



DÍOSPÓIREACHTAÍ PARLAIMINTE  
PARLIAMENTARY DEBATES

**SEANAD ÉIREANN**

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

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## SEANAD ÉIREANN

*Déardaoin, 22 Márta 2018*

*Thursday, 22 March 2018*

Chuaigh an Cathaoirleach i gceannas ar 10.30 a.m.

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*Machnamh agus Paidir.  
Reflection and Prayer.*

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### **Business of Seanad**

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

The need for the Minister for Health to outline the reasons a person, details supplied, has waited six years for autism services.

I have also received notice from Senator Kieran O'Donnell of the following matter:

The need for the Minister for Health to provide an update on plans for the provision of modular hospital beds at University Hospital Limerick.

I have also received notice from Senator Frank Feighan of the following matter:

The need for the Minister for Housing, Planning and Local Government to consider honouring the contribution of the Irish navy to Britain and Ireland by the issuing of a new postage stamp.

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

The need for the Minister for Education and Skills to provide an update on the building of a permanent structure at Gaelscoil Chionn tSáile, Kinsale, Contae Chorcaí.

I have also received notice from Senator Victor Boyhan of the following matter:

The need for the Minister for Public Expenditure and Reform to outline the proposals for apprenticeships and traineeships for the public and local Government sector as set out in the Public Service Stability Agreement 2018-2020.

Of the matters raised by the Senators suitable for discussion, I have selected those of Senators Buttimer, O'Donnell and Feighan and they will be taken now. Senator Lombard's matter had been selected but he has subsequently withdrawn same. Senator Boyhan may give notice on

another day of the matter he wishes to raise.

## Commencement Matters

### Autism Support Services

**An Cathaoirleach:** I welcome the Minister of State at the Department of Health, Deputy Catherine Byrne, to the House. Our esteemed Leader, Senator Buttimer, has the first item and he has four minutes.

**Senator Jerry Buttimer:** Go raibh maith agat, a Chathaoirligh. Thank you for allowing me to raise the matter. I, too, welcome the Minister of State to the House and thank her for being here.

I wish to raise the case of Mr. Gary Walton. He is a 33-year-old who requires support services. I seek an update on what services are available to him and his family. He was diagnosed with Asperger's syndrome along with an anxiety disorder.

The bottom line is that this is a very traumatic and tragic case. This young man was remanded in custody following an incident with his mother and he was released from prison yesterday. I am sure that everyone will agree that putting somebody in custody is not the answer to an issue for someone who has been diagnosed with Asperger's syndrome or a disability. I have spoken to his mother. She has emailed many of us about her son and she has also spoken on local radio. She is of the view that he needs to be placed in short-term residential care and receive treatment for a period. I am sure we can all agree that this is a very serious issue. The assault on his mother was brought before the courts. His mother, Phyl, has very much advocated, on behalf of her son, for HSE services to be made available, in terms of whatever facilities and joined-up thinking we can bring to this case. I have spoken to and listened to Phyl, and read the newspaper accounts of the court case and her appeal. It is worth noting that Professor Michael Fitzgerald made the diagnosis. The solution is to offer support and put in place joined-up thinking. I know that the Minister of State will reply but I hope that we can collectively, including the HSE and Gary's family, come together and engage in a conversation so that appropriate services are put in place.

I thank the Cathaoirleach for the opportunity to raise the matter and I thank the Minister of State for being here this morning.

**Minister of State at the Department of Health (Deputy Catherine Byrne):** On behalf of my ministerial colleague, the Minister of State at the Department of Health, Deputy Finian McGrath, I thank Senator Buttimer for raising this important issue.

I am informed by the HSE Cork Kerry community healthcare that it is aware of the case and that there has been ongoing engagement with the individual and his family since 2016. This Government's ongoing priority is to safeguard the vulnerable people who are in the care of the health service. We are committed to providing services and supports for people with disabilities that will empower them to live independent lives. As part of the HSE's ongoing service

provision, this year it will provide over 8,300 residential places to families in need across the country. Our policy is for people with disabilities to be supported to achieve their full potential so that, where possible, they can live ordinary lives in ordinary places, doing ordinary things. The overarching principle governing the planning and delivery of health services and supports for adults and children with disabilities, including autism, is that they should be integrated as much as possible with services and supports for the rest of the population.

At the request of the Minister for Health, the HSE has conducted a review of services to identify the existing models of best practice. The review has been completed and is being reviewed by the Department. In addition, the Department has completed an epidemiological research study into the prevalence and future projections for the autism spectrum disorder. Both of these reports are now being considered by the Department and the Minister.

While the Senator will appreciate that I am unable to comment on an individual case, I am aware that this case has been reported by the media recently. In the Cork Kerry disability services, Aspect is the service provider for day services for someone with a diagnosis of Asperger's syndrome. Residential placements for adults with disabilities, including autism spectrum disorder, are considered following detailed clinical assessments by the HSE services. On the other hand, access to places for those with the most complex needs are allocated on a priority basis and appropriate availability of service. I am informed by the HSE that the individual and family have been advised that if support is required for the mental health service, they should contact their GP who can make a referral. I also point out to Senator Buttimer that a caseworker was assigned by Aspect to this individual and in spite of numerous communications by the key worker to both his mother and this young person, the individual only attended one meeting in 2017.

**An Cathaoirleach:** I invite Senator Buttimer to put a brief supplementary question.

**Senator Jerry Buttimer:** I thank the Minister of State for her reply. From my observation the family would question the ongoing engagement and they would have been of the view that there was no engagement. The bottom line is there should be engagement between the HSE and the family. It would be appropriate for the HSE and the family to get together. The correct *modus operandi* is to have ongoing engagement and meaningful interaction. This is a young man who needs help and support and there needs to be joined-up thinking on how to facilitate that.

I appreciate the Minister of State's response but I hope that through the office of the Minister of State with responsibility for disability, Deputy Finian McGrath, the HSE could sit down with the family to work out a programme and a placement for this young man.

**Deputy Catherine Byrne:** I will comment on Senator Buttimer's request for joined-up thinking. All of us who are in public life are very familiar with people who are caught up in a system where the system does not seem to respond quickly enough for them thereby causing distress for the individual and the family. I will bring the Senator's message to the Minister of State, Deputy Finian McGrath.

Let me assure the House that everything is being done. The Government's ongoing priority is to safeguard vulnerable people in care. I am informed by the HSE that it has been engaged with the person concerned and the family and will continue to do so.

