. As Leader of the House, I join with the two Senators in condemning his death. If one listened to the "Miriam Meets" programme last Sunday, one could not but be moved by the powerful testimony of family members about what happened and how Aidan McAnespie was treated. It is unbelievable that a young man travelling to his own GAA club should be the victim of a tragedy like this without any recourse to justice for the family. It beggars belief that at one level, it is

claimed that his death was caused by a ricochet bullet when - as other Members have pointed out and as was said on the programme last Sunday - there was an ongoing campaign of harassment involving Mr. McAnespie. The Minister for Justice and Equality is committed to ensuring that the truth is found. He is examining all options that might be available to assist the family. I know, having spoken to the Minister, that he is concerned that there is disquiet about what may or may not have happened but the bottom line here is that it is important that the truth is uncovered for all victims and families of victims of the violence on both sides of the divide, and equally that we have reconciliation whereby we can bring our country forward again.

Senator Gerard P. Craughwell: The Minister could start with a declaration that there was no ricochet.

Senator Jerry Buttimer: I am committed, as is Senator Craughwell, to ensuring that we find truth. It will not bring young Aidan McAnespie back, but obtaining justice will give his family some solace. I join with Senator Ó Donnghaile in saying that the issue of equality is important for the North, and particularly the issue of marriage equality.

Senators Butler and Norris raised the issue of Permanent TSB and Ulster Bank, and we had two debates in the House last week on the issue; it was in the Order of Business twice and the Minister was in the House last Thursday. The Minister is committed to working with all sides to ensure that we find a way forward so that we can have certainty for families, homeowners and landowners in the case of the use of the non-performing loan book. It is also important to recognise there are many people who are paying their mortgages, struggling to pay and working through their issues with the banks. The State should work with those people as well and they should not be forgotten in this debate. The issue is being taken seriously. The Minister has met Deputy Michael McGrath and there is a willingness to work to ensure that we do find a way forward. The Minister has asked the Central Bank to look at the situation.

Senator David Norris: Is anything being done about the charitable status?

Senator Jerry Buttimer: I was of the view that it was being investigated. I join with the Senator in saying that there is no way that we should allow vulture funds to have permanent charitable status. That is not what the Act was set up for. Charitable status is not about vulture funds being able to piggy-back and to write off tax, in my opinion-----

Senator David Norris: Hear, hear.

Senator Jerry Buttimer: -----and it should not be allowed to continue. I know the Revenue Commissioners were investigating that, but I would really hope that the situation does not pertain where vulture funds are able to obtain a write-off by virtue of a loophole or a section of the Charities Act. They should not be able to have charitable status.

The Cathaoirleach has ruled on the matter of an tUachtarán. I believe that as a democracy, it is open to all citizens, provided that they can fulfil the eligibility criteria and secure nominations to run for President and provided they are over a certain age. I certainly believe that is an option that should be looked at. By the same token, I would not support President Trump in his bid for a second term. That is probably not in order on the Order of Business.

An Cathaoirleach: It is a matter for another jurisdiction.

Senator Jerry Buttimer: It is not our jurisdiction.

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Senator David Norris: He might not be there for a second term. He may be gone for his tea.

Senator Jerry Buttimer: I hope he does not go for his tea just yet, but I would not like to see him re-elected. His first 12 months in office have been littered with bad decisions and poor governance. The issue of An tUachtarán is a matter for himself. I very much hope any candidate who obtains the necessary criteria can run for election. A democracy is about a contest.

Senator David Norris: It is very difficult for an individual. It is skewed in the interests of parties.

Senator Jerry Buttimer: I accept that. I admired the tenacity and bravery of Senator Norris during the last presidential election campaign in first securing the nomination.

Senator David Norris: I thank the Leader.

Senator Jerry Buttimer: I believe we should have a contest for the Presidency of our country. I know the Cathaoirleach may rebuke me for that.

I am not familiar with the issue raised regarding retired members of the Defence Forces. I will be happy to talk about that after the Order of Business.

Senator Byrne raised the very important issue of an engineering technology event due to take place in Shannon tomorrow which has been cancelled. The initiative is one we should welcome and embrace because it is not just about primary and secondary school students being able to avail of opportunities. Recently in Cork three women, Gillian Keating, Ruth Buckley and Caroline O'Driscoll, produced a very important initiative called I Wish which is about the STEM subjects, namely, science, technology, engineering and maths, and the need to have more women involved in all of those subject areas. I agree with Senator Byrne that it is important that we promote and advocate for girls and women to study these subjects and go on to different careers.

I would be happy to accept Senator Warfield's amendment to the Order of Business. We should give consideration to working with all sides of the House to ensure that there is protection for workers in the arts. His points were well made.

I will not weigh in on the comments made by Senators Davitt and Craughwell on Mullingar, other than to say it is a fine town and a place I have visited on a number of occasions.

Senator Burke raised a very important issue raised by Senator Byrne last week, namely, the measles epidemic in Limerick. The fact that some 18 of the 20 people affected had not been vaccinated highlights the need for an ongoing campaign to promote the importance of vaccinations and immunisations because they work. Those who say they do not are doing a disservice to young people and young women in respect of the HPV vaccine. Senator Burke referred to the HPV vaccine uptake having increased to 50%, which is something we should support. All of us in the House support the campaign by the HSE and Department of Health on vaccinations.

I have addressed the matters raised by Senator Norris. In respect of the matter raised by Senator Devine, the Minister will come before the House in the coming weeks on the issue of divestment. It has been raised on the Order of Business a number of times and there was a Topical Issues matter on it. The Government is committed to delivering on the commitment in the programme for Government to deliver 400 multid denominational and non-denominational

schools by 2030. That is the Government's plan. In some cases things are taking longer than they should, but the point she raised is one that we should all work to see achieved. There should be diversity and choice, and a different model of delivery should be achieved. We will have a debate on that soon.

I fully agree with Senator Clifford-Lee on the pay and conditions of councillors. We had a debate on the matter in the House last week. She is right to raise the point and it is one we should all support, irrespective of politics. Councillors are the vanguard of local government. They are foot soldiers and policymakers. They are employed on a part-time basis, but in reality they work on a full-time basis. They deserve to be paid properly. I agree with the Senator.

I accept the amendment from Senator Warfield to the Order of Business.

An Cathaoirleach: Senator Fintan Warfield has proposed an amendment to the Order of Business: "That No. 22 be taken before No. 1." The Leader has indicated that he is prepared to accept this amendment. Is the amendment agreed? Agreed.

Order of Business, as amended, agreed to.

Arts (Dignity at Work) (Amendment) (No. 2) Bill 2018: First Stage

Senator Fintan Warfield: I move:

That leave be granted to introduce a Bill entitled an Act to enable the Arts Council to ensure that funding is contingent on compliance with employment law and for that purpose to amend the Arts Act 2003; and to provide for related matters.

An Cathaoirleach: Is there a seconder?

Senator Máire Devine: I second the proposal.

Question put and agreed to.

An Cathaoirleach: When is it proposed to take Second Stage?

Senator Fintan Warfield: Next Tuesday.

Committee Stage ordered for Tuesday, 6 March 2018.

Public Service Superannuation (Amendment) 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 present the Public Service Superannuation (Amendment) Bill to the House. I thank Members, in particular Senator Buttimer, for facilitating the Bill this evening. It is hoped that with the consent of the House we might conclude matters by taking all Stages. It is a short Bill, with the the sole

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purpose of ensuring that the same age limit applies to internal and external candidates for appointment to the ranks of Garda Commissioner and deputy Garda commissioner. The immediate impetus for this Bill is the upcoming competition for the next Garda Commissioner. Before proceeding, I want to acknowledge the dedication and service of acting Garda Commissioner Dónall Ó Cualáin.

The former Garda Commissioner announced her retirement last autumn. For the first time, the independent Policing Authority, working in conjunction with the Public Appointments Service, will now conduct the selection process for a Garda Commissioner. Shortly after the former Commissioner announced her retirement, I engaged with the chairperson of the Policing Authority. The authority has undertaken a significant amount of work to prepare for the appointment process, and I wish to acknowledge that. Members of the House will be aware that the Government triggered the statutory process included in section 9 of the Garda Síochána Act 2005, as amended, for the selection and appointment of the next Commissioner last December. I am pleased to say that preparations for the competition, which will be an open international competition without any restriction as to nationality or policing experience, are almost finalised. However, before the competition can proceed, I seek the support of this House to rectify an anomaly that has the effect of barring an external candidate aged 55 years or older from appointment as Commissioner.

The anomaly dates from 2004. It is an unintended effect of the retirement regime introduced at that time for new entrants to An Garda Síochána. At that time, the long-standing tradition, dating from the 1960s, was to appoint the Commissioner from within the ranks of An Garda Síochána. This unintended age barrier has no logical basis, and in the context of an open, competitive process, unnecessarily restricts the field of candidates for one of the most important public service leadership roles in this State.

As I have already stated, the Government's overriding concern, a concern I believe is shared in this House, is that the best possible candidate is selected to take up the leadership of An Garda Síochána. The Government has no preference as to whether the person is an internal or external candidate. Rather, the Government's concern is to ensure that the selection process attracts the widest possible pool of high calibre candidates, and that whosoever is selected and nominated by the authority for appointment by the Government is tested against a strong field. Seeking to ensure a level playing field where the age of the appointment is concerned is part of this concern. It has the support of the Policing Authority and the Public Appointments Service.

I will turn briefly to the Bill itself. It amends the Public Service Superannuation (Miscellaneous Provisions) Act 2004. It contains two sections. Section 1 is the substantive section while section 2 contains the general provision in regard to the Short Title, collective citation and commencement.

Section 1 amends section 4 of the 2004 Act. For the assistance of Members, I will set out the background and purpose of section 4. In essence, section 4 introduced a new retirement regime for members of An Garda Síochána who enter on or after 1 April 2004. The retirement of those who entered prior to that date continues to be governed by regulations made under the Garda Acts. While section 4 maintained the maximum age of retirement of 60 for all members of An Garda Síochána, it made it conditional for new entrants on or after 1 April 2004 on health and other checks. The purpose of this conditional approach is to ensure the operational capacity of the police service. Specifically, section 4 provides that a new entrant shall "cease to be a member" of An Garda Síochána, "on attaining the age of 55 years" but may continue to 60 years

subject to the Commissioner being satisfied that, “the member is fully competent and available to undertake, and fully capable of undertaking, the duties of his or her position as a member of the Garda Síochána”. Where the member concerned is the Commissioner, it is the Minister for Justice and Equality who must satisfy himself or herself as to capability and competency.

The Attorney General has advised that the manner in which section 4 is constructed has the effect of excluding the appointment of a person, who is not already a member of An Garda Síochána before the age of 55, to the rank of Commissioner. It has the same effect in regard to the rank of deputy commissioner. Accordingly, the Government has made the decision to amend the legislation to better support an open competition. Quite apart from the importance of ensuring a level playing field between internal and external candidates, it puts prospective external candidates who may already be 54 years of age in the unenviable position of trying to determine whether it is worth their while applying for the competition and running the risk of ageing out before the process concludes. To rectify this anomaly, section 1 inserts a new subsection (4) in section 4. It provides that nothing in that section shall prevent the appointment, in accordance with the Garda Síochána Act 2005, of a person who has attained the age of 55 years but is under the age of 60 as a new entrant to An Garda Síochána to the rank of Commissioner or deputy commissioner. Section 1 also inserts a new subsection (5) to clarify that the regime in section 4 in regard to medical and other checks applies to such appointees.

It is important to note that these amendments make no change to the retirement regime in operation for members of An Garda Síochána. The regime approved by the Oireachtas in 2004, under which all those who join An Garda Síochána on or after 1 April of that year cease to be members on attaining the age of 55 but may continue to the age of 60 subject to certain conditions, remains intact. This provision, in conjunction with regulations made by the Government recently, means that any person appointed to the office of Commissioner on foot of the upcoming competition shall serve for five years or until he or she attains the age of 60 years, whichever is the earlier.

As I previously stated, on this occasion for the first time, the independent Policing Authority, working in conjunction with the Public Appointments Service, will conduct the selection process for a Garda Commissioner. I am advised that the selection process itself is likely to take some four months from the launch date. Further time may then be required depending on the candidate. I and my colleagues in government are keen to remove any possible obstacle or barrier to ensuring the best possible candidate can be identified to lead An Garda Síochána and deliver the best policing services to the people of Ireland. I am keen that the competition proceed without delay. In that regard, I want to specifically thank the Members of this House for their co-operation with the passage of this Bill. I commend the Bill to the House.

Senator Lorraine Clifford-Lee: We are supporting this Bill. It is important that the base from which the next Garda Commissioner is chosen is as wide as possible and this Bill allows the net to be broadened. Equality must reign supreme when we are choosing the next Garda Commissioner and the best person for the job should be chosen. It is a very important role. I support this Bill on behalf of the Fianna Fáil group.

Senator David Norris: That was short and sweet.

Senator Victor Boyhan: I will also be short and sweet. I thank the Minister for his comprehensive background to this issue. I note the Bill passed all Stages in the Dáil on 21 February 2018. It is a short Bill, as he said, that seeks to alter the current position that had the effect of

barring an external candidate aged over 55 years from applying for the position of Garda Commissioner. That raises serious concerns and is something of which I was not aware. I do not know how that arrangement was allowed sit for so long. It is extraordinary.

Let us be clear. I am a great believer in simple messages and one of the things I have found since becoming a Member of this House is that when a fellow says that something is complicated, one wants to sit up and look. I refer to that as a type of diversionary tactic. When politicians say, "It is all very complicated" or "It is in the Bill for a very good reason", one really needs to start digging. However, I was amazed that the legislation precluded external candidates over 55 years of age from applying for the position but if they were internal candidates, that was grand. They could stay on until the age of 60. The issue has now come to us today for discussion. That is my simple message because sometimes setting the narrative is important and the narrative that needs to be set is that at this late stage, the issue is being addressed and that has to be welcomed.

The sole purpose of the Bill is to ensure that the same age limit applies internally and externally to the candidates for appointment to the rank of Garda Commissioner and deputy Garda commissioner. The Minister is right. It is a fundamental position within our State. I wish him well with the Bill. Originally, I thought this job was advertised but I understand now that it has not been advertised.

Deputy Charles Flanagan: It will be advertised.

Senator Victor Boyhan: The Minister set out the timeframe for that. I support the Bill and I know from speaking to my colleagues that they are very supportive of it also.

Senator Jerry Buttimer: I welcome the Minister to the House and thank him for bringing the Bill before us. As the Fine Gael Leader of the House, I confirm we will be supporting this Government Bill. As Senator Boyhan rightly said, it is about ensuring that we have the same age limit for external candidates and that they are not barred from being able to apply and be interviewed for the position.

The next Garda Commissioner is pivotal in terms of the reform of An Garda Síochána. It is fair to say that the Garda has suffered in the eyes of the public for a variety of reasons but it is important now that we restore that morale.

As the first female Commissioner, Nóirín O'Sullivan deserves our thanks and praise for the role she played. I always found her to be a very amicable and fair-minded person to engage with who did her best and wanted to see An Garda Síochána advance. Equally, we are very fortunate with the men and women who serve in An Garda Síochána in our towns and cities who do Trojan work to protect but also build a sense of community. It is now opportune that we bring reform to An Garda Síochána.