Let me emphasise that in 2018, funding of €1.772 billion has been provided for health and personal social care services for a complex and wide range of services and supports for people

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with disabilities. An additional €91.9 million was made available last year. This year, through the HSE, we will provide more than 8,300 residential care beds, as well as emergency support beds for 385 people. We will provide more than 1,800 respite nights and 42,500 day respite sessions to families in need of respite across the country.

I understand Senator Buttimer's concerns and his compassion about this issue. I certainly share some of those concerns, particularly when the family seems to be trapped in a situation where they see that they have difficulties in gaining proper access to services. Let me repeat that I will bring Senator Buttimer's concerns to the attention of Deputy Finian McGrath.

### **Hospital Accommodation Provision**

**Senator Kieran O'Donnell:** I thank the Cathaoirleach for allowing me to raise this important matter of concern for the people of Limerick city and county and the wider mid-west region. The issue is the building of a unit with 60 modular beds on the grounds of University Hospital Limerick and I wish to ascertain the measures being put in place to fast-track the planning and procurement stages of the project.

The background is that in 2009, the accident and emergency units in Ennis, Nenagh and St. John's hospitals were closed prior to the building of a new emergency department in University Hospital Limerick, which is now thankfully up and running. However, the closure of the three accident and emergency units was predicated on the provision of 136 co-location beds on the grounds of University Hospital Limerick. That never came to pass. We have been playing catch-up in the near-decade since 2009.

I thank the Minister for Health, Deputy Harris, for ensuring that 96 acute beds are provided for in the capital plan for University Hospital Limerick. It will require time to build such facilities but in the interim, beds are needed urgently. Bed capacity is a greater issue in the mid-west and in Limerick than in any other region in the country.

I have worked with the management of University Hospital Limerick, the Minister and the HSE to get an application submitted for 60 modular beds in the grounds of University Hospital Limerick. That has gone to the HSE. My understanding is that the application is now with the Department of Health. The critical issue is that there is a precise site on the grounds of University Hospital Limerick to locate the building. It is a medium-term temporary measure to enable beds to be provided on the ground in an area that is distant from any amenities.

Will the Minister of State outline the measures that have been put in place to ensure we can build a ward to house these 60 modular beds and have them in operation as quickly as possible? Such a project will have to go through the following phases: approval, planning, procurement and construction. I note many elements of the project will be completed off site and then it will be assembled on site and made operational. The unit will then have to be staffed. I want to fast-track the initial process of planning and procurement. As it can be built offsite, we should aim that it be in place as quickly as possible.

People will know from media reports that bed capacity is a problem in the mid-west. I believe that one must face up to the facts of the case. We will get the 96 acute beds, but it will take a period before they are operational and will be located adjacent to the new emergency department, which is up and running. We need to put in place the ward for the 60 temporary modular

beds on the grounds of University Hospital Limerick as quickly as possible.

That will require that we fast-track the areas of planning and procurement. Has the Minister plans in place to ensure that we can fast-track the building of this 60-bed ward on the grounds of University Hospital Limerick to ensure we can provide the beds the people of Limerick and the mid-west deserve?

**Deputy Catherine Byrne:** I welcome the opportunity to address the House on this matter on behalf of the Minister for Health, Deputy Harris. While acknowledging the need for productivity improvements and reforms across the health service, the recently-published health service capacity review outlines that in order to reach international standards of bed occupancy levels, the acute hospital system needs additional beds. In response to this recommendation, the Minister, Deputy Harris, has asked the HSE to develop a plan to identify the location and mix of beds across the hospital system, which can be opened and staffed by November 2018. This will help to improve preparedness for the winter of 2018-2019 and relieve overcrowding in our hospital emergency departments. The Department of Health is engaging with the HSE to develop this plan as a priority. I can confirm that as part of this process, all hospital groups have been asked by the HSE to submit plans to increase capacity, including plans to develop modular builds. I understand that in that context, the University of Limerick hospital group is preparing a proposal for additional beds. I can assure the House that the Government is committed to investing in new capacity and making tangible reforms to our model of health care delivery. The findings of the health service capacity review published in January were considered in the context of the recently-published Project Ireland 2040 initiative. The commitment to significant investment in the health services in the national development plan demonstrates the Government's intention to fundamentally improve our health service. The University of Limerick hospital group has identified a number of projects for future development. This includes a 96-bed ward block at University Hospital Limerick to address bed capacity needs and this project was funded to design phase. I am pleased to note that construction of this ward block is included in Project Ireland 2040. There has been very significant investment in University Hospital Limerick in recent years. The new emergency department opened only last May and other developments include the Leben Building, the cardiac unit, the car park and more besides. More recently, in September 2017, 17 new surge capacity beds opened in the old emergency department in Dooradoyle to alleviate overcrowding pressures. These beds will be converted to a medical short stay unit later this year. Also, a new surgical and pre-operative assessment unit at the hospital is projected to open in April 2018, which will further improve services at the hospital.

The need to address bed capacity at University Hospital Limerick is recognised by all stakeholders and medium and long-term solutions are being developed. However, it is important to note that a number of construction projects are under way at University Hospital Limerick. It goes without saying that acute hospital campuses are complex sites. Therefore, all construction must be carefully planned and scheduled in order to ensure that patient care is not impeded or unnecessarily impacted upon.

I have noted what the Senator has said. One of the issues that he raised concerns modular bed units, with which I am unfamiliar. I will discuss the matter with the Minister on his behalf. I am not sure how modular bed units are constructed but if they are anything like modular housing, they can be put in place in a short period. I will convey all of these matters to the Minister.

**An Cathaoirleach:** I shall allow Senator Kieran O'Donnell to ask a brief supplementary.

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**Senator Kieran O'Donnell:** I thank the Minister of State for her reply. University Hospital Limerick has submitted plans for 60 modular beds. These plans are, I think, with the HSE, which is in discussions with the Department of Health. For me, this matter is very simple. As a public representative in Limerick city, I know what people have had to endure in recent years due to a lack of bed capacity in the mid-west and I want the matter rectified. The 96 acute beds are now part of the capital plan, for which I thank the Minister for Health. The initiative will make an enormous difference but it will take a period to get through the normal planning, procurement and building processes. In the interim, I want how necessary these modular beds are to be conveyed in the strongest possible terms. I will work with the Minister, the HSE and the Department of Health to find ways to fast-track the process and have these beds provided as quickly as possible.

**Deputy Catherine Byrne:** I have noted the matters raised by the Senator and I understand his frustration. I assure him that we all want to make sure that we can get modular beds into units such as this as soon as possible. I will stress to the Minister the necessity for him to contact the Senator about this matter because I do not know how long construction will take. I will certainly relay to the Minister the Senator's deep concerns about this project and about the need for the issue relating to University Hospital Limerick to be attended to as soon as possible.

**Senator Kieran O'Donnell:** I thank the Minister of State.

**An Cathaoirleach:** I thank the Minister of State and the Senator.

### **Special and Commemorative Stamp Programme**

**An Cathaoirleach:** An chéad rud eile belongs to Senator Frank Feighan. The Minister for Communications, Climate Action and Environment will deal with the final issue. Tá fáilte romhat, a Aire. I call Senator Feighan. The Senator has four minutes to outline his case.

**Senator Frank Feighan:** I thank the Minister for Communications, Climate Action and Environment for attending. My matter refers to the need for the Minister for Housing, Planning and Local Government to consider honouring the contribution of the Irish navy to Britain and Ireland by issuing a new postage stamp and to outline ways to facilitate same.

Last year, my colleague, the Minister of State at the Department of Foreign Affairs and Trade, Deputy Cannon, who has responsibility for the diaspora, called on An Post to issue a stamp to honour the contribution made by the Irish diaspora to society at home and abroad. His idea is wonderful. I have made a similar proposal but this time I want the enormous contribution made by the Irish navy to Britain and Ireland to be recognised.

During the recent St. Patrick's Day celebrations, I was delighted to attend an art exhibition by Bernard Canavan, a London-based Irish painter, in the House of Commons. The exhibition was facilitated by Chris Ruane, the UK Labour Party MP for the Vale of Clwyd. Like my own father, Mr. Canavan's father, who hailed from Longford, was one of tens of thousands who took the boat to England in search of work. Bernard was 16 years of age when his family were forced to move to the UK because of harsh economic conditions here. Over the years, Bernard's paintings have paid homage to the generations of Irish people who worked very hard and sent money home in order to assist members of their families. Countless men and women emigrated for work and they often had very tough lives in the process. It is estimated that the

equivalent of hundreds of thousands of euro were sent back to this country by labourers. This money helped families here to survive.

Many of Bernard Canavan's evocative paintings are worthy of providing images for a commemorative stamp that pays tribute to the Irish navy. As many Senators will know, the life of a navy was a hard one. It was a life marked by many emotions, ranging from happiness to sadness to loneliness. It was a life often fuelled by a large amount of alcohol. Last year, Bernard was awarded a distinguished service award by the President for representing the forgotten Irish in Britain through his art.

Many labourers went on to make great lives for themselves. They set down solid roots in many corners of Britain and, in doing so, reared families who now proudly display their Irish heritage and culture at every opportunity. We must not forget that many of the labourers who left this country went on to build successful construction companies and businesses that continue to provide thousands of jobs across these isles. In many cases, unfortunately, the story of the Irish navy was one of tragedy whereby comfort was found at the bottom of a pint glass. This led to broken families and people losing touch with home. Sadly, many of them ended up living on the streets of London and many other cities far from their native shores. I know that the Cathaoirleach went to London in the late 1970s and worked as a navy. I know that every politician here understands the work and sacrifices made by Irish men and women who went there.

Ulton Cowley is the author of a seminal book, *The Men Who Built Britain: A History of the Irish Navy*, which captures the often bleak world of the Irish migrant labourer. Up until recently, these men had been largely forgotten or ignored but Mr. Cowley has rightly pointed out that, in terms of the canals, railways, roads, tunnels, dams and public utilities, such people, and those in the professions of teaching and nursing, effectively ran Britain. Their standing is a lasting monument to their sacrifices and achievements. Truly, they built Britain and, indeed, they built Ireland. They have made an enormous contribution to British and Irish society. That contribution should never be underestimated. It is my view, therefore, that a commemorative stamp to honour the Irish navy would be a lasting testament. I look forward to hearing the thoughts of the Minister.

**Minister for Communications, Climate Action and Environment (Deputy Denis Naughten):** I welcome the opportunity to address the Seanad on this matter and I thank the Senator for raising it.

As Minister for Communications, Climate Action and Environment, I have a statutory function under section 69(4) of the Postal and Telecommunications Services Act 1983 in respect of granting consent to An Post for the design and issue of postage stamps. I want to inform the Senator that An Post deals directly with the process of stamp suggestions. In order to allow sufficient time for necessary approvals, research, design and production, the An Post stamp programmes are planned well in advance of the year of issue. In this regard, An Post invites suggestions for stamp subjects 18 to 24 months in advance of each year in question. Senator Feighan will be interested to know that there is currently a call by An Post for suggestions for the 2020 stamp programme. The closing date for receipt of suggestions is Wednesday next, 28 March 2018. The public trawl by An Post for proposals for stamp programmes runs from October each year to March of the following year. An Post requests suggestions from members of the public and various bodies, as well as Ministers and Departments. I put forward my own proposal to An Post that it would consider the festival of Hallowe'en, which has its origins in

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Rathcroghan, in my county, Roscommon, in this regard. It is amazing to think that a major international festival such as Hallowe'en is commemorated on stamps in the United States, Belgium and Austria but that Ireland - the home of Hallowe'en - does not yet have such a stamp.

All suggestions received by An Post are vetted by the independent philatelic advisory committee, which was set up to advise on the content of each annual stamp programme. The committee recommends the subjects for inclusion in the An Post commemorative stamp programme. Following ratification by the board of An Post, the stamps programme is then forwarded to me, as Minister for Communications, Climate Action and Environment, to bring a memorandum to Government for approval. This week, for example, I received Cabinet approval for the 2019 stamp programme that will cover some 35 stamps on 16 different subjects. I shall give an indication of the scale of suggestions. For the 2019 stamp programme, there were 210 suggestions.

In the context of the design of each stamp, these are commissioned by the stamp design advisory committee, an external panel of art and design experts established to direct the design process. Once I am advised by An Post of the designs, I then bring a memorandum to Government for their approval.

I will bring the Senator's suggestion to the attention of An Post, particularly in terms of the Irish navy, who, despite what is displayed on the screen in the Chamber, has nothing to do with the Irish Naval Service.

The Irish navy played a very important role in building up the United Kingdom and that should be acknowledged. I fully acknowledge the contribution the Senator has made in highlighting that.

Regarding my own family, my grandfather went to the other side of the Atlantic, to the United States, and worked on the trams in Boston. Very many Irish people went abroad and contributed to building up the economies across the globe. That is one aspect of history that we proudly celebrate during our celebrations around St. Patrick's Day. It is not only about the here and now, it is about the history of the Irish abroad and the way they developed the countries that they made their own. As the Senator knows, many of the Irish navvies fell on very hard, difficult and challenging times. It would be nice to see their contribution to society in the UK acknowledged by way of a stamp. I will bring that recommendation to An Post on foot of the Senator's Commencement matter.