I welcome the fact that we will have an open, international recruitment campaign. I welcome the age barrier being changed. It is a pity the 5 ft 9 in. height barrier could not have been changed over time. Many of us who are of a smaller height might have been considered for An Garda Síochána. I always found that to be discriminatory and unfair because the many of us who might have considered applying were precluded from doing so because of the height restriction. That was wrong, and I am glad that has changed.

Senator Victor Boyhan: The Senator could be Sergeant Buttimer.

Senator Jerry Buttimer: I could be assistant Commissioner or even Commissioner now, never mind sergeant.

(Interruptions).

Senator Jerry Buttimer: The point I am making is that I would have been very happy to have been a member of An Garda Síochána. The change to the age limit of 55 for external candidates is welcome. I am wondering aloud now but the Pontiff, US President Trump, President Michael D. Higgins and, I understand, Senator Norris are over 70.

Senator David Norris: Seventy three and three quarters.

Senator Jerry Buttimer: I am curious as to the reason we are putting in caveats in terms of the age of applicants for this position, but we are open to change. I welcome that an independent appointments commission will be set up. Who will sit on the interview panel? Who will be the people with the competency and expertise? Will they be from inside or outside the jurisdiction? Will they have a set *modus operandi* and terms of reference stating who they may recruit?

This is a wonderful opportunity to renew An Garda Síochána. I wish the Minister and the independent body well in doing the work that is now ahead of us. The Minister said in his speech that it will take four months or so. It is important that we get it right. The process should be open and transparent. I commend the Minister on his stewardship of the Department. It is important that we thank acting Garda Commissioner Ó Cualáin for his work, and Ms Nóirín O'Sullivan.

Senator Niall Ó Donnghaile: Cuirim fáilte roimh an Aire. I hope he will forgive me for reading notes from my iPad. I know Senator Norris will not.

Senator David Norris: I will on this occasion.

Senator Niall Ó Donnghaile: I will just have to plough on regardless.

Sinn Féin will be supporting the Bill. To a large extent, it is a relatively minor technical Bill. It is intended to address the unintended effect of the retirement provision applying to members of the Garda Síochána who entered service on or after 1 April 2004 and external candidates for appointment to the rank of Garda Commissioner or deputy Garda commissioner. It relates to section 4 of the Public Service Superannuation (Miscellaneous Provisions) Act 2004, which states that such members of the force shall cease to be members on attaining 55 years of age but may continue until 60 years subject to checks. The provision, however, has the unintended effect of creating a bar on the appointment of persons aged 55 or more to the rank of Garda Commissioner or to the rank of deputy Garda commissioner where those persons are external applicants. Clearly, that is not sensible. We support legislation to rectify such an unintended but obvious anomaly and consequence.

As colleagues have said, it is vital that the process be as open as possible to external candidates. We previously expressed that it would be preferable to have an external candidate take on the position of Garda Commissioner for a number of reasons, one of which is that it would be invidious at this stage for somebody within An Garda Síochána to take on the position. A person from within the force would find matters difficult from the outset. We should be considering external candidates and, very likely, people from outside the jurisdiction. It is possible

that the Minister has commented on this already but, if he has any update on the process for the appointment of the Garda Commissioner, it will be very welcome.

My colleagues in the Dáil expressed the view to the Minister that we would have believed it preferable to have an extended period with an acting Garda Commissioner, as is currently the case. They also expressed the view that it would have been preferable for the recommendations of the Commission on the Future of Policing in Ireland to have been reported before a Garda Commissioner was appointed in order to allow the Public Appointments Service and the Policing Authority to take account of them. While the Minister is proceeding in any event, we still have some concerns in this regard.

This is going to be a crucial appointment. With the right appointment, together with enthusiastic implementation of the recommendations of the Commission on the Future of Policing in Ireland, it may be possible to draw a line under recent controversies and begin a new future for policing in this State. As has been said, however, that would require the commission to come up with radical proposals, and these must be implemented fully and enthusiastically by the Government. It is essential, therefore, that we get the appointment right.

Let me add to previous observations regarding the maximum age, which, even after the enactment of this legislation, will still be 60. It is unusual that we require gardaí to retire at that age when in other areas we force employees to work for a longer period, perhaps up to the age of 67 or 68, in places they would rather not be. This is the other extreme. In many circumstances, those who would be forced to work for longer would be least likely to be able to do so. In the case of gardaí, however, there are people who would very much like to remain in service and who are perfectly capable of so doing but who are prevented from doing so. I ask the Minister to reconsider this.

The legislation is technical and is intended to rectify an anomaly. We will support it. I will assist in ensuring the process for appointing a new Garda Commissioner is robust. The right person must be appointed to ensure that there is a new era in An Garda Síochána. It is not very often it happens, on which basis I hope Senator Norris forgives me for using my script.

Senator David Norris: At the age of nearly 75, 55 looks pretty young to me. For a responsible position such as Garda Commissioner, not many people under 55 would apply. One would need that degree of experience. A large number of commentators have suggested that it would be a very good thing to have someone from outside the jurisdiction take up the role. As such, I am very happy to support the legislation, which rectifies a technical anomaly, as the Minister said.

I want to raise something else because this legislation deals with the terms and conditions of work of civil servants. I would like the Minister to take back to Cabinet my view, which I think is widely supported in the House, notwithstanding that people are reluctant to say it in public because of voter reaction. There are 111 civil servants in Leinster House who get more than we get as Senators. That is a pretty astonishing situation. Approximately half a dozen of them at least get three times what we get. During the financial emergency, the long-service increment was removed. I cannot think of another job where one does not get a long-service increment. Certainly, everyone around here gets it, including the secretaries. What is wrong with us? Why are we so utterly mealy-mouthed?

An Cathaoirleach: The Senator might be surprising the Minister with this extra-curricular

matter.

Senator David Norris: I am but it is to give him a little message to take back to Cabinet. It is time we did something about this anomaly. We do not need to be mealy-mouthed. I can tell the Minister that the public of Ireland would not give a toss if we gave away every penny we had to St. Vincent de Paul and danced naked across the roof of Leinster House. They would not be impressed. This is a very serious thing. I must say the civil servants were shrewd enough. I see one of them having a good smile. They got it. It is the smile of the cat who got the cream.

Senator Catherine Noone: She is smiling at the Senator's comment about dancing across the roof of Leinster House.

Senator David Norris: The civil servants were cute enough to get it streamed into their main income. We did not. It was quite extraordinary.

This affects pensions, which will be seriously reduced as a result. My pension, for example, will be less than it was ten years ago. I ask the Minister, therefore, to take back to Government a feeling which is shared very widely in the House, but which many of my colleagues are afraid to say anything about. We really need to look at the terms and conditions of our own employment. If we do not, we will not get really good people into politics. They will get a hell of a lot of abuse from the media and very little thanks from the public. If they are paid buttons as well, it will have an effect. I appeal to the Minister to mention this to his colleagues as something which should be looked at. I thank the Chair for his indulgence.

An Cathaoirleach: I thank the Senator for that extra unplanned item for the Minister. It is a matter for his own discretion as to whether he replies to it.

Minister for Justice and Equality (Deputy Charles Flanagan): Senator Norris is, as always, fearless in the teeth of voter backlash.

Senator Michael McDowell: Fearless in defence of his wallet.

Senator David Norris: You are a fat one to talk, McDowell. I just got your bill of costs.

Deputy Charles Flanagan: It is an indication that the first shots have been fired in the Seanad election as Senator Norris takes on the electorate, fearless of any backlash as usual.

Senator David Norris: I would not say that was a great vote getter.

Senator Catherine Noone: It would not be a great vote-getting slogan, all right.

Deputy Charles Flanagan: The Senator has not often been on the side of the voter.

Senator David Norris: I ignore the electorate largely.

An Cathaoirleach: We should get back to the Bill.

Deputy Charles Flanagan: I appreciate the support of the House for this short Bill and for the positive comments of Members. In particular, I acknowledge the support of Senator Clifford-Lee and Fianna Fáil, Senator Ó Donnghaile of Sinn Féin, Senator Boyhan and, indeed, Senator Norris, in our objective of ensuring the best possible candidate is appointed to lead An Garda Síochána. I reiterate that Government has absolutely no preference as to whether the person is an internal or external candidate, but whoever comes through the process, whether they

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be a member of An Garda Síochána or otherwise, will face a significant task. The person will be required to continue the implementation of the major reform programme, to improve governance of An Garda Síochána, improve performance management, build managerial capacity, and enhance service delivery while continuing to ensure that the organisation has the capability to secure the State and keep citizens safe. The person will also be required to implement any further strategic reforms to the sector generally that may flow from the work of the Commission on the Future of Policing.

I note Senator Ó Donnghaile's view that it might be best to delay the appointment of the Garda Commissioner until the Commission on the Future of Policing has completed its work. The commission's work is well under way and I acknowledge its work under the leadership of the experienced former police officer Kathleen O'Toole. It will produce its report by September this year at the latest. I am sure Senators will agree that it is not in the public interest or that of An Garda Síochána that we allow a state of uncertainty to persist. We must proceed and ensure that there is not a vacuum around the leadership of the police service. It is some time since former Commissioner Nóirín O'Sullivan retired, whose leadership of An Garda Síochána and whose contribution I want to acknowledge, and it is important that we move swiftly towards a replacement. I know from my engagement with Kathleen O'Toole, the chair of the Commission on the Future of Policing, that she shares my concern that after a careful and deliberative approach to the recruitment process we need to proceed to ensure the best candidate is selected. The approach has been followed that has allowed the policing authority to engage with the Commission on the Future of Policing to see how it sees the future role and responsibilities of the Garda Commissioner.

I will refer briefly to points raised by Senators Buttimer, Ó Donnghaile and Norris on the maximum retirement age of 60 years. It is less than that which applies to the majority of public servants with the exception of other uniformed services such as the Defence Forces and Prison Service. The distinguishing feature of the uniformed services is justified by the physical nature of the role and need to maintain operational capacity at all times. That also means the retaining of talent and refreshing the supervisory and management tiers in organisations that are often seen as having somewhat limited promotional opportunities. I have listened carefully to Senators on this. I believe there is merit in considering whether these justifications hold the same sway for the leadership tiers of the police service, particularly in the context of open competitions. I have asked my Department to undertake a review on this matter. Any proposal for change will have to be carefully managed to avoid a silting up of senior leadership tiers for several years that might be a consequence. I acknowledge the input in any such change of my colleague, the Minister of State at the Department for Public Expenditure and Reform, Deputy Patrick O'Donovan. I understand he will bring forward a Bill later in the session to amend the 2004 Act to extend the retirement age for the majority of pre-2004 public servants to 70 years. This Bill may provide a timely vehicle for any proposals for change in the retirement arrangements applying to the office of the Garda Commissioner and other senior leadership ranks in An Garda Síochána. Indeed, the Minister of State's Bill may provide a timely vehicle for any proposal for change in respect of the retirement arrangements applying to the Office of the Garda Commissioner and other senior leadership ranks in An Garda Síochána.

As regards an interview board and who will manage this process, I reaffirm that this is a matter for the Public Appointments Service, PAS. Its staff will manage the competition and arrange the selection procedures in conjunction with the Policing Authority. I expect the advertisement to be placed in national and international newspapers and on appropriate online services within

a couple of weeks. I am keen that the process formally gets under way without undue delay and I suspect it may well be completed within four months of the launch. I expect the launch to be on or about the date the advertisement is placed. There will be an accompanying booklet setting out the terms and conditions, and the information regarding the vacant position. It is important that the successful person be required to implement reforms to An Garda Síochána of a significant nature. In the meantime, the enactment of the legislation is necessary to ensure we have the widest pool of candidates for competition.

With regard to Senator Boyhan's comments, there is no diversionary tactic or ulterior motive other than to ensure a level playing field for those who wish to apply from outside An Garda Síochána, those who wish to apply from within, those who wish to apply from within the State or, indeed, persons on the international stage. I would welcome the passage of all Stages this evening in order that the Policing Authority and the PAS can launch the competition. They are almost ready to do so and it could well happen within a matter of days. I hope it will but adhering to a strict timeframe is desirable in view of the time involved for selection processes for senior posts. Further time may be required in the making of the appointment as well.

I thank the House for facilitating the process and I look forward to returning-----

Senator David Norris: Will the Minister take my message to Cabinet?

Deputy Charles Flanagan: Of course I will.

Senator David Norris: I thank the Minister.

Deputy Charles Flanagan: I always give the Senator's messages due and careful consideration and I am happy to bring that message to Cabinet. However, I could not guarantee that favourable consideration will be given to the points at issue.

Senator David Norris: No, they are too gutless.

An Cathaoirleach: I would like to acknowledge the presence in the Visitors Gallery of Deputy Joe Carey and his guests. He comes occasionally to pay homage to this Chamber and we are grateful for that.

Question put and agreed to.

Public Service Superannuation (Amendment) Bill 2018: Committee and Remaining Stages

Senator David Norris: The House is agreeable on this occasion to take Committee and Remaining Stages now because it is a simple, technical amendment to the primary legislation. Had it been anything more substantial, there would have been reservations.

An Cathaoirleach: Point noted.

Sections 1 and 2 agreed to.

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Title agreed to.

Bill reported without amendment, received for final consideration and passed.

Public Service Superannuation (Amendment) Bill 2018: Motion for Earlier Signature

Senator Catherine Noone: I move:

That, pursuant to subsection 2o of section 2 of Article 25 of the Constitution, Seanad Éireann concurs with the Government in a request to the President to sign the Public Service Superannuation (Amendment) Bill 2018 on a date which is earlier than the fifth day after the date on which the Bill shall have been presented to him.

Question put and agreed to.

5 o'clock

Data Protection Bill 2018: Committee Stage (Resumed)

Question again proposed: "That section 2, as amended, stand part of the Bill."

Acting Chairman (Senator Gerry Horkan): We have dealt with amendment No. 1 and voted on it.

Senator Alice-Mary Higgins: I want to signal that I may table an amendment on Report Stage to alter some of the language. It will be different from what we have done. I may also address problems with section 54 that arise from this. The Minister has indicated he will be happy to engage with me on this. I want to signal there may be consequent amendments on Report Stage.

Question put and agreed to.

Section 3 agreed to.

SECTION 4

Acting Chairman (Senator Gerry Horkan): Amendments Nos. 2 to 5, inclusive, 24 to 26, inclusive, 42, 46, 47, 59, 67 to 79, inclusive, 81, 84, 87 to 89, inclusive, 91 and 92 are related and may be discussed together by agreement. Is that agreed? Agreed.

I ask anybody who wants to speak on any of these amendments to indicate now that they will do so because they will not be allowed to speak at a later stage.

Senator Alice-Mary Higgins: Are they all Government amendments?

Acting Chairman (Senator Gerry Horkan): Yes.

Minister for Justice and Equality (Deputy Charles Flanagan): These are all technical drafting amendments to various sections of the Bill. Looking at them, they seem in their entirety to include minor corrections to grammar and punctuation, layout changes to improve the readability of the Bill and a number of cross-reference corrections. That is all. They are all merely technical.

Acting Chairman (Senator Gerry Horkan): We were all sent a list of the type of grammatical clarifications earlier.

Government amendment No. 2:

In page 12, line 11, to delete “commits an offence and is liable” and substitute “shall be guilty of an offence and shall be liable”.

Amendment agreed to.

Government amendment No. 3:

In page 12, line 13, to delete “12 months, or both” and substitute “12 months or both”.