**Senator Frank Feighan:** I thank the Minister for his reply. I look forward to the outcome of the stamp advisory committee's deliberations.

Like the Minister, I am very proud of the Irish diaspora. They have gone to all corners of the world. They never forgot about Ireland. There is always a rush for us to travel to New York, Boston, Dallas and wherever, and rightly so, but we have taken our near neighbours in London, Birmingham, Manchester, Liverpool and Glasgow a little bit for granted, but they never forgot Ireland. I remember in 1988 when the Republic of Ireland beat England in Stuttgart, at least 3,000 or 4,000 of the 12,000 who went to Germany that time were from the United Kingdom, sons and daughters of Irishmen who went there in the 1950s and 1960s. They never forgot our country and we should not forget them.

A new postage stamp honouring the sacrifices made and the toils of the Irish navy in contributing to all aspects of buildings and services in the United Kingdom, and even more importantly to the island of Ireland, should be issued.

## **Order of Business**

**Senator Jerry Buttimer:** The Order of Business is No. 1, Data Protection Bill 2018 - Report and Final Stages, to be taken at 12.45 p.m. and conclude not later than 3.15 p.m.

**Senator Catherine Ardagh:** I rise to commend the Trojan work and bravery of the Dublin Fire Brigade who spent all last night and this morning extinguishing a fire at the Metro Hotel in Ballymun. Thanks to their swift action, nobody has been harmed and there are no reports of casualties thus far. On behalf of the Fianna Fáil Party and Fianna Fáil group, we are in awe and we are thankful to Dublin Fire Brigade for their professionalism, given that it was a 15 storey, 88 bed hotel and block of apartments. In light of this event it is important that a proper investigation is undertaken into the cause of this fire. It is also incumbent on the council to ensure that proper fire safety standards are met when it comes to commercial and public buildings. But for the luck and the swift work of our firefighters, this could have had a different ending.

I refer to a hard Brexit and the impact that will have on the annual spend of the average Irish household. According to the ESRI's most recent report, consumer prices for food, etc., could rise as much as 2% or 3%. This is particularly worrying when the research shows that the cost would rise the most for lower income households, as they spend a greater share of expenditure on food products which are, of course, imported from the UK. This shows that a hard Brexit will affect lower income families disproportionately. In a time when one in ten Irish people suffer from some degree of food poverty and when over €700 million worth of food is discarded each year, we can see that something is adrift. I call on the Minister to attend the House to discuss the challenge of Brexit and to discuss food security.

I refer to rent prices in the city and housing. It is an item that I raise nearly once a week. The latest Private Residential Tenancies Board, PRTB, survey shows that the average rent nationwide is over €1,000 a month and the average rent in Dublin is at €1,500. These rates at any reading are simply far too high for the average working family and it is clear that the mechanism of the rent pressure zones does not seem to be working adequately. I call again on the Minister to come to the House to re-examine the feasibility of rent pressure zones and update the House regarding the elephant in the room, namely, the lack of social and affordable housing in this State.

**Senator Victor Boyhan:** I would like to briefly raise three issues. I join in thanking the Dublin Fire Brigade for what could have potentially been a catastrophic fire. One thinks back to Grenfell Tower in London and the terrible consequences of that fire and how it impacted on the people that lived there. I also want to acknowledge the great work that Dublin City Council has done because I understand, and this has to be verified, that there were a number of people in emergency accommodation residing in that building. That was their home. That has a traumatic impact, particularly on people who have been there for more than a one night stay in a hotel. It is their home. There are children and families involved. There is the staff of this hotel. Dublin Fire Brigade has again done a magnificent job, as do all the fire services. We are so lucky today that everyone is alive and hopefully got out intact. I want to acknowledge the support of Dublin City Council because it has played a huge part in terms of supports for the

emergency response that happened last night.

I want to use this opportunity to wish Ursula Halligan well. She was a political journalist who everyone would have known in this House working at the cutting edge of political journalism and TV. I want to take this opportunity to acknowledge that we need the media and journalists, and journalists and the media need us. We are in partnership to tell the truth and get the story out. Ursula always did that and was always at the cutting edge. She always brought a great excitement to the edge of political stories, be it inside or outside this House. I want to acknowledge that, because she was someone I admired, listened to and followed. People had an opportunity to wish her well last night.

It is Daffodil Day tomorrow, a really important day. One of our great friends, and former Senator, Averil Power, is CEO of the Irish Cancer Society. I want to wish her, her team and all of those involved in the society, and those who help and support people with cancer right across the country, well with the important fundraising endeavour being launched tomorrow. It is to be hoped that all of us will make a conscious decision tomorrow to wear the emblem.

**Senator Paul Gavan:** I want to begin by acknowledging that yesterday was the first anniversary of the death of Martin McGuinness. My colleagues, Senator Conway-Walsh and Councillor Donnelly, are in Stormont today for the official unveiling of a portrait of Martin. I am sure it will be a very emotional event for all concerned. I am glad to say that people from all parties and traditions will be there. On Sunday, the chieftain's walk will make its way from Glenowen in Derry to An Grianáin in Donegal. It was a favourite walk of Martin's and will raise funds for the North West Cancer Centre, which is very appropriate given the weekend that is in it. I understand thousands are due to take part in the event and it is a very fitting tribute to our fallen leader and comrade. I find it hard to believe it has been a year since Martin passed away. So much has already been said about him. Suffice to say, his loss is still hugely felt, but equally we are determined to see his work through to a positive conclusion both in regard to the assembly and our wider project of a 32-county republic based on justice and fairness.

My second point is related. Like a number of Senators I have just attended a presentation by the McAnespie family. People from all parties were at the presentation which was very well attended. It is hard to talk about it. I admire the courage of the family, including Sean, Vincent, Aidan's brothers and his nephew, Brian Gormley. He was the most harassed man in Ireland, experiencing seven years of harassment twice a day before being gunned down. The description of the murder as an accidental discharge was nothing short of disgraceful. Even the PSNI historical enquiry team described it as the least likely version of what had happened. It is hard to believe that, 30 years on, the McAnespie family are still seeking justice. I say this in a non-party political way. We need the Crowley report to be published.

**Senator David Norris:** Hear, hear.

**Senator Paul Gavan:** My colleague, Deputy Caoimhghín Ó Caoláin, who was one of the witnesses, said he would be willing to waive his rights so that the report can be published, and he believes other witnesses would also do so. How much longer must the McAnespie family wait? I think I speak for all of us in the Chamber - if I do not, I ask Senators to make themselves known when they speak today - when I say the report has to be published. I am not playing party politics with the issue. It is up to the Government to act on the report.

**Senator David Norris:** Hear, hear.

**Senator Paul Gavan:** We can reflect on the failures of past Governments. I do not want to do that. Rather, I want this Government and the Minister for Justice and Equality, Deputy Charles Flanagan, to publish the report. I ask everyone in the Chamber to join with me in regard to that issue.

**Senator David Norris:** I have received a ruling from the Cathaoirleach that my motion on Standing Order 41, which precludes Members from introducing an amendment which creates a charge on the Exchequer, has been ruled out of order. I completely accept that and I understand the reasons for that. I understand it was discussed by the Committee on Procedure and Privileges last night and a decision appears to have been taken that it should be referred to the Dáil reform committee. I am not sure why the Seanad should refer the conduct of its business as an independent House to a committee of the other House. I think that is wrong. I hope the Committee on Procedure and Privileges will develop the guts to stand up for the independence of this House and remove this ridiculous restriction on our freedom.

If we do not do that, I certainly will protest any time I hear any Member of this House complaining about not being allowed to introduce an amendment of this kind when it is ruled out of order. We have the power to do something about it. If we do nothing about it then Seanad Éireann is responsible for its own secondary status. I certainly hope that the Committee on Procedure and Privileges will stand firm and stand by the Seanad. I have spoken to civil servants, whom I will not name, who are involved in this and the phrases they used were “a grey area” and “an academic situation”. We should push through a grey area and academic situation, and establish our rights. We are adults.

I very much welcome the Pope’s visit and I am delighted he is coming. He is a good man. I publicly initiated the first move towards an invitation a couple of years ago in the previous Seanad. I would like to thank Senator Wilson who mentioned this yesterday. The Pope should be given a terrific welcome. He is a wonderful man. I do not think he is completely up to speed on gay rights or women priests and so on.

I very much regret that the committee running the World Meeting of Families removed from the brochure images of same-sex couples. If we are talking about the family, we should be talking about the full family. I hope there will be some discussion of these issues in a courteous way. I know the Roman Catholic Church takes a long time to change its view, but it is insulting to people who are now in legally recognised marriages in this country that they are not considered to be part of the family. I think they are.

Despite my reservations, I will be giving a welcome to the Pope. I might even catch a glimpse of him flying past in his car because I will be back from Cyprus to attend the Fitzpatrick clan rally which nicely coincides with the Pope’s visit. From my point of view and from my heart I wish him well and a happy and successful visit here. He is elderly and I do not suppose he can last all that much longer. I sincerely hope that when he does depart the church gets another good hearted, open Pope who will lead it forwards and not backwards.

**An Cathaoirleach:** On the matter of my ruling, the matter is still live in the Committee on Procedure and Privileges and while it has been referred to the Dáil committee for a view we are not bound by it. I cannot promise Senator Norris a successful outcome but he should not despair just yet.

**Senator David Norris:** I thank the Cathaoirleach. I know he will stay firm. It is the other

ones I am worried about.

**An Cathaoirleach:** I am greatly touched by your faith in me.

**Senator James Reilly:** I would like to be associated with the comments made on the great work done by the Dublin Fire Brigade last night in saving lives, as well as the work it does day in and day out to protect us. It is a group of individuals, like gardaí and others, who place their lives between us and harm. I wish to acknowledge the great work done not just by the Dublin Fire Brigade but all the fire services around the country and the many volunteers.

I commend the Irish Cancer Society given the week that is in it. I had the honour of addressing the Danish cancer society last week in Denmark on the scourge that is tobacco. We have been joined by many young people in the Gallery and I wish to tell them to never, ever smoke. It is an industry I have described as evil because it seeks to addict young children into a habit that will kill one in two of them prematurely. That is a fact. I thank the Irish Cancer Society for all its support in helping us to overcome the challenges we faced when facing big tobacco and the litigation and threats which were made to this country in many different ways.

I wish, however, to correct the record, a Chathaoirligh, because before the St. Patrick's Day break, I mentioned that the Autism Spectrum Disorder Bill was passed in this House in October or November. I went back and checked my records because it seemed so recent and found it was 12 July. I said at the time that I would keep raising this issue to find out the status of this Bill. Autism is a condition that directly affects 65,000 of our citizens, as well as the quarter of a million people who are in their families and the hundreds of thousands more who are their friends. This Bill is hugely important to those people. Children with autism have opportunities to correct the developmental anomalies they suffer from such as the lack of speech or their inability to socialise. When those opportunities are missed, parents look on in desperation and acute anxiety and try all sorts of alternative care, often to their detriment and certainly to the detriment of their wallets and incomes. Many of these families are struggling to make ends meet in caring for their loved ones. These children, as we know, can have tremendous outcomes and can be very positive people in society if they get intervention early in life. I ask the Leader again to bring the Minister in here to explain to us where this Bill is. We are coming into Easter and there is still no sign of it. I accept that the Department of Health is a busy one and that it has many Bills on its plate. However, it cannot ignore this group of citizens or be allowed to leave this on the back burner. I will continue to raise the matter week in, week out. I looked at the *change.org* website this morning. I said recently that 71,000 had signed up to support the Bill and there are now just short of 73,000 signatures. This issue will not go away. I urge those who have not done so to join that site in support of the Bill. We must act. The terrible thing is that this is just to bring in a Bill to ensure that a strategy is put in place. It is not even the end or the end of the beginning. We are way back. I urge the Minister, notwithstanding all that he has on his plate, to ensure that this Bill is brought into the Dáil.

**Senator Diarmuid Wilson:** Like Senator Gavan, I attended the gathering in the audiovisual room that is still under way. We were obliged to leave it to attend the Order of Business here. A presentation is being made, chaired by Deputy Caoimhghín Ó Caoláin, on the killing on 21 February 1988 by a British soldier of Aidan McAnespie, a man who for more than seven years had suffered intimidation every time he crossed the Border at Aughnacloy, County Tyrone to visit his relatives in County Monaghan. Five days a week, on his way to work and on the way back, he experienced the intimidation. Any independent analysis of his killing would come to no other conclusion than that it was murder.