Amendment agreed to.

Government amendment No. 4:

In page 12, line 15, to delete “5 years, or both” and substitute “5 years or both”.

Amendment agreed to.

Question proposed: “That section 4, as amended, stand part of the Bill.”

Senator Alice-Mary Higgins: I want to speak very briefly on the section to indicate I am looking at it in terms of potential amendments on Report Stage. The sentiment of the section is very good, in terms of making sure data subjects are not pressed to allow right of access in inappropriate circumstances. I may look to enhance it on Report Stage.

Question put and agreed to.

Sections 5 to 7, inclusive, agreed to.

SECTION 8

Question proposed: “That section 8 stand part of the Bill.”

Senator Alice-Mary Higgins: I seek clarification on the section 10 investigations under way at present. As we know, a section 10 investigation is under way by the data commissioner in respect of the public service card and the Department of Employment Affairs and Social Protection. Will the Minister clarify that the investigation under way, or any other investigation that may be under way before the Bill comes into effect, will proceed in the same timeline and that the data commissioner who is leading the investigation will still be in a position to lead the investigation? This would mean any investigation commenced but not completed would

continue under the same terms of reference with the leadership of the same commissioner. This is very important because serious concerns have been expressed about section 10 audits in the past and section 10 investigations under way at present. I seek clarity on ensuring they will proceed and we can expect the same timeline and leadership. Will the Minister assure me on this matter?

Deputy Charles Flanagan: I thank Senator Higgins for raising this issue. I refer her to section 8(2)(b), which states any investigation under section 10 of the Act on the date, which is the date of commencement presumably, that has been commenced but not completed shall continue. I do not anticipate the type of difficulty Senator Higgins adverts to. It is an important point. There will be an element of continuity there in order that any investigation will not fall if it is not completed on the date to be established for the purpose of the Act.

Senator Alice-Mary Higgins: I have a complementary point, which is the question of complaints that might have been made under section 10. It seems slightly different rules might apply to complaints, potentially, under the new data commission. There is the question of whether complaints need to be adjudicated on. I want it clarified that the existing Act will apply to any complaints that might be made before the commencement of the Act. This is my understanding of it. I welcome the Minister and thank him for his clarification.

Deputy Charles Flanagan: Section 8(2)(a) deals with a complaint under section 10 and section 8(2)(b) deals with an investigation under section 10. This seems to cover the point as raised.

Question put and agreed to.

Sections 9 to 11, inclusive, agreed to.

SECTION 12

Senator Alice-Mary Higgins: I move amendment No. 4a:

In page 14, between lines 30 and 31, to insert the following:

“(4) The Commission shall have the power to order the suspension or limitation of any specific data processing actions or processes within a public authority when it considers that necessary or expedient during the course of an investigation.”.

I apologise; I am trying to pull up-----

Acting Chairman (Senator Gerry Horkan): It is on the first additional list of amendments dated today.

Senator Alice-Mary Higgins: I ask the House to bear with me for one moment. I am trying to pull up the additional list of amendments in front of me. I do not think I have them in front of me. I apologise. I thought the amendment was in the printed list and I do not have it in front of me. I will speak first to my concern about the section. I want to clarify that the specific powers in respect of the commission in terms of-----

Acting Chairman (Senator Gerry Horkan): We are discussing amendment No. 4a.

Senator Alice-Mary Higgins: I am literally trying to pull up amendment No. 4a.

Acting Chairman (Senator Gerry Horkan): I have it in front of me if the Senator wants me to read it to her.

Senator Alice-Mary Higgins: Yes, will the Acting Chairman read it out because I do not have it on my list?

Acting Chairman (Senator Gerry Horkan): It states:

In page 14, between lines 30 and 31, to insert the following:

“(4) The Commission shall have the power to order the suspension or limitation of any specific data processing actions or processes within a public authority when it considers that necessary or expedient during the course of an investigation.”.

Senator Alice-Mary Higgins: I thank the Acting Chairman. I can speak to that and I can also speak to an additional related concern I will raise on Report Stage. The amendment is intended to ensure situations we have seen recently do not arise, for example, the very serious concerns raised by the data commissioner in respect of the roll-out of the public services card, the manner in which it was rolled out and, specifically, on the legal basis and measures in place to ensure the security in processing of data. This amendment proposes an additional appropriate power for the data protection commission so that, when concerns like this are raised, the commission will be able to suggest that a particular activity should be suspended. There is a real concern that, while last autumn very serious concerns were raised by the Data Protection Commissioner, we in fact saw a doubling down on the roll-out of the card. The functions of the card were expanded and additional services were made unavailable to those who did not agree to have a public services card and did not agree to contribute their information into the single customer view database associated with it. There is a concern that if a practice about which the Data Protection Commissioner, or the new data protection commission, has raised concerns is under way and that concern has been signalled publicly - which is not something which is done lightly, it is done very rarely and would involve initiating the equivalent of a section 10 investigation - one of the powers the commission should have would be the power to suggest that no further action be taken in rolling out that particular practice.

This provision is about signalling that when the data protection commission says that it has serious concerns about a process it should also have the power, which it will not always wish to use, to request that the brakes be applied to a process when it feels it necessary or appropriate. For example, if a Department is collecting data in a way which the data protection commission believes is unsafe, it should ask the Department not to continue with the process while it investigates it and tries to ensure that the proper safeguards are in place. It is a very simple and reasonable new power.

Perhaps the Minister can assure me on something. I have not put down an amendment on it because the Minister may be able to assure me on the record instead. As I understand the transfer functions, under the section 10 of the existing Act the Data Protection Commissioner is entitled to request the erasure or destruction of data which has been collected in a way which is dangerous or which is in breach of data protection rights. That power to request erasure of data which has been collected improperly, inappropriately or illegally is a specific power which the Data Protection Commissioner has at the moment. Perhaps the Minister could assure me that the data protection commission will have that same power.

Deputy Charles Flanagan: On the matter of amendment No. 4a in the name of Senator

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Higgins, I refer to Part 6 of the Bill entitled “Enforcement of Data Protection Regulation and Directive” together with Article 58 of the General Data Protection Regulation, GDPR, which confer a broad range of far-reaching enforcement and corrective powers on the data protection commission. Article 58(2) of the GDPR confers on the commission the power to impose a temporary or definitive limitation to include a plan on the data processing operations. This applies both to public authorities and bodies and to private sector controllers and processors. This would cover the issues raised by Senator Higgins. As a consequence, I do not see a need to insert a new provision in section 12 as suggested in the amendment. I do not believe it is necessary because it is covered. Senator Higgins asked me to assure her and I am pleased to do so. If any issues arise, we can have a look at them between now and Report Stage. I note that Senator Higgins has indicated her wish to return to this matter on Report Stage. I am satisfied that the issues raised are covered. We will have a look at it later on in the event of there being any further or ancillary issues. However, I do not see a need for the amendment and am therefore not minded to accept it.

Acting Chairman (Senator Gerry Horkan): Is Senator Higgins pressing the amendment?

Senator Alice-Mary Higgins: I am happy not to press the amendment at this stage but I reserve the right to come back on Report Stage.

Amendment, by leave, withdrawn.

Section 12 agreed to.

Sections 13 to 23, inclusive, agreed to.

SECTION 24

Question proposed: “That section 24 stand part of the Bill.”

Senator Alice-Mary Higgins: I would just like to speak briefly and signal that I may suggest other amendments to this section on Report Stage, not in respect of the annual report, but in respect of other reporting by the data protection commission.

Question put and agreed to.

Sections 25 and 26 agreed to.

SECTION 27

Government amendment No. 5:

In page 22, line 20, to delete “in tort” and substitute “on tort”.

Acting Chairman (Senator Gerry Horkan): This amendment has already been discussed with amendment No. 2.

Amendment agreed to.

Section 27, as amended, agreed to.

Section 28 agreed to.

NEW SECTION

Government amendment No. 6:

In page 22, between lines 30 and 31, to insert the following:

“Child for purposes of application of Data Protection Regulation

29. For the purposes of the application of the Data Protection Regulation in the State, a reference to “child” in the Regulation shall be taken to be a reference to a person under the age of 18 years.”.

Deputy Charles Flanagan: This amendment inserts a new section 29 which defines a “child” as “a person under the age of 18 years” for the purposes of the Bill. This is a response to a recommendation of the Joint Committee on Justice and Equality in its valuable report arising from pre-legislative scrutiny of the draft data protection Bill last year. While the data protection rights and protections that apply to adults under the GDPR also apply to children, the GDPR acknowledges that the personal data of children merits specific protection and it includes a number of specific measures for the protection of children. For example, Recital 38 states that the specific protections “should, in particular, apply to the use of personal data of children for the purposes of marketing or creating personality or user profiles and the collection of personal data with regard to children when using services”. In addition Article 12, which obligates controllers to provide information to data subjects on the processing of their personal data “in a concise, transparent, intelligible and easily accessible form”, states that its provisions shall apply “in particular for any information addressed specifically to a child”. Recital 65 also refers to the rights to erasure set out in Article 17 and says “That right is relevant in particular where the data subject has given his or her consent as a child and is not fully aware of the risks involved by the processing, and later wants to remove such personal data, especially on the internet.” The GDPR does not contain a definition of a child. This amendment will therefore provide clarity, which was a recommendation of the Joint Committee on Justice and Equality. However, the definition does not bear any connection to the issue of the digital age of consent in Article 8 of the GDPR, which forms the subject matter of the next group of amendments, which we will undoubtedly be addressing.

Senator Alice-Mary Higgins: I welcome this amendment. It is really important and is a key point of clarity. It makes it very clear that the definition of child in this respect is “a person under the age of 18 years”. It is a welcome amendment but I would like to signal a real concern which relates to one of the fundamental issues which needs to be addressed in the Bill and with which we need to very seriously engage before the Bill proceeds to Report Stage. The Minister mentioned that under the GDPR there is provision for special restrictions around the use of data and targeted advertising in respect of children and that children need to have particular rights and protections put in place in terms of the use of their personal data. However, in this Bill, lengthy as it is, we do not see any specific restrictions around the use of data relating to those under the age of 18. We have not put into effect any measures, indicated any specific or special restrictions, or laid out clear guidelines. Yes, there is provision under the GDPR, but there is also scope under the GDPR for specific restriction, particularly in the area of advertising and targeted marketing. While we will have a later debate on the digital age of consent, which I do not want to pre-empt, we have heard concerns from across the board from all of those with a view on the digital age of consent on every side about how the data of those aged under 18 is used and targeted. Measures have been taken in the UK which may not be perfectly replicable here and we may look to our own version of them. In the UK, amendments were introduced which sought to restrict the use of GPS data, for example, in respect of those under 18. In terms

of GPS data, consent to access it can be given relatively easily, which is important in the context of advertising and how users are targeted. Additional concerns, which have become more intense since the introduction of legislation in the UK, centre on the ease with which people may inadvertently consent to the turning on of recorders or cameras on their phones. There is scope, particularly in the context of child protection, for specific restrictions. One of those mentioned by the Minister, which is made very clear in Recital 65 of the GDPR, is the right to be forgotten. There is an explicit right to be forgotten for those who were under 18 at the time that they consented, for example, to participation in a space or forum or to the sharing of their data. I do not believe there is anything to stop us putting in place measures to require, for example, that a data protection officer would put in place a clear timeframe by which a request to be forgotten by someone who is under 18 or was under 18 at the relevant point is satisfied. We could say, for example, that a request to be forgotten on a site, server or forum should be granted in a timely fashion, that is, the data should be erased within 30 days. I do not think that would contradict the GDPR but would complement it and give effect to it. It would be a concrete child protection measure and in that context, I am indicating my intention to bring forward an amendment on that on Report Stage. That said, I would also be very happy to work with the Minister to ensure that we do it in a way that works for everybody across the House. These are the kinds of concrete measures that we can introduce to ensure that people's experience with the Internet is not negative and to ensure that children, young people and all citizens are empowered. I would like to see concrete measures on the right to be forgotten introduced for everybody but these are absolutely imperative and urgent in respect of children. I ask the Minister to indicate his thoughts on this matter.

Senator Michael McDowell: I endorse what Senator Higgins has been saying. I welcome the definition of a child as a person who is under the age of 18. One of my big problems is that I see around me quite contradictory attitudes towards childhood as a state. As I understand it, one is either a child or an adult. Although it is a somewhat arbitrary point in time, we have fixed the age of 18 as the point at which a child transitions to being an adult. In law, we treat people under the age of 18 as children and a number of points flow from that. Some people are now talking about according the right to vote in local elections, for example, to children. There has been talk about amending the Constitution to allow this to happen. I wonder whether we have a grip on the idea that childhood is a state of presumed vulnerability during which there is a need for special protection. When I occupied the seat that the Minister now occupies in St. Stephen's Green, I recall being constantly amazed by newspaper reports about child refugees. These were people who had travelled halfway across the world, unaccompanied minors, who suddenly were "children". The media rightly said that they needed special protection. Sometimes they disappeared off the radar screen and the Minister for Justice and Equality of the day was effectively under the spotlight in terms of what had happened to these "children". We have protections for children relating to the purchase of alcohol and even to national lottery tickets. We have many protections in place for children. I do not know whether it is still the case but when I was a youngster, one was allowed to bet on the tote. There are people who think that is wrong and is introducing youngsters to gambling at an inappropriate age.

We must be philosophically consistent about the distinction between childhood and adulthood and about where the age of majority starts and the period of childhood ends. In that context, I welcome the Minister's amendment. It is worthwhile stating where childhood ends as far as Irish law is concerned in the context of data protection. Moreover, as Senator Higgins has argued, it is all very well identifying childhood for the purposes of the regulation but we should look to some of the protections that the United Kingdom has provided for children in its legisla-

tion. While I commend the Minister's amendment and have no problem with it, I believe we should go further. We should actually flesh out some of these protections in Irish law. As Senator Higgins has said, if we are going to give children special rights or acknowledge their special entitlement to protection as a result of the language of the regulation, then we should actually put flesh and bones on that in Irish law. If a child wants to exercise the right to be forgotten, for instance, he or she should have a clear and simple way to achieve that.

I remember a situation where someone set up a fake Facebook account in my name and I discovered that I supported the Occupy Dame Street protest, which Members will be glad to hear. It caused some consternation, with my friends saying that what they always had assumed about my sanity had now been proven to be true. However, when I decided that I wanted this Facebook page to be taken down and tried to assert my own right not to be portrayed as favouring the aforementioned campaign, I had real difficulty in getting Facebook to listen to me. The company would not deal with me at all until I produced photocopies of my passport, affidavits and statutory declarations to say that I was who I claimed to be. One wonders, in that context, if it is fair that multinational companies could demand of a child things that he or she simply cannot do. We have to have very simple remedies and procedures to enable children to protect themselves. They should not have to go to a solicitor to vindicate their rights, as I had to do in order to engage with Facebook and get it to remove my messages of support for the Occupy Dame Street protest. While I could see the funny side of it, I did not know what I was next going to support before I closed down the account.

Senator Higgins is right to say that it is all very well to define childhood but that we should go a few steps further and begin to examine ways in which we can provide in our law and our implementation of the regulation some very clear and concise methods by which children can protect themselves. We must also provide in law for their parents or guardians to be able to come to their assistance and to bring about genuine protection for them. It has been argued that one of the mistakes that was made with regard to the banking regime was that of approaching things on a point of principle. I accept that was a mistake at the time. Now we should go further than mere statement of what is a child for the purpose of the regulation in Irish law and provide protections for children. This is without prejudice completely to the next amendment.

Deputy Charles Flanagan: I do not disagree with the points that have been made in respect of ensuring a special level of protection having regard to the special status of the persons we are dealing with, namely, children. However, for the purpose of the amendment and to ensure clarity in the legislation because specific reference is made throughout the GDPR on the matter of a child or children, it is important that we clarify the issue in domestic legislation as to what we mean by the status of a child. That is why the amendment does no more than provide for that measure of clarity. It accords with the *de facto* position in our country anyway where across a range of legislative frameworks, procedure and practice, the definition of a "child" is a person under the age of 18.

With regard to many of the issues raised by Senators Higgins and McDowell, I am very much open to giving careful consideration to the type of protections that might be deemed appropriate and necessary in this legislation. We have an opportunity later to so do but, for the purpose of clarity, I do not want at this stage to go beyond this definition. I ask Senators to agree that it is appropriate to insert a new section 29 at this point in the Bill defining for the first time a child as being a person under the age of 18.

Amendment agreed to.

27 February 2018

SECTION 29

Acting Chairman (Senator Gerry Horkan): Amendments Nos. 7 to 9a, inclusive, are related and may be discussed together.

Senator Michael McDowell: I move amendment No. 7:

In page 22, line 32, to delete “13 years” and substitute “16 years”.

This is an important subject which needs to be debated and thought about carefully. We are not dealing with the right to have a phone or whatever, nor with a number of issues relating to young people’s access to the Internet. We are dealing with the point at which a child aged 13, 14 or 15 is capable of consenting to certain actions on the part of online service providers and the operators of Internet services and sites to process such young people’s data. We are dealing with the possibility that we should make it our law that henceforth a child aged 13, 14 or 15 is deemed capable of consenting to the processing of data relating to him or her without any parental or guardian supervision.

The choice provided for us by the GDPR is to opt for 16 being the age at which children can lawfully be presumed capable of giving consent or a lower age down to the age of 13. I do not suggest that choosing one age or the other flies in the face of the regulation because it clearly allows member states a discretion as to what they choose in this respect. We should be practical about the ages of 13, 14 or 15 and what these years mean in most children’s lives. These are the ages of young adolescence or puberty or the like at which children undergo physical and intellectual transformation of a far-reaching kind. Without over-elaborating on those themes, they are ages at which children need protection and support from whoever is performing the parental or guardianship role in their lives, if it is available to them.

There has been a great deal of naivety about the Internet as a phenomenon in that it was perceived as being all good news and positive, and that the dissemination of information and the capacity of people to interact with others in the media was, by definition, good. However, on the other hand, there has been a growing appreciation, which I will come back to, that the Internet is not all good for everybody or for children, in particular, and that all sorts of issues arise in respect of children and the protection of children.

I do not know whether the Minister starts with the same proposition as me but I recall Professor John Maurice Kelly lecturing on jurisprudence in UCD. His strong view was that when one talks about rights, there has to be a correlative duty, and he was strong in lectures to his students in the 1970s that to talk about rights divorced from duty to uphold those rights was a splitting of two concepts that were inextricably linked. There was no such thing as a right without a corresponding duty and the question whenever one spoke about rights was to ask oneself whose duty it was to uphold, guarantee and vindicate them.

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To talk about rights divorced from duty to uphold those rights, he was strong in lectures to his students in the 1970s that this was a splitting of two concepts that were inextricably linked. There was no such thing as a right without a corresponding duty and the question whenever one spoke about rights was to ask oneself whose duty it is to uphold, guarantee and vindicate them.

Under our Constitution, even allowing for the amendment made to give children special recognition, the role of the family is important and, in particular, the role of parents where they are present in a child's life, which is an important aspect of childhood. It is not the case that every family is based on marriage, as the Constitution seems to presume, and many family arrangements are non-marital one way or another. I accept that and I accept that the old idea of the nuclear family of two parents and a number of children in a permanent relationship does not apply to everybody. While many people may think it is the ideal, it is certainly not the only way in which a child can be properly and lovingly brought up.

However, I strongly believe that parents do have not merely rights in respect of their children but also strong duties, and they owe their children the duty of parental care, authority and supervision. That cannot be simply abdicated without consequence for a child. In many respects, children have a right to have their parents' duties delivered to them. When it comes to the interaction of young people with social media and the Internet in general, parents have a very clear responsibility which cannot be avoided. It is simply not good enough to say that children have rights in respect of the Internet. Parents have duties in respect of the Internet, namely, to protect their children, to give them assistance and to uphold their interests concerning how they function online.

In 2017, the Digital Childhoods report highlighted that the Internet was conceived as an environment for adult users, and no design concessions were made for children. As has been pointed out by Professor Barry O'Sullivan and Professor Mary Aiken, the utopian vision of the Internet was that all users would be equal. If all users are equal, then a child user is treated the same as an adult user. That is why, arguably, the Internet by default is not fit for children.

The protection of children's online privacy is a matter of great importance. It is important that many social media platforms require that their users are at least 13 years old. Has that been enforced in a regulatory context? The evidence seems to show that underage usage of mainstream social media platforms is very widespread. The Minister has said that the Government considers the digital age of consent of 13 years to represent 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. The Minister said that these rights were enshrined in the UN Convention on the Rights of the Child. I wonder about this, because the UN Convention on the Rights of the Child was ratified in 1989, and came into effect in 1990. This means that it almost entirely predates Internet online services and social media as we know them today. The assertion that a child's right to participation in the online environment is enshrined in the UN Convention on the Rights of the Child needs to be addressed and queried. The point that Professor O'Sullivan and Professor Aiken have made about the UN convention is a good one. They have argued that if the UN Convention on the Rights of the Child is to be brought into play, Article 17 must be considered. That article provides: "States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health."

The professors also point also to Article 19, which provides: "States Parties shall take all ap-

appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.”

Moreover, they point out that the UN convention provides: “States Parties recognize the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development.” It goes on to say: “The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child’s development.”

The Children’s Rights Alliance and the Irish Society for the Prevention of Cruelty to Children, ISPCC, approach this matter solely from the point of view of children’s rights. I contend, however, that we have to look at it in a slightly more nuanced way, and to look at children’s rights in the context of the correlative parental duty to provide for their development and protect them from exploitation. In that context, I question whether choosing the lowest possible age of 13 as the digital age of consent, at which children will be deemed capable of agreeing to the use of their personal data on the Internet, is in fact striking the balance in the way that the Minister has gone on the record as saying.

Amazing figures from the United Kingdom show that more and more younger children are going online. Half of children in the UK at the age of three or four are now engaging in some kind of online activity. Some 79% of children between five and seven years old are doing it. Some 94% of children between 8 and 11 years old are participating in online services. In the UK, 99% of children from 12 to 15 years of age are online. There may be social differences between our country and the UK, but I do not think those figures are dramatically different in Ireland. The point that Professor Aiken and Professor O’Sullivan have made is that there is now an emerging body of evidence about the potentially harmful effects of social networking sites on the well-being of children. As they point out, these include sleeplessness, obesity arising from being stuck in front of a screen all day, compulsive use and vulnerability to advertising. In addition to those, kids are suffering from a myriad of downstream consequences, including an inability to concentrate at school, poor grades, anxiety, depression and sometimes even suicidal ideation.

We may ask what we can do about these things. The two professors made another interesting point. They noted that rates of anxiety and depression among young people have increased by 70% over the last 25 years, and that young people say that four of the five most-used social media platforms make their feelings of anxiety worse. The Royal Society for Public Health states that the platforms that are supposed to help young people connect with each other may actually be fuelling a mental health crisis. Without being too alarmist about it, there is no doubt that young people are especially vulnerable to peer pressure, bullying, insidious pressure to conform in some respects and insidious efforts to isolate and demean them. We live in a world where eating disorders among children are sadly becoming increasingly common. One of the pressures in that regard is the constant bombardment of young people with ideal body types and sizes. Young people see heroines and heroes with particular body images, which make them unhappy with their own bodies and get them into a state of dissatisfaction. This leads to all sorts of psychological pressure on young people. Young people are vulnerable to cyberbullying, sexting and sextortion and so on. In 2017, Europol reported that the number of sextortion offences, which is the forcing or encouraging of young children to provide images of themselves in a sexual context, and webcam blackmailing, has rocketed in recent years. Sometimes,

the victims in this regard are as young as seven.

Instant messaging apps can also be used to bully children. The national anti-bullying research and resource centre in Dublin City University has found that new apps and social media platforms are targeting children as young as nine years of age. Children can be very reluctant to tell their parents about the bullying they encounter on social media because they are worried that their Internet access will be taken away from them. Children who are victims of bullying are frequently found to experience low academic performance, depression, anxiety, self-harm, loneliness, isolation and changes in sleeping and eating habits. This is not just an issue of concern for two professors: the teaching profession is becoming increasingly aware of these problems as well. In that context, we are required to consider what is the appropriate digital age of consent. For example, should it be set at 13, as it is in the United Kingdom alongside its special statutory protective measures, which we have not yet put in place, or, should it be set at 16, as it is in France, Germany and the Netherlands?

I do not rubbish anybody else's views but the arguments that have been made by the ISPCC, the Children's Rights Alliance and Geoffrey Shannon and others have been based on the proposition that children have a right to participate in the Internet and that that right should be vindicated and encouraged. The argument that the maturing process in today's digital world involves not treating children as plants in a glasshouse, totally isolated, has some merit. However, I believe that parents, where they are in a position to exercise protective powers over children, are people who should have some input into whether their child is or is not to be accorded the legal status of being capable of agreeing to the processing of his or her data by other bodies on the Internet. We are not only dealing with the physical location of children which exposes them to vulnerability, we are dealing with their preferences, photographs, interests - sport and so on - and a profile in respect of every child who participates on Internet service provider apps and so on. We are dealing with massive data in respect of those children and it is being proposed that we set at 13 the age at which a child can consent to others processing their data in any way the latter consider appropriate. I am of the view that 13 is too young for those types of decisions to be made in cases where children are under the effective supervision and protection of their parents. Put another way, I believe that parents should have a *prima facie* right to be involved in a decision by children as to whether their child consents to the processing of his or her data for commercial reasons and so on. We are setting the balance wrong by going to the lowest possible age in this regard. We should uphold the concept of childhood and the rights of parents to protect their children and to make responsible decisions for their children up to the age of 16.

There are some who believe parents might use their right to withhold consent unfairly to deprive their children of access to various services but I wonder if many parents would actually do that. Even where parents do withhold consent in respect of young children, surely we should accord a presumption that the parents are making the responsible choice rather than the irresponsible choice in respect of their children. Parents will know how vulnerable their child is and the disorders, weaknesses of psychology and so on from which they suffer. Parents will know if their child is vulnerable to bullying. They are in a better position than any statute to judge their child's maturity.

At present, a person here under the age of 18 cannot buy a scratch card for the national lottery. According to our law, a child is presumed to be incapable of making a mature enough decision to spend a couple of euro on a scratch card. How then can it be right that a child at the age of 13 would be in a position to decide who can use his or her photographs, social media profile and other data, including the child's physical location and online conversation? How

can it be right for us to say on one hand that a person under 18 years of age is too young to buy a scratch card because he or she is not mature enough to understand the dangers of gambling and so on, and on the other hand propose to set at 13 the age at which a child is to be permitted to make legally effective decisions about his or her data and profile and accord to third parties the right to process and to commercially exploit those data? That does not add up. I know that there are different points of view on this issue and that mine is, perhaps, the minority point of view, but I believe that it is worthwhile debating this issue. I am not convinced by anything that I have heard thus far, in particular the reference to reliance on the UN Convention on the Rights of the Child, which long predates the Internet. In the days of radio and television only, there was a very limited amount of damage that could be done to children. The dangers and the risks have increased exponentially. There are people who are preying on children and there are also services that are exploiting children's profiles and targeting children with advertising. I think we should set the balance towards the age of 16 rather than 13.

Acting Chairman (Senator Gerry Horkan): For the information of Senators there are seven contributors yet to speak on this group of amendments. I will call Senators in the order in which they have indicated starting with Senator Freeman, followed by Senators Boyhan, Ruane, Ó Donnghaile, Higgins, Clifford-Lee and Noone.

Senator Joan Freeman: My colleague, Senator McDowell, delivered a very factual argument on this topic but I propose to focus on an emotive aspect of the topic. Let us put the Government into the centre of this picture.

One of the best ways of describing the Government and its attitude towards children is to look at the ad for Barnardos on the television at present. Barnardos has done a truly magnificent job on this. It pictures a woman who has just lost her child. She is pushing a pram and her little boy has suddenly gone missing. I do not know if the Minister has ever experienced this, but I have, not only as a child when I lost my mother, but also as a parent when I lost my child. One feels fear and horror when one loses a child. Barnardos is not talking about lost children but about the lost child, through not having been protected from either sexual
6 o'clock abuse or neglect. I have said many times in this Chamber that this Government is absolutely guilty of abuse, the abuse being neglect of our children. Let us picture and think about this 13 year old child. She has just started school, and it is the most dreadful and difficult time for that child at 13 years of age. She has suddenly gone from primary to secondary school. That transition is making her grow up very quickly. She finds it very difficult and it is an anxious time for her. Between 13 and 16 years of age is the biggest transition of that child's life - in fact, any person's life. Most changes that happen in a person's lifetime happen during those three years, whether it is puberty or emotional change. There is also the sudden transition into an older world.

The other part of being 13 is that it is usually the time of the onset of self-harm. This is when a child cannot cope with emotional difficulties. As we all know, the emotional difficulties are brought on by their peers, their environment, their culture and things they cannot cope with, such as bullying, peer pressure or feeling that they are ugly, that they have no friends or that they are not a part of society. This goes hand in hand with being 13. I do not know whether the Minister has children, but if he has a child who is or was 13, would he ask that child to stand in front of a stranger and hand over his or her photographs and address and all other details about himself or herself? Does the Minister think it would be okay for that child to stand there and hand that information over to a stranger? Just because there is a screen between the child and the social media organisations and companies does not mean the child is protected. There

might as well be a stranger in front of that little girl or little boy of 13 years of age, and the Minister thinks it is okay for that child to hand over that information.

One of the Minister's arguments has consisted of quoting the main organisations involved, such as the ISPC, the Ombudsman for Children and the Children's Rights Alliance, as if they are gods, and because they are the ones who are giving us this information, we should go by that information. I am not quite sure whether the Minister realises that the Children's Rights Alliance has updated its information and its submission. It now says it is absolutely wrong to rely on the parents' consent. However, the little bit it has missed out on is that it is absolutely wrong to rely on a 13 year old to have the sense of responsibility to be able to hand over those data. I will quote something the Children's Rights Alliance has said in its updated submission.

[There is far] too much of an emphasis on parents and young people to make informed decisions in an ever changing technological environment. Consent can provide illusory control and place an excessive burden on parents.

This is what the Children's Rights Alliance is saying now. It is saying its original submission was not quite correct. It also states that "this approach takes the emphasis off the data controller, which in many cases [is] a social media platform". Not once, except last week at our Oireachtas Joint Committee on Children and Youth Affairs meeting, has this subject come up of the onus being on the companies. If the Minister honestly believes that a 13 year old child, or the parent of that child, can fight the giants of social media, he does not know what is going on in the world. My children are long past being 13 but I know I represent the majority of parents in Ireland, and actually the majority of parents in this Government who must toe the party line. I ask the Minister to re-evaluate what this Government is trying to say and to introduce not only the age of consent as 16, but also legislation to the effect that the onus of this will be on the social media platform companies rather than on innocent children.