**Senator Paul Gavan:** Hear, hear.

**Senator Diarmuid Wilson:** He was shot dead by a member of the British army, deliberately. The British Government carried out a so-called investigation into this crime and came up with no conclusive conclusion. The Irish Government commissioned an independent investigation under Assistant Commissioner Crowley into this murder and the conclusions of that report have not been published. This has been highlighted by various members of my party, including most recently by Senator Gallagher, who is a representative from the constituency where some members of the McAnespie family live in County Monaghan. This call has fallen on deaf ears.

Like Senator Gavan, I am not being political. The party I belong to got the investigation carried out. The Taoiseach of the time was Charles J. Haughey, who insisted on this investigation. However, successive Governments have refused to publish the findings of the report. I do not know why or what reason there could be for not publishing it. I appeal to the Leader to use his good offices to ask An Taoiseach to make every effort to get agreement from the Government to have this investigation, carried out by Assistant Commissioner Crowley, published without any further delay. In attendance at the audiovisual room were members of the McAnespie family, including Aidan McAnespie's elderly father. The least he is entitled to before he passes on to his eternal reward is the conclusions of that report, which was carried out by our Government and our authorities.

**Senator David Norris:** Hear, hear.

**Senator Paul Gavan:** Well done.

**Senator Maria Byrne:** I again raise the outbreak of measles in Limerick and the mid-west. There are now cases affecting more than 25 people so it is quite serious. They are giving out free vaccinations in the Lord Edward Street primary care unit this afternoon from 3 p.m. onwards. I encourage people, especially those aged from 20 to 40 who have not yet been vaccinated, to attend the clinic for a free vaccination. These people are kept in isolation in the hospital but the outbreak is quite serious.

I also wish to raise the television series, "Nightflyers", which is being shot in Troy film studios in Limerick. They released a teaser on Tuesday. It is a science fiction series that will be released shortly on Netflix. More than 400 people are employed locally in Troy film studios and there are also many people on an apprenticeship programme. The film is being shot locally and is being made in Ireland, while NBC studio from America is actually in charge of the film. The more we can encourage people to come from other countries to film their films in Troy Studios the better, as it is creating local employment. I encourage people to have a look at "Nightflyers" on Netflix.

**Senator Aidan Davitt:** I welcome the forthcoming visit of the Pope to Ireland. It has been discussed on and off in the House for the last while. I would certainly welcome the return to the Phoenix Park of a pontiff and the proposed gathering in Croke Park. It is quite a tight timeframe as they are talking about a two-day visit. However, I certainly hope there will be an all-Ireland part to this visit. Our church is an all-Ireland church and I certainly hope that it would be part of the healing process in Ireland were the pontiff to visit all of our island.

**Senator Frank Feighan:** I agree with Senator Gavan and acknowledge the work of the late Martin McGuinness. One year past his death, we are in a different space. It is a hundred years since the first MP was elected to the House of Commons in my home town of Boyle, in the elec-

tion of the snows in 1917. He was George Noble Plunkett, who was elected as an Independent and joined Sinn Féin. He was the first abstentionist from Westminster.

I recently spent a week in the United Kingdom. I was in the two hams, namely, Cheltenham and Twickenham, but I was in Westminster many times too. There is a sense of resignation that we need a nationalist voice in Westminster. I have talked to people on the Exiting the European Union Committee, which is chaired by Hilary Benn. We are missing that republican voice. Most of the MPs elected in the North of Ireland effectively backed Brexit. We are missing that SDLP voice. That is nothing against Sinn Féin.

I understand that people are concerned that parliamentary work would compromise republicanism. However, we are in a unique situation now and perhaps it is time for Sinn Féin - I acknowledge to Senator Gavan that it is an issue for that party - to reconsider in the context of fighting for nationalism. I have met Sinn Féin MPs who are doing great work in Westminster but that voice is not on these very important committees. Instead, we are relying on mainly Labour Party MPs to fight for the island of Ireland. They have their own constituencies and they are not going to say it in the UK. I believe the Border in Ireland will be the Achilles heel for Brexit. The issue of the Border will do the United Kingdom a huge favour. Sinn Féin has benefitted politically from its participation in the parliaments in Dublin and Belfast. I do not like to tell other parties what to do and I am not doing that. However, it has been highlighted by people who represent the Irish caucus and diaspora that they need nationalist representation of MPs on important committees such as the Exiting the European Union Committee. In the coming months there could well be a vote in Parliament on Brexit and that could be an opportune time for Sinn Féin to exercise its rights on behalf of nationalism on the island of Ireland.

*12 o'clock*

**Senator Tim Lombard:** I wish to raise the issue of bus services in Ireland. We have put much investment into bus services and public transport but there are major anomalies in the system that must be examined. A key issue is bus fares, which I have been examining over the last few weeks. If one travels the 16 km from Carrigaline to Cork it will cost €4 but if one travels the 28 km from Kinsale to Cork it will cost €14.50 return. That anomaly must be examined. Travelling from Bandon to Cork, which is a distance of 29 km, costs €17.50 return. There is a real dilemma at present. We are promoting public transport and encouraging people to use buses but the fares do not work. I attended a meeting with representatives of Bus Éireann a few weeks ago along with Senator Buttimer and the Tánaiste and Minister for Foreign Affairs and Trade, Deputy Coveney, during which we discussed this issue. There must be a complete review of the structure for pricing bus services.

Bus services in rural Ireland are a joke in many ways unless we do something about the prices. We talk about getting people onto buses but it is not economical. If one lives in Kinsale and works in Cork, one will spend €3,000 per year for a bus service. That is not sustainable. If one lives in Bandon and works in Cork one will spend €3,200 per year. People cannot afford to spend that kind of money on public transport. There has to be a complete review of the pricing structures in Bus Éireann, but we have not seen it. Something has been done for the bus services around the cities but not for the services to rural towns. We have examined the situation in rural towns throughout Ireland, not just in Cork. They are priced out of existence because there is no decent pricing structure in place. I appeal to the Leader to invite the Minister for Transport, Tourism and Sport, Deputy Ross, to the House. I tabled a Commencement matter on this and it was refused because the Minister had no responsibility. The Minister must take responsibility for this. He must come to the House and address it. If he does not, bus services

in rural Ireland will be a joke.

**Senator Martin Conway:** I agree with Senator Wilson about the family of the late Aidan McAnespie and that the Crowley report on his assassination should be published.