Senator Victor Boyhan: I welcome the Minister here to discuss what is a very important topic. It is one issue of all the parts of this legislation that has exercised many people. I have had an awful lot of letters, telephone calls and emails in this regard. I have also had conversations with members of parties in this House and the other House who have grave reservations about the legislation. Some of them have said that this is the party line and they must stick to it. However, Deputy Leo Varadkar, the Taoiseach, came before this House recently to address us and talked about the important role we have and the expectation he, as Taoiseach, has of us, that is, that we are to revise and add to legislation. That is the role of the Seanad. It is not a question of the Minister, the Department or the Lower House fighting or conflicting with one another. It is about getting legislation that is right and good. I will not talk at length about areas I was going to talk about because my colleagues, the two previous speakers, have touched on them.

I have an iPhone in my hand. It is a very powerful yet potentially lethal and dangerous thing. I have the capacity to access information which, yes, is educational and informative, but also the power to damage people's reputation, to blackmail people, to lure in people, to focus on particular messages and to exchange photographs as this model has a camera. In the wrong hands this is a lethal and dangerous piece of technology, and that is very important to say because it is the reality of the matter. Far too often I have met people whose children, some of them, sadly, younger than 13 years of age, have been the subject of intimidation and bullying of a sexual nature and other natures and have been devastated.

A daughter of a friend of mine used to attend a private school in south County Dublin. Last

year she noticed some strange activity on the part of this daughter, a very bright, able girl. She eventually confronted her because her phone kept going on and off and took her phone from her. The daughter told her she was being intimidated and bullied and that it was happening in the school. Of course, the mother went to the school and the school did not want to get involved. Some weeks later her sister had a similar experience, but on this occasion she is very lucky her sister is alive because her sister had to lift her off a rafter in their home. She had become very unwell and got no support. When we talked about this conversation, she spoke about the trauma of it and the hatred of herself. That girl did not go back to school for one year, at which stage she was 14. She eventually told her mother she did not want to go to a school where she would be recognised or known and did not want to be seen in her community. She chose to go to a school in north County Dublin. I am happy to say the girl moved on, but not everyone is as lucky, and that is the power of the Internet and social media.

I wish to focus on a few more matters, specifically one aspect of the legislation, which concerns the digital age of consent. I do not think any of the previous speakers or myself are in any way against children having supervised access, knowledge, training and induction to social media and the power of the Internet. The reality is that it is a powerful tool and we must live with that, but we do need to protect children. There are serious issues about the right to parenting, by which I mean guardianship and the different contexts around that. Senator McDowell referred to this earlier in relation to what constitutes family in the broadest sense of a child that is loved and nurtured by an adult who is charged with their guardianship, who has the responsibility to love, protect and defend that child in its life. That is really important. We are talking about the rights of parents and guardians to care, defend and protect their children.

I was in Austria recently and spoke to colleagues from Germany and France where they have had similar arguments. They have had this debate and have chosen 16 years. I do not know that the problem is here about 16 years. They have teased it out and brought in experts and having considered it, their view is the age of 16 years.

I acknowledge the work of the Oireachtas Library and Research Service, which prepared a digest about the Data Protection Bill. We spoke about this previously. During pre-legislative scrutiny, there were several key issues of which the Minister will be aware. On 12 May 2017, the Department of Justice and Equality published a general scheme, following which there was scrutiny. There was a recommendation that detailed consultation would take place with children of all ages to ascertain their views of the proposed measures on data protection. That has not taken place. It may have been technically a difficult thing to do but it was important. It is important that we try to get feedback and engage with people.

This all stems from the right of a parent or guardian to protect their children. People are vulnerable. They develop at different stages in their lives in their emotional and sexual development, their realisation of who they are. Earlier, Senator Joan Freeman spoke of the age of 13 years. Looking back at what I was at 13 years of age, very confused and mixed up, I would say I was a vulnerable little boy. Had I had a smart phone in my hand, I do not know what I would have been looking at or who I would have been making contact with or whether the power of that instrument would have made me feel better, stronger, more needed, more loved and accepted. Venturing deep into the Internet would I have been leaving myself exposed and more vulnerable? Might I have been leaving myself to be violated and taken advantage of? At my age, I can say that yes, I would have. What safety measures are we putting in?

I know the Minister is reasonable. I will conclude by asking him to look again. He has a

very able colleague in the Minister, Deputy Katherine Zappone. I do not know where she is coming from on this as I have not had that conversation with her. I think the Minister should go back and look at this. He should talk to his colleagues in Germany and France and ask them their logic and reasoning in adopting 16 years. He would be quite enlightened by that as they have had this debate and argument. I appeal to him at this stage to look again, reconsider, and leave that choice at 16 years. It goes back to the digital age of consent. It is too frightening a thought that a 13 or 14 year old could sign away digital consent, could share photographs and biographies of themselves, and share pictures of their extended family, not only information about themselves, without necessarily knowing what they were doing or the ramifications of having contractually given their consent to one of these online companies.

Yesterday, Senator Catherine Noone and I were at a meeting of the British-Irish Parliamentary Assembly, BIPA, in the House of Commons. We spoke there about online platforms and the power of advertising in the context of obesity in children. We were talking about how commercial companies target children for chocolate, Coke and lots of things full of sugar. We had an insight from people inside that industry and how they set about marketing and how online marketing, which they tell us has not yet advanced to food and confectionary, is always on their radar. They want to market foods and drinks with sugars to children. These big multinational companies sit down at board level to see how they can target young children and get them into certain habits to make more profits. Conscious that I would be coming for this debate today, I was listening to the techniques they use and how online will eventually become an issue. I draw this parallel with giving digital consent to children of 13, 14 and 15 years, which is allowed by this Bill. This is very dangerous and need to protect these children. We need to empower and allow parents and guardians to protect their children. That is the key message and I ask the Minister to reconsider.

Senator Lynn Ruane: I thank the Minister for his time today. My amendments are in the same section. I tabled them because I have not been sold on the whole debate on the age of consent. The debate in the media and in these Houses has very much centred on the age we should set, whether it be 13 or 16 years. It is an important conversation that we should have but we are mixing up many things that are connected into the same thing. As a mother of a teenage girl and a girl who is not yet a teenager, I am conscious there are many different households and relationships between children and their parents regarding openness, honesty, education around the Internet and how best to use it. There will be some children who want to talk to their parents about this and some who will not. There will be some parents who will give permission and others who will not. There will be some children who will listen and say, “Okay Mam, I will go on the Internet” or have a certain social media account.

However, on a practical level, most children operate in the space of social media and for them not to be on certain social media accounts with their friends will make them isolated and excluded. It is a double-edged sword. Reference was made to buying scratch cards but we cannot compare these things. That is a single event of one person buying a scratch card, but people’s worlds now operate online, so it is a question of how we empower and educate children. I am not looking at this from a children’s rights base at all, but on a practical level. Whether the consent is at the age of 13, 15 or 16 years, it does not matter because once the consent is given, whether it is given illegally if the child lies, by the parent or whatever the circumstance, the data will still be taken. We do not protect our children’s data, their photographs, videos and content that they share, because even if the consent is given with a lack of understanding about what happens most parents do not realise that data is involved in this at all. They just think

that they are giving their child consent to be involved in a platform, whether it is Instagram or something else.

My amendments seek to protect the data of children which takes the onus away from consent and places it on the industry and the market. My daughter showed me a sponsored ad on her Instagram account for lip fillers and cosmetic surgery. She is 11 years old. I do not know what data would give anyone the impression that she was going to have lip fillers. This is what we need to protect people from. My daughter and I have an open relationship, but many other households do not have that. My amendment states that it shall not be lawful for a data controller to process the data of a child for commercial or marketing purposes when the child is under the age of 16. The data companies play a huge role in contributing to the concerning culture which exists and which contributes to psychological problems such as those relating to body image and gambling. There are marketing campaigns that are wholly unsuitable for children. I do not accept that parents should have to take full responsibility for a development which is actually a deliberate strategy on the part of data companies. Most parents will not be in a position to understand that these campaigns are run with the intent of collecting this data.

I propose that we place the onus on data companies to do the work. We must also ensure that they will no longer be allowed to target children with unsuitable and inappropriate data marketing strategies and that their campaigns for adults will not be not targeted - either accidentally or on purpose - at children. Data companies are the experts in this field and could easily ensure that their algorithms and data collection procedures are altered to ensure that children are not included. This would also take a huge amount of pressure off parents to fully police their children, with all the practical challenges that includes. We want to have oversight of our children's' online activity, but we cannot always have that. Other forms of online safety include discussing with whom children should or should not interact and whether their accounts should be private.

Most of my children's' friends do not ask for permission to use social media. My daughter takes my phone sometimes and walks off. When I ask her what she is doing, she tells me that she has just sent a verification code to my email so that she can sign up to a service. At ten and 11 years of age, children have it sussed. There is not much of a generation gap between myself and my kids. I am a young mother and I am struggling to keep on top of it. It is really hard for parents to manage this. We can create a safe environment where we fully empower and teach our kids about what platforms they should be on. My daughter knows not to accept a request from somebody she has never met in person, for example. The rule is that if she has not met the individual in person, then she should not accept them on her social media. Her social media is fully private and she has brought me up to speed on how other kids can isolate their social media accounts so that their parents cannot see it. There are special buttons on Facebook which can be selected and which enable the child to select his or her mother's' account, which means that she is the only person who does not know that her child's' Facebook account exists. This is a minefield. I am of the view that the age of consent does absolutely nothing to protect children in this regard.

The second part of the amendment seeks to alleviate some of the concerns regarding the lower age of digital consent. It relates to children being used as a sort of Trojan Horse in order for data companies to access the data of the adult relatives of the children who have given the children permission online. Both parts of the amendment are modelled on provisions in Spanish data protection law. We have drafted these in consultation with children's' rights advocates in order to find a comparable legislative provision that would also be compatible with EU law

and the GDPR. The second part would ensure that the data companies would not be able to process data as it relates to the parents, guardians or family members of the child if those relevant adults did not consent to it, apart from where the data of a parent would be required in order to verify the age of the child. The general intention of the amendment is to ensure that while we may set the digital age of consent at the lower age of 13, there should still be oversight by the State, or self-regulation by data companies and processors, to ensure that children, regardless of age, are not using the Internet without any protections whatsoever. The amendment also seeks to ensure that data companies will have a responsibility to ensure high safety standards for children and that the burden of regulation and protection will not fall solely on parents.

I am tabling this amendment in the hope of being constructive and potentially finding a common ground for those who may disagree on the digital age of consent. I look forward to the Minister's response.

Senator Niall Ó Donnghaile: Ar dóigh amháin, ba mhaith liom buíochas a ghabháil leis na daoine a chur síos an leasú seo mar cuireann an díospóireacht seo leis an bpróiseas maidir leis an reachtaíocht seo a chur chun cinn. Cé go bhfuil difríochtaí ann, tá sé thar a bheith tábhachtach agus dearfach go bhfuil an plé agus díospóireacht seo againn. Cuireann sé leis an bpróiseas agus cuidíonn sé linne agus leis an bpróiseas sa Teach seo.

I thank Senator McDowell and his colleagues for bringing forward this amendment in the first instance. I do not say that in a patronising way or to placate the Senator. I say it because this is such a complex issue, which is evident from the contributions and the input we have heard already. It is a complex dimension of what, as it stands, is extremely complex legislation. This debate shows the merit of the legislative process. We have the opportunity to engage and to inform ourselves, to discuss these issues and to come to what we hopefully can agree is the best conclusion going forward. At the heart of all of this for every Member is the issue of keeping children safe in the first instance, and doing that in a way which reacts to the new reality of digital information, to how young people access information and to what information relating to children is accessed. It is about doing that in a way which respects, reflects and acknowledges what Senator Ruane said. It is important that it actually acknowledges the practical realities and conditions in which we operate. I have experience of it myself. Some young people could buy and sell us when it comes to Internet use. I am fairly prolific across a number of social media platforms and I worry about some of the things to which I sign up. Many of us have seen quite extensive terms and conditions on various websites and we just click accept without thinking about it too much.

This is a complex issue that affects all of us. I understand why - because of the sensitivities regarding the digital age of consent - this has come to the fore in such a striking way in recent times. I have been conflicted. My party has had a very broad, extensive, all-Ireland conversation on the proposals, both on the initial Bill and on Senator McDowell's proposed amendment. That has been a very useful exchange and engagement and I believe it compels us to ensure that, going forward, we get this right, because there are very practical, tangible and real potential outcomes here. I want to mention the briefing that Senator McDowell and his colleagues held last week. I found that very useful and informative. There have been other voices in this debate, and we need to acknowledge that.

It is not very often that I read from a script but I have found myself doing so twice today. Due to the nature of this issue, I wanted to get my thoughts down and ensure that they are conveyed properly at this stage of the discussion.

In the context of the amendment, the Bill before the House is extremely complex and it has enormous implications for a wide variety of areas in respect of which we have considerable concerns. It is challenging to have an issue as complex as the digital age of consent thrown into the mix. We have listened to a broad range of views that have been expressed, both inside and outside these Houses over the last two weeks, that the age of consent should be set at 16. In particular, Ms Mary Aiken and Mr. Barry O'Sullivan referred to this. The points they articulated have merit and, undoubtedly, credibility as well. We are very mindful of the fact that there is a considerable body of opinion among children's rights and child protection authorities, such as the ISPCC, the Ombudsman for Children and the special rapporteur on children's rights, which have the contrary view, which is that the age should be set at 13.

Sinn Féin has taken the view that it needs to consider this matter further. As has been said previously, this is rushed legislation and I have consistently said so. This matter is deeply complex and we wish to hear further debate, more evidence and more policy before we arrive at a final position in the Dáil.

There are a number of significant matters to be considered. We undoubtedly need to ensure the safety of our children online and assure parents that their children are safe online but that will not be achieved by a moral panic. We need to create a safer Internet and a safer online environment for Irish children and for all Irish citizens of any age. In my view that means that we should enact the Digital Safety Commissioner Bill 2017 introduced by Deputy Ó Laoghaire. I welcome that the Government did not oppose the legislation at Second Stage and will set up an office for digital safety that will act as an online watchdog. It means that we should examine the default privacy and security settings on social media platforms and providers. It means greater education for parents and children. We should also tackle the use of data to target children for marketing and commercial purposes online. We will support amendments to that effect as outlined by Senator Ruane.

We need to consider what works, what is practical and what makes policy sense. We need to consider the need to balance the rights of parents to have peace of mind with the right of a child to access the Internet. We need to take on board the voice of the child. I am sure we all agree that whatever view one takes on the age of digital consent, it is undesirable or impractical to keep children away from the Internet. I acknowledge that no-one has proposed that we do so.

An issue of this complexity could justify legislation in and of itself not to mind being lumped in with such a gargantuan Bill such as this one. I honestly regret that Sinn Féin has decided to abstain on this position at this Stage. I am sure colleagues here will acknowledge my party does not abstain very often and does not adopt such a stance lightly. We are actively listening and engaging on this matter and we will arrive at a position on that basis.