**Senator Paul Gavan:** Well said.

**Senator Martin Conway:** Another issue I wish to raise concerns mass sporting events that take place. There are some well established mass sporting events from which people get great enjoyment. They are very well run and donate enormous amounts of money to charities. However, there are many other mass sporting events popping up around the country. It would be a good idea to invite the Minister to the House to discuss how these events can be regulated, how the numbers can be dealt with properly and how such events should not seriously impact on communities. Last year in Ennistymon, County Clare, there was a mass cycling event with between 2,000 and 3,000 participants. It effectively closed down the town for an entire Saturday and the business community in the town did practically no business. The town of Ennistymon has challenges. The roads in the area already are very busy due to the Cliffs of Moher visitor experience, which attracts almost 1.5 million people each year. There is also an issue with Blake's Corner, which is causing enormous traffic difficulties.

The aforementioned cycling event is due to take place again this Saturday. I am advised that it has been booked out at a cost of €40 per head. The two local councillors proposed a motion that the number of people taking part in cycling events that start and finish in Ennistymon would not exceed 1,000. That was being fair to the organisers and the people who wished to take part, together with the business community and the residents. However, despite the motion being passed unanimously at the municipal district and effectively being council policy, this cycle will take place with 3,000 participants. What troubles me even more is that I am reliably informed that a cheque for €3,000 has been provided to the organisers of this event to support it. Cycles and runs are wonderful, as are the people who take part in them. However, when is enough enough? Will there be 5,000 next year and 10,000 the year after? The Oireachtas and the Government have a responsibility to put some type of control, regulation and order on these mass sporting events.

**An Cathaoirleach:** Thank you, Senator. I thought you would never get off your bike.

**Senator Colm Burke:** The issue I wish to raise relates to the provision of home care. I have raised it on a number of occasions. There is a need to grow the service across the country because more people will require home care and we want to keep people out of hospitals and nursing homes. My concern is the policy of the HSE at present. I understand that the HSE cost per hour to provide home care is approximately €35 per hour per person. That is based on the cost of administration and paying the person providing the home care. Private sector providers are charging €24 per hour. That is made up of administration costs, insurance, whatever else is involved and paying the carer.

**Senator Paul Gavan:** What are they paying their staff?

**Senator Colm Burke:** They are paying the staff the same rate as the HSE.

**Senator Paul Gavan:** They are not.

**Senator Colm Burke:** They are and if the Senator wishes to debate it I have no problem-----

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**An Cathaoirleach:** Please allow Senator Colm Burke to make his comments.

**Senator Colm Burke:** If the Senator wants the taxpayer to pay €35 per hour-----

**Senator Paul Gavan:** I want decent wages for those workers. They are not getting them.

**Senator Colm Burke:** I have no problem with €35 per hour being charged to the taxpayer but it is important that the taxpayer realises-----

**Senator Paul Gavan:** We are talking about the minimum wage.

**Senator Colm Burke:** It is important that the taxpayers realise what is happening. It is costing the HSE €35 per hour to provide home care per hour per patient. There is now a policy in the HSE of stopping people from the private sector without any cost analysis of what it is costing the taxpayer to provide that home care. I am seriously concerned about that. I can give another example relating to the cost of home care. I am aware of a situation where two new nursing homes were built by the HSE. One is being run by the private sector and the other is being run by the HSE. It costs €911 per bed per week in the home run by the private sector, while the cost in the home run by the HSE is more than €1,500 per bed per week. That is the difference. While people may criticise the private sector, it is providing and delivering the services.

I am worried about what is happening with the provision of home care. No cost analysis has been produced by the HSE about the provision and it is also directing the private providers to only provide a half hour of care when people want an hour. Client-directed care is not being sufficiently advertised. The HSE pays for the cost of this form of care, but the client, rather than the HSE, decides when - that is, at what time - the care is required. I think we need to review this. I also think there is a need for a cost-benefit analysis of the provision of home care by the HSE.

**Senator Jerry Buttimer:** I thank the 12 Senators who contributed to the Order of Business this morning. I join Senators Catherine Ardagh, Victor Boyhan and James Reilly in commending the men and women of the Dublin Fire Brigade on their heroism in preventing any loss of life last night. I congratulate and thank them for their profound bravery in responding immediately and swiftly to the fire at the Metro Hotel in Ballymun. I welcome the decision of the Garda Síochána to conduct an investigation into the events leading up to the fire. I do not want to pre-empt the report, but I certainly hope that if there are any findings, we will put them in place. I would like to give Members an illustration of the work done by Dublin Fire Brigade personnel last night. They went through the 15 storeys of the hotel floor by floor to ensure everyone had been evacuated and no one was still there. They deserve our praise and thanks. Last night's events highlight the need to create awareness among everyone about fire exits, fire alarms and smoke detectors in our homes. We need to be vigilant in preventing incidents of this nature. I commend Dublin Fire Brigade on its efforts last night. We must ensure there is no return to the bad old days when we saw the tragic loss of life in Grenfell Tower.

I would be happy for the Minister to come to the House for a debate on Brexit. Senator Ardagh is right when she says there is no good news on Brexit. The Government has made its position on a hard Brexit clear. I want to wish the Taoiseach and the Minister of State, Deputy McEntee, well as they travel to Brussels today for the talks on Friday. We have been clear on where we stand as a Government. I hope we will not be found wanting by our friends and colleagues across Europe. Ireland is a unique case as the country that will be most affected by Brexit. There is no good news on Brexit.

I would be happy for the Minister, Deputy Eoghan Murphy, to come to the House for a debate on the matter of rent. It is important to recognise that the Government has prioritised a range of actions to ensure existing rent predictability measures, such as rent pressure zones and increased security of tenure, are fully respected and enforced. Over half of all tenancies are now covered by rent protection zones. We are making sure landlords comply with the new rules. The figures show that there was a deceleration in the fourth quarter of last year, with standardised rents increasing by 1.1%, compared with 2.5% previously. As Senator Ardagh knows quite well, the Government is committed to Rebuilding Ireland and to increasing the supply of social and private housing.

I join Senator Boyhan in congratulating Ursula Halligan on her 18 or 19 years as political reporter for TV3. Her coverage was always balanced and fair. She has always been very courteous and professional. Her leadership and inspiration during the marriage equality referendum resonated with many people. Her intervention at a critical time in the campaign certainly struck a chord in the hearts of many people. I always found her courteous and diligent as a professional journalist. I wish her well in her new post in UCD. I think we should have a debate on the point made by Senator Boyhan about the relationship between the media and the body politic. We have not yet had such a debate.