Senator Alice-Mary Higgins: I thank Senators McDowell and others for proposing their amendment and acknowledge the amendment I have co-signed with my colleague, Senator Ruane, and the related amendments in this section. I also acknowledge that good, credible evidence, positions, advice and perspectives have been offered by all sides on this matter. I hold the advice given by groups such as the Irish Society for the Prevention of Cruelty to Children, ISPCC, the Children's Rights Alliance and Dr. Geoffrey Shannon in high esteem. I also acknowledge the credible and positive input made by Professor Barry O'Sullivan and Dr. Mary Aiken, who spoke at the committee briefing. These are important perspectives and there is quite a bit of common ground that can be achieved.

Earlier Senator Ruane spoke eloquently about child protection and that is why I support her amendment. I shall first speak to her amendment and then to the other amendments that are part of this group. The key issues of child protection in the legislation are not simply about the point of entry. Legislators across Europe are facing this challenge now whereby previously there was a great focus on the idea of guarding the portal into spaces in order to see the participants therein. The amendment proposed by Senator McDowell and others in no way seeks to limit access to the Internet. On the idea that the point of access is the key point of regulation, we also need to regulate within the Internet, within specific information service providers and in specific categories such as fora and others. I will not elaborate again on issues Members discussed earlier such as the right to be forgotten. According to amendment No. 9a, “It shall not be lawful for a data controller to process the data of a child for commercial or marketing purposes”. Yesterday, Professor Barry O’Sullivan expressed in *The Irish Times* his concerns on the collecting, recording and sharing of a child’s home or school address, as well as children’s location, date of birth, photographs, likes or dislikes or conversations. I believe that amendment No. 9a would go some way to alleviating the questions on the way data are processed and for what purpose data are processed by the providers. It places a high burden, as is right and proper, on the companies and platforms themselves to ensure this regardless of the moment of consent. As was addressed earlier, when parents believe they are consenting, they may believe they are only consenting for today or tomorrow but in the detail of the terms and conditions, there can be very long-term consequences. I believe very few parents will always read through or even understand the terms and conditions related to consent. There are areas of specific consent, as I have indicated, that have moved forward since the general data protection regulation, GDPR, was put forward such as, for example, consent to the use of one’s image and the context for such usage, be it by a private company or public authority.

First, we need to tease out the area of consent and analyse how the consent process takes place but also, as Senator Ruane has proposed in her amendment that I have co-signed, we need not simply to wash our hands of the issue after the point of consent but to ensure there are still standards as to how the data that belong to children are treated and that those standards are properly enforced. Amendment No. 9a stipulates up to the age of 16 and I am open to increasing the age and stipulating up to the age of 18, which would be in line with amendment No. 29 that has just been agreed to here. If there had been clear measures covering the protection of data, people would feel more assured about the point at which the age of digital consent is set. As those measures and additional safeguards are not in place, digital consent currently carries a very high burden. At present, digital consent is far too wide because once one consents to terms and conditions, the constraint is not placed on those terms and conditions or the subsequent action.

I am moved by both arguments. As for the argument on the other side, real and practical concerns have been expressed by many non-governmental organisation, NGOs, that work with vulnerable young people. Let us not forget that people can be mothers at the age of 15. People face very difficult questions on, for example, their sexuality or gender orientation during their teenage years and they may not always have the support of their parents in such situations. Not every household in Ireland will be a safe space in terms of a child’s access to the Internet. The ISPC and other organisations have expressed their concern about the ability of children to access certain sites. I acknowledge that the Bill contains a measure to address this matter. The reference to information society services, in terms of applying an age of digital consent, does not include a reference to preventative or counselling services. Some of the organisations that have spoken about this area, however, have expressed their concern about the fact that preven-

tative or counselling services have not been defined. They fear that cases may be taken against them and it may fall to case law to determine if services are considered to be preventative or counselling services. I believe there is a job of work to be done to make the exemption more robust. I wish to indicate my intention to table a proposal on Report Stage - and am happy to support proposals tabled by other Members - to, for example, establish a list to which sites from anywhere in Europe wishing to be considered as safe sites for preventive and counselling services can apply. Perhaps the list might be set with the assistance of the Data Protection Commissioner and appropriate guidance from the Ministers for Justice and Equality and Children and Youth Affairs. The measure would address some of the concerns of many people in civil society that the services they offer, which are being accessed by young people who often are highly vulnerable, are not potentially in danger of being inadvertently in breach or considered in breach or of having a complaint made against them to suggest they are in breach. Even the process of a complaint could be highly detrimental to what are often small organisations or NGOs. There is room to make the exemptions more robust and clear in that regard. Ideally, I would like the exemptions to mention education also to recognise children as education and creative actors. However, I acknowledge that may not be possible. I would like the Minister to indicate that. If we were to raise the age to 16, making the exemption on preventative or counselling services clear and watertight would become even more important. As I said, the proposal I put forward here on strengthening our protections and the amendment proposed by Senator Ruane and me on the processing of children's data are extremely important, in particular in the context of a lower digital age of consent. An amendment to strengthen or clarify the definition of "preventative and counselling services" is also important, in particular in the case of a higher age of consent.

The question of the digital age of consent is not the central issue. Currently, I am somewhat more persuaded towards an older age point and I reserve the right on Report Stage to look at it further. For example, 15 years is an age which could be useful as children are in transition year programmes which could be paired with the vital matters of digital education and awareness and the process of making it clear to children how and why they engage with the Internet and ensuring they are supported in doing so. However, that is a money amendment and not something we can put forward, although it is within the scope of the Minister to do so. I reserve the right to look at that age of 15 albeit not every school in Ireland has a transition year programme. Many do, however. While other issues have come in, they are the vital issues on either side that affect the question of the digital age of consent. I ask the Minister to address them. Certainly, I am happy to co-sponsor amendment No. 9a and I urge the House to support it. It is a practical proposal to support and give assurance to those on all sides of the debate.

Senator Lorraine Clifford-Lee: Like other speakers, I am glad to be here tonight to speak on this very important issue. We have heard a great deal of debate in the House across the aisle and in the media on this issue, which is very relevant. As lawmakers, we are grappling with it because it is so new and evolving and, as such, we are not as familiar as we really should be with the concerns that exist. I also wish to reserve Fianna Fáil's position on the age issue. I have researched the issue and am tending towards the age of 13. However, there are others in my party who have not yet arrived at a position and who are considering the proposal of 16 years of age. We want more time but, regrettably, it seems the legislation is being rushed to comply with the EU regulation. We should have been afforded more time to debate such an important issue. However, we are here now and will engage in a consultative process over the coming weeks and months.

Rather than going over old ground already covered by other speakers, I intend to focus on the issue of education, which is the key one whether the age is 13 or 16. Children and their parents or caregivers must be aware of the dangers posed by online activity. Senator Ruane laid out clearly that ten and 11 year olds can get around the age of consent, so whether we set it at 13, 15, or 16 is irrelevant if the children themselves are not familiar with the threats that exist. Their parents may not be familiar with them either. I am relatively young and digitally engaged but am still shocked on a daily basis by what is out there. Senator Higgins made the point very well that not every family offers a safe space for their children for whatever reason and not every child will be able to obtain consent to access vital services. Life is conducted online whether we like it or want it. Senator McDowell laid out the very real risks posed to all of us, including anxiety, depression, lack of sleep and disturbance of sleep patterns generally due to our digital activity. That said, people's lives are conducted online and if access points, support services and advice are cut off, in particular for teenagers who might be finding their way in the world, one excludes people and perhaps creates even more problems.

I spoke to a colleague earlier who told me his 14 year old son's football team's arrangements about training and matches are conducted on Facebook and WhatsApp. If one does not allow a child to engage in that or if a child cannot obtain the consent to engage, he or she will be excluded from a very healthy activity like engaging with a local football team. That is why education is central to this and we should be seeking to determine how we can support the education of both children and their parents to allow them to give consent and education themselves, create a safe space and protect children, as Senator McDowell outlined. The reference to scratch cards does not compare like with like. Scratch cards involve gambling, pure and simple, and there is nothing positive about obtaining one. Engaging in digital activity is overwhelmingly positive, although it creates or engages threats. Therefore, I reserve the Fianna Fáil position. It is something on which we will engage in a great deal of debate in the coming weeks.

I refer to our amendment in the grouping on reasonable efforts to obtain verifiable consent. We should consider listing the exact methods to communicate with parents. Provision for dual verification might be made. As Senator Ruane pointed out, her daughter was well able to take her phone and get a verification code. If there were two methods of verification, we might have a safer space for children. I ask the Minister to consider the amendment.

Senator Catherine Noone: Like some other speakers, I am conflicted on this one. I will try to be brief because the weather is pretty bad and Members will be keen to get home this evening. I wonder how any child is disadvantaged by setting the age at 16 years. That is where I will start. There has been a considerable amount of debate and it comes down, in essence, to the conflict in trying to balance participation and safety. Children will get around the terms and conditions, regardless. Senator McDowell referred to the duty of parents. As legislators, we have a duty to be laser-focused in taking any steps to ensure children's safety online. Others have referred to this point, but these are evolving media and in a sense we are behind the curve as adults in catching up with children.

Senator McDowell also spoke about the statistics. I did some work about six months ago on the study that was mentioned. Of Twitter, Facebook, Snapchat, Instagram and the platforms most used by children, I find that Instagram is, in a sense, the happiest of those places. In fact, however, it was shown in the study to have the most negative impact on feelings of self-worth because of an idea it perpetuates the notion that others' lives are better. Children do not have the ability that adults have to know better. It is rare for people to put a bad photo of themselves up online or to try to depict their lives as somehow negative as opposed to being perfect. The sa-

lient point from the survey was that this is leading to increased anxiety and depression because it is difficult for children to cope with the very positive lives being portrayed when they do not feel that their lives are on the same wavelength as the fake reality they are viewing. It is surely fuelling a mental health crisis. There is no doubt about that.

When it comes to the data element of things, we are not talking about access to the Internet. We are talking about forming contracts with online companies. A GP friend of mine told me about a parent who came in to her recently. She discovered, quite by accident, that the parents are having issues at present. Suffice it to say that the young girl about whom the parent proceeded to tell my friend was interacting with a paedophile online. The language being used was around looking for attention, feeling low and that kind of thing. That is going on. That is a reality which we have to face.

To bring a bit of balance to what I am saying, and I agree with many of the points raised by both Senator Higgins and Senator Ruane in this regard, the Internet does have very positive attributes. We all know that. I believe that no matter what age we set as the digital age of consent, the issue is bigger than this one measure. The only show in town is a digital safety commissioner. If we had in place a digital safety commissioner focused on this area, it would afford a co-ordinated framework to deal with this issue. We would need to provide the commissioner with legal powers to regulate the sector, to provide better protection to children online and to ensure that children, young people and their parents are educated. That is what I come back to all the time. Children are going to get online and the issues around enforcement, registration and policing in this area are just so difficult to resolve. A digital age of consent has already been introduced in the US and recent research has shown-----

Senator David Norris: What age is it?

Senator Catherine Noone: I think they went for 13.

Senator David Norris: I thank the Senator.

Senator Catherine Noone: The research is showing that a more effective measure to protect children is to introduce legislation to prevent commercial industries using data to target children and to forbid such companies from selling on their data, as Senator Ruane has alluded to. Some parents are allowing consent and some parents are not. It is not very effective. We have the benefit of learning from others. I am naturally conservative on children's issues and when I first looked into the digital age of consent I thought it has to be 16, it just has to be. I will come to my final point shortly, but I do not see how any child would be disadvantaged by that. Nobody has been able to answer that question for me. Perhaps the Minister could because I am not sold on this. Obviously I want to support the Minister on this but I am coming to the conclusion that we need a digital safety commissioner quick smart. Education is key but until we have a framework put in place by a digital safety commissioner we will be rudderless when it comes to this issue. That is really all I have to say on this for this evening. I look forward to contributing at a later stage.

Senator Gerard P. Craughwell: I was very impressed with what the last speaker had to say and I agree with much of it. When I was a young fella growing up my Dad told me that I could not smoke, and I smoked like hell. My Dad told me I could not drink until I was at least 18, and many's the good pint I had when I was 15 and 16. Shortly after I became president of the Teachers Union of Ireland I was called---

Senator Catherine Noone: I am glad the Senator said “of the Teachers Union of Ireland”.

Senator David Norris: I thought we had stepped into a time machine for a minute.

Senator Gerard P. Craughwell: This is quite a serious point I am trying to make. I got a call to the north west of Ireland where two young children had taken their own lives. They had taken their lives because they were accessing social media. Those two young children were younger than 16. When I arrived in the school the principal told me that they had a rake of psychologists in trying to deal with the fallout of what had just happened. He told me that he sat in his car every night, to the point where it was becoming a problem in his family, monitoring social media on behalf of the staff in the school, such was the level of interest in what was going on on social media and on the Internet through Facebook, Twitter and all the other platforms.

He told me that the one thing that bothered him was that when the children leave the school and go home, they are fed and sent to do their homework; before they go to bed their parents ensure that they change into their nightwear, that they wash their teeth, hands, faces and whatever else but the one thing the parents do not do is take the children’s mobile phones off them. They do not take away their access to social media. Some of the stuff that goes on on social media is quite trivial, but any of us who are involved in social media can see the poison, the rot and the disgusting behaviour that is out there. In my own case, I had a man whose biography told me that he was a consultant in a hospital silenced on Twitter for the abuse he gave me.

Let us be honest about what we are talking about here. A 13 year old is a child. Would any Senator here expose his or her 13 year old to some of the behaviour he or she sees rained down on himself or herself? If adults can be that cruel to one another, just look at what children can do. I have spent 25 years of my life working in education and I am fully committed to access to the Internet for children. I am fully committed to it. It is a tremendous tool. I introduced electronic learning in my courses in 1995, when the area was in its infancy, because I saw the benefit of it. All my life I have resisted any sort of controls on the Internet, but I am changing my view. I resisted Senator Lorraine Higgins’s Bill vehemently in the last Seanad. I regret that dearly because what goes on in cyberspace needs controlling.

I commend the Minister on bringing this Bill to the House. It is good work on his part. What he is trying to do is something which has needed to be done for a long time and I congratulate him for it. However, let us as legislators not think that the all the parents of this world are like my colleague, Senator Ruane. Hers is clearly a loving family where her children are happy enough to discuss any issue with her. Indeed, in my own family there were times when I had to
7 o’clock get up from the table because my wife decided to answer a question some of my children asked and I felt totally uncomfortable with the line of conversation and went for a walk around the garden. I am a typical 64 year old man. However, at the end of the day one cannot be with one’s children 24 hours a day, seven days a week. One cannot control them and so other controls must be in place which we, as legislators, have to establish. I totally agree that we need a commission which we would be able to refer to and to ask to look at things because the self-determining system is not working.

There are members of the Government’s party, of Fianna Fáil, of Sinn Féin and Independent Members in this room who all believe the same thing.

The age of 13 is too young. Let us not push this to a vote and not ram 13 through as the age of consent. What the Minister does today will probably last for 20 years and this legislation

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will shape the system in this country. I beg the Minister to do the honest thing and go for the safe option of 16. We can always lower the age at another time if we need to do that or review it after one year, two years or five years, but we should not expose 13 year old kids. There was a case in the west of Ireland where a girl was stripped in a classroom and photographed, with the photograph being put up on social media by a shower of louts. These are only children and we have a responsibility to make sure we protect them.

A couple of weeks ago a guy told a story of how he gambled €10 million of money he embezzled from his employer and said that nobody had asked him where he got it. If an adult can get away with that, what happens to a child? My child could take my credit card and register as me online so we have to start looking at these things very carefully. I beg the Minister to accept Senator McDowell's amendment. If it cannot be done it will be pushed to a vote or brought back on Report Stage. I would rather it was amended now. The Minister has had a long afternoon and I thank him for his time.

Senator David Norris: Senator Noone asked how children could be disadvantaged by the age being 16. It will happen by clever children from the same peer group managing to weasel their way onto the system and calling the other children "nincompoops". Senator Craughwell spoke of his agonies over what people said about him on Twitter. I do not do these things very much. I am glad to say that I am totally computer illiterate and, indeed, am a computer virgin - one of the few areas in which I can claim virginity. I expect to go to my box as a computer virgin. I was rung to be offered a new iPhone or an upgrade and I responded by asking if they did downgrades. I explained that a telephone was an instrument that made and received telephone communications. I did not want it to tell me about the weather in the Arctic, diagnose the state of my bowels or tell me about the fate of the polar bear. All I want is large numbers so I can telephone my friends.

My wonderful neighbour, Muireann, puts out Twitter messages for me. I manufacture the words and she does all the twiddling. Sometimes she reads the awful things people say and we have a good laugh about it as there appear to be an awful lot of mentally unbalanced people out there. I enjoy their ravings.

Senator Niall Ó Donnghaile: We enjoy those of the Senator too.

Senator David Norris: Good. After I won celebrity home of the year, somebody tweeted that they were not f---ing surprised I lived in a f---ing palace after all the f---ing money I had bled out of the Irish taxpayer over the years. I tweeted back, "You ain't seen nothing yet, honey - wait till I gets me pension and I'm living on till 95."

Deputy Charles Flanagan: There is a maximum of 160 characters and most of them seem to be "f".

Senator David Norris: Perhaps it was the Minister who did it. That innocent look covers a multitude of sins.

An Cathaoirleach: Perhaps the Senator could return to the Bill now.

Deputy Charles Flanagan: I sign anything I say or do.

Senator David Norris: The Minister would not be known as a red-hot roaring radical and he suggests the age of 13. I understand that it was as a result of a consultative process. We

either accept the democratic element of a consultative process or we do not. It is important that we have an office in control of this area and to which one can appeal. The only significant question is what the practical effect will be and what will be the actual impact in real life of making it one age or the other. I am not convinced that 16 is the appropriate age, because children are far more Internet-savvy than their parents. They could run rings around their parents and 13 is ancient in the world of Internet savviness. Children use devices such as computers and telephones at the age of three or four and are literate at that age so by the age of 13 they will know how to circumvent anything.

As in religion, there is a major onus on parents. It is the responsibility of parents to supervise this. I am old-fashioned and do not particularly like the fact that the streets are full of people on their mobile phones and not looking where they are going, meaning they bang into one. If I might allow myself a little aside, it is the same on trains. I was in Cork for the funeral of a dear friend and on the way back, a couple got on at Mallow. The young girl took out a huge bag and produced two enormous make-up kits. She was brushing, powdering, dabbing and streaking and then out came the eyelashes and she did not put it away until two and a quarter hours later, when we arrived at Kingsbridge Station. I was fascinated. She started off quite pretty but she was plastered with make-up by the end.

An Cathaoirleach: The Senator is prone to divergence today. We should get back to the Bill.

Senator David Norris: I have been asked to filibuster so that there will not be a vote.

An Cathaoirleach: Whoever asked the Senator misled him. We cannot allow a filibuster.

Deputy Charles Flanagan: I am surprised at Senator McDowell.

Senator Michael McDowell: It was not me.

Senator David Norris: I know that we cannot filibuster and it would be beneath me to do it.

One has to ask what the practical impact will be of having one age or the other. If Members are convinced that 16 is right they should vote for 16. I have nothing against a vote. What is wrong with having a vote? If people believe 13 is the appropriate age, they can vote that way in line with their conscience. We all want to protect children from the worst form of abuse. One of the nastiest forms of abuse is sticking up naked or indecent photographs of another person. It is vile and beneath contempt. We rely on the companies involved to take down such images immediately.

An Cathaoirleach: I will allow Senators Ruane and Higgins and will then bring in the Minister because it is appropriate that he should respond to the various points.

Senator Lynn Ruane: Senator Norris asked about the disadvantages and practicalities. As a mother, I want to encourage an environment in which my daughter can be honest about her age online. There are predators and paedophiles pretending to be young girls in order to communicate with young girls. If parents do not give their consent to young girls, those girls have to lie to get online and they pose as 16 year olds or 17 year olds to do so. If we move the age to 16, closer to the age of sexual consent, will we put them in a more vulnerable position? Can we pursue the predator when he says a girl's profile shows her as born in a particular year and

asks how he was to know she was only 11 or 12?

Senator David Norris: That is a fair question.

Senator Lynn Ruane: This might be relevant to Senator Norris's question about the practical implications of this.

Senator Alice-Mary Higgins: I will be brief. It is a valid question and one the Minister might address. It is clear that regardless of what age a child submits, the data provider or information society's provider is still liable to fines. The burden falls on them of fines regardless of what age a child puts in. However, that is around the companies. As to individual vulnerability to predators online, the danger that the submission of a false age could be used as a defence in a court case is a very real concern. There is a concern about anything that might incentivise children to feel they have to give a false age. Obviously, it is not a crime on the child's part. While it is a crime on the part of a company to give access to a child, the key point is vulnerability to predators or grooming. Maybe the Minister can address that.

I acknowledge the consideration of this at pre-legislative scrutiny stage and the recommendation of the age of 13 by the committee at that point. However, the committee also recommended very clearly that the age of consent should be reviewed at appropriate intervals to ensure it remains suitable. The Minister might indicate the position on the following. There is no provision in the Bill as drafted for a review of the age of consent. Whether we stick with 13 or it changes, the question of a review mechanism is important. When would be an appropriate moment for that? We may have a digital safety commissioner, proposals for which most Members strongly support. However, while there are provisions on conversations between the commission and the Minister, there is no real provision in the Bill as to how a digital safety commissioner might slot into the legislation. One of the obvious points might involve a review of the age. We will soon see how various ages of consent pan out in other countries. The significant and valid point was raised earlier by Senator Boyhan that the fact that France and Germany have appointed the age of 16 years will put pressure on digital service providers to work to that age. It may be illustrated that companies are pressured to provide better services or there may be inadvertent consequences. We will soon be in a position to learn how different digital ages of consent have panned out around Europe. The Minister might discuss the question of a review.

Senator Paudie Coffey: I apologise to the Minister and the Members for joining the debate late, although I was watching a lot of it. As a parent and, then, as a politician, I note that a vast number of people are concerned about access to material on various digital platforms. The Minister recognises that, as do we all. We must strike a balance which provides adequate protection for our children, who are defined in the Bill as persons under 18 years of age, albeit we are speaking in this particular instance of the age of consent, which the Bill, as drafted, proposes as 13 years. I am somewhat torn on this. We are entering a new era of access to material whereby any individual, including a child, with a digital device can access information from any corner of the world. That information can be good, as we all know, and educational, but it can also be devastating. It might only be pictures but they could change the life of a child or individual forever. I agree with some speakers that the Bill is about data protection, but it is also the case that we very much need a debate in Ireland on the new digital era and protections for our citizens, including children. Protection may be needed from people seeking to groom children, or who are otherwise suspicious and who we do not want interacting with children at all, or from companies using digital platforms to sell games or for marketing or accessing the data of people, including children, to sell on.

I recognise that parents must be responsible also but things are moving very fast with technology. I consider myself to be fairly technologically adept, but one has to keep up with the various platforms and devices to be fully up to speed. I recognise that there are protections including blocking technology for the Internet. However, last Christmas new devices were bought for children, including children under the age of 16 and as young as ten, which led to parents, with good intentions, signing up their children to gaming platforms. Those parents subsequently discovered that their children spent thousands of euro buying bonus game points and items to allow them to advance in those games. These are reputable companies but they use their devices to access children who spend thousands of euro without their parents' knowledge. The Minister might tell me that their parents should know, but all they do at the start is register a credit card. These incentives then come up on the game screen and children just click a button to download games and bonuses, stacking up thousands of euro in costs. People might ask what I am talking about, but some parents are too ashamed to say this is happening. When they challenge the companies that sold these things to their children, they discover they have no comeback because they signed terms and conditions or ticked a box to get a child up and running at Christmas and are left with hundreds or thousands of euro in bills.

I am not saying this is the legislation to deal with that issue, but it relates to data protection and the age of consent. As such, I flag the need for the Oireachtas to come back to this issue, perhaps through a joint committee, delve into it in more depth and put in place the protections for citizens, including children, as to the digital material they can access night or day at home. A person could be watching television in one room without knowing what material is being accessed in another. I am concerned about it and I am interested to hear the Minister's response as to what we can do in the legislation or further legislation to protect citizens, including children, in relation to digital material.

Deputy Charles Flanagan: I am pleased to have had the opportunity to listen to the contributions over the past couple of hours. I acknowledge the depth of the debate, which I have found very useful. It has been exactly as it should have been.

Senator Niall Ó Donnghaile: Hear, hear.

Deputy Charles Flanagan: I acknowledge what Senators have had to say on this complex issue. It is an issue on which there are sharply divided opinions and different perspectives. It is an issue where there is no right or wrong but our objective is shared, which is to do our best for society, in particular our children, in identifying an age of consent for those who are the subject of these amendments. It is important to go back to first principles on the import of the legislation which seeks to harmonise, in so far as possible, a regime across the European Union and to introduce new opportunities. Those new opportunities, however, are introduced against a background of ensuring that stronger protections are in place. I would have thought that to be the overarching consideration of the Bill.

The four amendments in the grouping relate to Article 8, which specifies the matter of the digital age of consent. It may be 16, 15, 14 or 13 years of age. That is an issue reserved for national legislators. Article 8 provides that providers of information society services must make reasonable efforts to obtain the consent of the holder of parental responsibility over the child where services are offered directly to children.

I have listened closely to the debate. Indeed, this is not the first time that this issue has been debated. I would like to say that the protection of children is paramount here and I want

to acknowledge the sincere contributions that Senators have made here. I am glad that Senator Freeman has returned because she, rather inquisitorially, asked me about my own experience with children. Yes, I do have children. I have two lovely daughters. Therefore, I did have the opportunity of sharing with them the very difficult journey through their teenage years, which I am sure is an experience shared by most people in the Seanad.

Senator David Norris: I had no difficulty with my children.

Deputy Charles Flanagan: That is fine. The debate on the Bill and these amendments is taking place against a background of what has been a significant amount of discourse over the past year or more. I remind Senators that two public consultation processes, which were publicly advertised and in respect of which submissions were sought, have taken place. Indeed, following the completion of these consultations by both the Department of Justice and Equality and the Government's data forum, which brings together legal and data protection experts and which represents business, SMEs, service providers, sociologists, psychologists and education specialists. After that consideration, the Government decided on giving favourable consideration to the age of 13. The Government took account of the expertise and knowledge of those who responded to these consultation processes in reaching this decision. The respondents included the Ombudsman for Children, the Internet Safety Advisory Committee and the Children's Rights Alliance, of which mention has been made. Indeed, I was surprised to learn that the latter group had changed its view but we can return to that matter in the context of the debate. The majority of respondents were in favour of stipulating 13 years. The process was such that the matter was referred for pre-legislative scrutiny to the Oireachtas Joint Committee on Justice and Equality last July. That committee took a particular view. Senator Higgins said the committee took a view that might be subject to a review at some future time. I agree with her that this is very important in the context of what we are doing.

Senator Alice-Mary Higgins: The Taoiseach will meet them.

Deputy Charles Flanagan: I also want to refer to the submissions made by Dr. Geoffrey Shannon, the special rapporteur on children's issues. Dr. Shannon has done a particularly good job on children's issues over the years. He also recommended the setting of the age of consent at 13 and so did the committee in its report.

I strongly agree with what Senator Clifford-Lee said when referring to knowledge, information and education and training and to assisting people in dealing with this issue. That should be the background to our debate rather than arbitrarily lowering the age and hoping for the best by way of some form of prohibition. Considering the issue in light of information, knowledge, advice and guidance is important. Setting the age at 13 was seen - and still is seen - as representing something of an appropriate balancing of a child's right to participate in an online environment and, of course, the right to safety and protection. I speak as a former Minister for Children and Youth Affairs, albeit for a reasonably short period.

I listened to Senator McDowell speak about the UN Convention on the Rights of the Child. He has formed the view that it really does not matter all that much because the declaration is somewhat outdated and outmoded. I am not really sure if I accept his view. I think the convention plays a very important role in terms of the overarching principles on the rights of the child. I remember vividly its 40th anniversary. In fact, it was the first time that I had an opportunity to meet the then Senator Michael D. Higgins in Galway when he presided over a special event. I was not too long in politics at the time and I fondly recall some advice that the now Uachtarán

na hÉireann gave me on that occasion. I think that was in November 1989.

The age of 13 was chosen after considerable and careful consideration. It was mentioned that other countries have set a different age from the one that we propose, which is true. It is also true to say that Ireland is very much in line with many other EU states. The age of 13 has been adopted by the Czech Republic, Denmark, Latvia, Poland, Spain, Sweden and the UK. In the past couple of weeks, the Finnish Government has also decided to adopt the age of 13 years. It is important that we note the position of Sweden, Denmark and Finland because these are countries to which we often look as models in the context of child support, child welfare and child protection. They have all adopted the age of 13.

During the course of the debate, I remarked upon the fact that while there was reference to many submissions, there was particular reference to that of the Children's Rights Alliance. I have its submission with me and a letter I recently received. I had the opportunity last week to hold a very constructive meeting with the chief executive of the Children's Rights Alliance. The body has a considerable contribution to make to this debate but it recommended that the age be set at 13, contrary to what may have been implied here earlier.

Among the many submissions to which I wish to point are those made by the ISPC and the Ombudsman for Children. I also want to point to the submissions made by some of the lesser known bodies and organisations such as *SpunOut.ie*. I further wish to refer to the very important contributions made by Digital Youth Council, CyberSafeIreland and Dr. Shannon, to whom I have already referred.

I acknowledge that there is another view. I am not saying that the people who proffered or proposed the other view are in any way wrong or misguided. I listened carefully to their views and I listened very carefully to Senator McDowell's opening contribution. He advocated on behalf of a group who recently visited the Houses of the Oireachtas and made a very worthwhile and constructive contribution. I am sure we will hear a great deal more from those individuals, which I welcome as part of the debate.

I note in response to Senator Noone that it is important to reflect on the basis of the support of many groups for the age of 13. Briefly, I cite matters like the potential impact a higher age threshold could have on the educational and social development of children in Ireland. Restricting the access of 13, 14 and 15 year olds to online services and social networking sites could very well place those children at a disadvantage compared to their peers in other jurisdictions. I note that in the context of increased mobility across the world, the ease with which people travel, student exchanges and the ease with which many of our teenagers travel across the Union and beyond.

Reference was made to the negative impact a higher threshold could have on the right to freedom of expression of children and the right of participation of children as enshrined in international treaties. Senators Higgins and Ruane both raised the matter of the unenforceability of a higher age threshold in the absence of robust, effective age verification mechanisms. That is important in the context of the ease with which children even younger than 13 years are using the Internet. The point was stressed by Senator Ó Donnghaile and others.

It is also reasonable to make the point that adopting a higher age threshold could well encourage technology savvy children to be misleading about their age, which would make it difficult for online service providers to offer age appropriate guidance and tools to ensure a safe

online experience. I agree with Senators Noone, Coffey and others about the need to have a safe online experience which is different from a prohibited or illegal one. That is why this should be seen in the context of what we are proposing across Departments, with particular reference to the Department of Children and Youth Affairs, the Department of Communications, Climate Action and Environment and my own Department of Justice and Equality.

A consultative process is ongoing in the context of two Bills before the Dáil and a forum will be held in March at which I hope Senators will have the opportunity to make contributions. I assure Senators that the Minister for Children and Youth Affairs, Deputy Zappone, and the Minister for Communications, Climate Action and Environment, Deputy Naughten, the Minister for Education and Skills, Deputy Bruton, of course, and I are collaborating on this issue to ensure we have something of a cross-Government or even whole-of-Government approach. This is a question of striking a balance in the context of what is happening in any event and also ensuring that our laws are not unduly restrictive or prohibitive. It is an issue we can revert to at a future date. I agree with Senators Noone and Higgins that this may be an issue which might be looked at by a future digital safety commissioner, however, I am not minded now to accept amendment No. 7 which seeks to replace the age of 13 with the age of 16.

Amendment No. 8 is simply a drafting amendment which does not alter the substance of section 29. I certainly understand the motivation of Senator Clifford-Lee in tabling amendment No. 9 but a reading of her proposal suggests that it cuts across the text of Article 8 of the GDPR which is a difficulty I have in terms of accepting it. Article 8(3) already provides that the controller, being the provider of the information society service concerned, must make reasonable efforts to verify that consent is given or authorised by the holder of parental authority. It specifies that the available technology must be taken into consideration by the controller. That provision is directly applicable in law arising from the text of Article 8, which takes precedence in the circumstances over the proposed amendment. For that reason, I am not in a position to accept it.

It is highly likely, however, that the European Data Protection Board will, in any event, issue further guidelines on the matter with a view to being in a position to identify best practice. It will be able to do that under Article 70 of the GDPR. I am unable to accept the amendment, but it is an issue we can discuss in the context of further engagement. I said at the outset that the whole basis of the law was opportunity and protection for citizens. I refer Seanadóirí to Article 40 which makes provision for codes of conduct. Specific mention is made there to a possible code of conduct on the provision of information to and the protection of children and the manner in which the consent of holders of parental responsibility over children is to be obtained for the purposes of Article 8. That is a matter we can look at in the context of further engagement also.

I am sorry if Senators feel the legislation is being rushed. I have been attending EU Justice and Home Affairs meetings for the past few months where this issue is very high on the agenda. There is a clear intention on the part of all member states to enact the legislation in its entirety by the date in May. That target date is pretty rigid and it is one we have agreed. It is vital to achieve compliance with that and enact the legislation. We have some time in that regard. I hope that, as with this evening, we will have ample opportunity on this and I regret genuinely any feeling people have that it is being rushed. We had a process going right back to pre-legislative scrutiny and, indeed, the public consultation, all of which has informed us as to the approach we are now taking.

Senator Niall Ó Donnghaile: I forgive the Minister.

Deputy Charles Flanagan: I thank the Senator.

I wish to briefly refer to Senator Ruane's amendment. I am very much inclined to agree with her. I am very struck by her personal experience and her practical approach. I also listened to the supporting commentary of Senator Higgins. Having regard to the fact the amendment was only tabled yesterday and was only seen by me yesterday, I do not think it is unreasonable if I were to ask for some time to reflect on the proposals in the amendment. To the fact that I had just got sight of it I would add that I had a constructive meeting with the CEO of the Children's Rights Alliance last week and we undertook to have further engagement and a look at some specific ideas that might lead towards possible changes. I believe they would accord very much with the amendments-----

Senator Lynn Ruane: I have been working closely with the Children's Rights Alliance on the amendments.

Deputy Charles Flanagan: -----put forward by Senator Ruane.

I will ask that we revisit this, in the spirit in which I believe the debate has been held. I very much value the comments made by Senators and the contributions over the past couple of hours. It is a long time since I was in a debate where three amendments took in excess of two hours or more. I welcome this because it is testament to the importance of the issue to hand. In this spirit, I ask Senators Higgins and Ruane not to push the amendments and we will give the matter further consideration. Perhaps we will even bolster these amendments with additional child protection safeguards. I will come back to this. I very much agree that data companies of course have a greater level of responsibility. That appears evident at present. Efforts should be made on our part to render them even more accountable. This is in line with what Senator Higgins has said regarding further safeguards and protections. We can look at this.

The final point I will make at this stage is on the matter of the overall review of the age of consent that has been mentioned. Down the road assuming, or when, the digital safety commissioner office is established and in a position to draw experience from what is happening, we can certainly consider looking at it at that stage. In any event, we can come back to it on Report Stage.

Senator Alice-Mary Higgins: Perhaps scope might be built into the Bill to accommodate it.

Deputy Charles Flanagan: We can look at it.

Senator Alice-Mary Higgins: Perhaps we can formalise a review process.

Deputy Charles Flanagan: We can see how best we can do it. I will leave it at that for the moment.

Acting Chairman (Senator Gerry Horkan): I was in the Chair at 5.30 p.m. and the Cathaoirleach and Leas-Chathaoirleach have taken the Chair since we have been discussing amendments Nos. 7, 8, 9 and 9a. Is Senator McDowell pressing his amendment?

Senator Michael McDowell: The Minister has been very reasonable in what he has said, and although my amendment is at variance with the stance being taken by the Department, the

debate has been useful in that it has raised the issue. It has been fairly thoroughly debated. It has been the occasion on which the amendments of Senators Ruane and Higgins have had their first run out, and if there is the prospect of arriving at some improved protections along the lines of their proposal, that would encourage me greatly.

I am also conscious of the fact that Fianna Fáil and Sinn Féin want time to consider their positions and do not want to be pushed into a “Yea” or “Nay” one way or the other on the issue. I do not like asking for votes when I can see the outcome, and I am not doing a solo run or an I am holier than anybody else act. I believe very strongly the Minister is under an imperative to meet the May deadline, and whether or not the matter is rushed I imagine that in the end we will meet that deadline. If it can be done in the context of addressing some of the issues that have arisen on extending protections, then I am happy with that.

I suggest that some of the legislative provisions in the United Kingdom are interesting in the context of Brexit. These are probably matters which it will not in a couple of years be obliged to do at all, but it does occur to me that provision for them might be made in the legislation. I also take the point the Minister made that there are references in some of the articles in the regulation to guidelines which could be the subject of some legislative fleshing out in this jurisdiction.

I do not propose to put the matter to a vote chiefly because I know what the outcome will be and I do not want to waste everybody’s time, in view of the arithmetic as it is now working out. Professor Mary Aiken wrote a book called “The Cyber Effect” and between one thing and another I ended up launching it in Dublin. We are in a transformative phase where childhood itself is changing. Children are not just reading Enid Blyton any more and they are not sticking to Lego or Barbie dolls. The world is moving under our feet so to speak. I do not want to be an unconscious part of a process whereby we erode childhood or we absolve parents of their duties towards children.

What I said at the beginning about rights I very strongly believe. It is great to stand up and talk about rights all the time and we have the Children’s Rights Alliance and the Ombudsman for Children. We are all in favour of rights, but there is no such thing as a right without a corresponding duty. Society must accept it has duties in respect of children. If we talk about children’s rights there are correlative duties to children. Whether choosing 13 or 16 as the age of digital consent is the way to demonstrate compliance with our duties is one thing, but I am absolutely convinced this country needs to take the protection of children on the Internet much more seriously. I am convinced the commissioner for Internet safety must be fleshed out. I am convinced we should have been looking at the possibility of guidelines ourselves. We should have been inquiring of ourselves whether the UK protections were legitimate and apposite. We should have been asking ourselves all of these questions, rather than simply arriving very close to a May deadline when all of these things would have to be legislated on in a bit of a rush.

I thank all of the Members who contributed to the debate on this amendment. I have learned a lot listening to them. In the spirit of constructiveness I will not put the matter to a vote.

Acting Chairman (Senator Gerry Horkan): Is Senator McDowell asking to have his amendment withdrawn?

Senator Michael McDowell: No, what I will do in fact is I will move it.

Acting Chairman (Senator Gerry Horkan): Is the Senator withdrawing his amendment?

Senator Michael McDowell: I will not call for a vote on it.

Acting Chairman (Senator Gerry Horkan): The question on the amendment will have to be put.

Amendment put and declared lost.

Government amendment No. 8:

In page 22, line 33, to delete “The reference in Article 8” and substitute “For the purposes of the application of Article 8 in the State, the reference in that Article”.

Amendment agreed to.

Senator Lorraine Clifford-Lee: I move amendment No. 9:

In page 22, after line 34, to insert the following:

“(3) Where the holder of parental responsibility over a child gives consent in relation to an offer of information society services directly to a child, the data controller shall make reasonable efforts to verify such consent.

(4) For the purposes of *subsection (3)*, a data controller may obtain verifiable consent from the holder of parental responsibility through appropriate methods, including by electronic means. Such methods must be sufficient to ensure and/or verify that the person providing consent has parental responsibility over the child concerned.”.

Amendment, by leave, withdrawn.

Senator Lynn Ruane: I move amendment No. 9a:

In page 22, after line 34, to insert the following:

“(3) It shall not be lawful for a data controller to process the data of a child for commercial or marketing purposes, when the child is under the age of 16.

(4) It shall not be lawful for a data controller to process data in relation to the parents, guardians or family members of a child, without the consent of the person to whom the data pertains, save for age verification purposes, when the child is under the age of 16.”.

I will withdraw the amendment and reserve the right to resubmit it on Report Stage.

Amendment, by leave, withdrawn.

Section 29, as amended, agreed to.

SECTION 30

Question proposed: “That section 30 stand part of the Bill.”

Senator Alice-Mary Higgins: I wish to speak briefly to this section to signal it is one of the key sections under which some of the issues we have discussed could be addressed. It deals

with the designation of data protection officers. I signal that I will focus on this section on Report Stage as one of the key areas where the Minister will perhaps have the capacity to set out particular rules around the roles of different categories of data protection officers in terms of different categories of Internet actors.

I note, in particular, that section 3 gives the Minister scope to have regard to a large number of issues but only to have such regard almost at the moment of appointment. There might be scope for him to have regard to some of those issues in respect of processes as well. There is provision for data protection officers to widen the scope of organisations wherein a data protection officer may be required. The Minister might be able to indicate if he believes there is scope for a data protection officer to be shared between a number of small organisations.

For example, I refer to the small and medium-sized enterprise sector or the voluntary sector, organisations such as the Wheel and groups like that. We may want there to be data protection officers in as many organisations as possible. However, I am conscious that if I seek to expand the application or requirement for a data protection officer, it may place pressure on some small companies or organisations. I am happy to work with the Minister around that.

Is it possible for a data protection officer to be shared between a number of companies or entities, or perhaps provided by a central body? There may be later amendments relating to the duties of data protection officers. At the time of their appointment, the Minister has a particular power and he may be able to ask for transparency in certain areas. I am not sure if this would come under section 30 or another section, or perhaps a new section but I suggest some timelines should be put in place for the response of data protection officers to concerns that are raised with them, and perhaps also for the automatic triggering of investigation by the Data Protection Commissioner when a large number of individual complaints have been made to a data protection officer. Perhaps we can have transparency around the operation of the data protection officer. I know we will come to deal with those issues later but I am opening up the discussion on them for Report Stage.

Deputy Charles Flanagan: I will be introducing regulations in the normal course. There is provision under Article 37, which deals with the designation of the data protection officer, in terms of there being scope for a group of entities appointing a single data protection officer but obviously there would have to be guidelines and regulations to ensure that there was access across the various undertakings or entities.

For example, each and every local authority now has a data protection officer. Across the SME sector, particularly in recent times, companies are moving towards the designation and appointment of such officers but there is much work to be done in that area.

In response to the Senator's specific question about groups, the answer is "Yes" it is possible, but there will be a number of regulations around that to ensure there is a large degree of movement and flexibility between the various establishments involved. We will come back to that at a later stage.

Senator Alice-Mary Higgins: I thank the Minister for that. I believe that, as far as is possible, each organisation should have its own data protection officer but that responsibility should be exercised in very constrained circumstances. It is something to which we can look, given that there is that capacity.

Deputy Charles Flanagan: I note that is where the Senator is coming from on this point,

rather than using the groups as a specific designation.

Senator Alice-Mary Higgins: It should be an exception rather than the rule.

Deputy Charles Flanagan: Yes.

Senator Michael McDowell: Since we have moved away from the issue of children's rights and are dealing with a more general issue, I want to put one of the views on the record. The general data protection regulation, GDPR, is the culmination of a development of European Union law on data protection in which the progress towards protection and regulation has been inexorable and is becoming increasingly more complicated. Increasingly more bodies are now being required to have authorised officers and the like, and increasingly more people are being sucked into this general regulatory sphere.

The whole purpose of data protection was to protect people from the technological changes which were making data increasingly available and potentially damaging to individuals. One of the weirdest steps that was ever taken was to extend data protection to paper records. I have never understood why that was done. It was an overly-excited group of people at European Union level who agreed to do that.

I do not see why paper files, which are not accessible to the public, should be the subject of such regulation. If we had not had the electronic revolution and the Internet combined, I do not believe the member states of the European Union would ever have agreed to introduce this kind of protective regime in respect of paper records in the form of physical material stored in filing cabinets and the like. It was a somewhat promiscuous extension of a series of rights and remedies to an area which was not necessary in the first place. There are so many written records on paper which do not need all of this paraphernalia and all of this series of protections.

People are now being sucked into the status of being data processors. I refer to solicitors, perhaps even barristers and all sorts of service providers of a very insignificant kind, people running small businesses around the country. To ask them to suddenly become subject to this generalised regime has been a big mistake. It is irreversible on a national level now because the train has left the station. Paper records are included. They should never have been included in the first place. I am availing of this occasion to make an entirely ineffectual bleat of protest that this should never have happened in the first place.

Acting Chairman (Senator Gerry Horkan): That matter was not particularly relevant to this section but I indulged the Senator.

Senator Alice-Mary Higgins: I welcome that the Minister is happy to engage with myself and Senator Ruane around those protection of children areas. However, I highlight, as part of that discussion, that under Article 6.1(f) of the GDPR, which is one of those key areas where the protection of the child is weighted against the interests of a data controller and it relates back to this data protection issue, it is of concern that there is a note in the GDPR which allows for exemptions in respect of processing carried out by public authorities.

I want to signal at this point that the concern I raised during our last debate around public authorities could relate back to that question of protection of the child. Again, this might be an area where we may need to add an additional clarification in regard to public authorities.

27 February 2018

Question put and agreed to.

Section 31 agreed to.

Progress reported; Committee to sit again.

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

Senator Catherine Noone: Tomorrow at 10.30 a.m.

The Seanad adjourned at 8.01 p.m. until 10.30 a.m. on Wednesday, 28 February 2018.