Senator Boyhan rightly mentioned that tomorrow is Daffodil Day. I thank those who are volunteering across the country and wish them well in raising funds for hospice foundations and movements and for cancer care in all parts of the country. The great community spirit in Ireland is seen to be alive on Daffodil Day, which is a wonderful day. We all like to see the lapel badge - the daffodil of hope - as we look forward each spring. We will all support Daffodil Day tomorrow. I hope the weather will be good. As Senators will recall, we had a couple of years when this event was washed out. Tomorrow is a very important day and I thank everybody involved. I commend the Irish Cancer Society. As Senator Reilly said, one of the most important things we can do is eliminate smoking from our society so that we have a smoke-free Ireland.

Senator Paul Gavan referred to the unveiling of the portrait of Martin McGuinness. The most important legacy that people on all sides could leave in his memory would be a return of the power-sharing Executive in Stormont. It is important for all parties in the North to renew their efforts to go back into government. Martin McGuinness took a step to go into government with Ian Paisley and he took a step to lay down arms. On the anniversary of his death, the best legacy we can leave is for the Executive in Stormont to be returned. I hope that can happen.

Senators Gavan, Diarmuid Wilson and Frank Feighan spoke about the McAnespie family. I could not get to the audiovisual room today. We have had a debate on this matter in the House. Senator Robbie Gallagher has tabled a motion on it as well. We were all struck by what happened to young Aidan McAnespie. All of us want to see justice for the members of the McAnespie family, who have bravely and courageously highlighted this issue. Members can listen back to the powerful interview they gave on the “Miriam Meets” programme. I am not defending anything when I say for the record of the House that the Minister has said there are confidentiality issues with the Crowley report, which was compiled under the stewardship of Assistant Commissioner Crowley, and that to protect people-----

**Senator Paul Coghlan:** They got it wrong.

**Senator Jerry Buttimer:** Can I finish? The Minister has said in this House and elsewhere that due to the fear of intimidation or whatever, confidentiality commitments were given to

people living in the communities. The Minister has said he is open to looking at this. All of us recognise that part of the report was given to the McAnespie family in the past. In the interests of bringing closure to the family and helping to bring about justice, there should be another look at how we can ensure the Crowley report is presented to the McAnespie family. It should be given to them. I will be happy to have that communicated to the Minister from the House today.

Senator David Norris referred to a matter that was raised at the Committee on Procedure and Privileges and on which the Cathaoirleach has adjudicated.

Senators Norris and Aidan Davitt raised the forthcoming visit of Pope Francis, which was the subject of a discussion yesterday. It is important to recognise that this is an historic visit, but it is not a State visit. The Seanad Committee on Procedure and Privileges decided yesterday to look at how we can invite the Pope to address a joint sitting of the Houses of the Oireachtas. I know that the visit will take place on Saturday, 25 August and Sunday, 26 August. We should use this opportunity to welcome Pope Francis to our country. He is the head of the Catholic Church and he is very welcome.

**Senator Paul Coghlan:** Absolutely.

**Senator Jerry Buttimer:** He has helped to make the church a friendlier and warmer home for people than it was in the past. It is disappointing, as Senator Norris rightly mentioned, that a wide variety of families, including LGBT families, single-parent families and lone-parent families, were removed from a brochure promoting this event. I hope the church will recognise that the traditional family model has changed in today's Ireland and today's world. All of us should embrace this within the concept of family. If that means challenging the conservative perceptions and preconceived notions of some people, I think that is no harm.

Senator Reilly spoke about the Autism Spectrum Disorder Bill 2017. I am certainly not holding it up as Leader of the House. I will endeavour to find out where the Bill is for the Senator. I commend him on the remarks he made about cancer last week. I congratulate him for his Trojan efforts to achieve a tobacco-free Ireland.

I join Senator Maria Byrne in calling on everyone in Limerick to avail of the free vaccination this afternoon. It can be seen in today's report on the importance of the HPV vaccination that vaccinations work. I think we need to spread the message that vaccinations work. I hope people will take that up.

I congratulate Troy film studios on the imminent launch of "Nightflyers".

Senator Lombard raised the issue of bus services in Ireland. As he said, I also attended the meeting in Cork with Bus Éireann. As the Senator said, the cost of travel from Kinsale to Cork is €14.50 return. This does not promote greater use of public transport. The Government has increased the resources of Bus Éireann in terms of additional new buses. I agree with the Senator that in Cork we need additional buses, additional bus lanes, greater encouragement of the use of bus services and more customer friendly fare options. I am happy to ask the Minister for Transport, Tourism and Sport, Deputy Ross, to come to the House for a debate on bus services.

I, too, had a Commencement Matter on this issue ruled out of order, yet the Minister, Deputy Ross, was able to respond to a Topical Issue on Bus Éireann in the Dáil. I understand why my matter was ruled out of order but there needs to be accountability by Ministers to this House, be that in regard to the HSE or any other agency. It is not acceptable that Ministers, Departments

or organisations can refuse to come to the Houses of the Oireachtas to address issues, be that in committee or in either House. We need to be able to hold them to account. As I said, I understand why my Commencement Matter was ruled out of order but it is unacceptable that Members of this House cannot get a reply to a matter that is of importance to people in Cork city.

Senator Conway raised mass sporting events. I am open to correction but I understand there are regulations governing the licensing of events by the local authorities, working with An Garda Síochána and other agencies. The point made by the Senator in regard to Ennistymon is perhaps one that he could take up with the relevant authority in the area.

Senator Colm Burke raised home care packages, which is an important issue. We need to see more people availing of home care packages and I am happy to have the Minister come to the House for a debate on the issue.

Order of Business agreed to.

*Sitting suspended at 12.25 p.m. and resumed at 12.50 p.m.*

### **Message from Dáil**

**An Leas-Chathaoirleach:** Dáil Éireann has passed the Thirty-sixth Amendment of the Constitution Bill 2018 on 21 March 2018, to which the agreement of Seanad Éireann is desired.

### **Data Protection Bill 2018: Report Stage**

**An Leas-Chathaoirleach:** Before we commence, I remind Members that a Senator may speak only once on Report Stage, except the proposer of an amendment who may reply to the discussion on it. Each amendment on Report Stage must be seconded.

Government amendment No. 1:

In page 10, between lines 26 and 27, to insert the following:

“ “political party” means a political party registered in the Register of Political Parties in accordance with section 25 of the Electoral Act 1992;”.

**An Leas-Chathaoirleach:** Government amendment No. 1 arises out of committee proceedings. Amendments Nos. 1, 25 to 30, inclusive, 38 and 39 are related. Amendments Nos. 26 and 27 are physical alternatives to amendment No. 25. Amendment No. 27 is a physical alternative to amendment No. 26. Amendment No. 30 is a logical alternative to amendment No. 29. Amendments Nos. 1, 25 to 30, inclusive, 38 and 39 may be discussed together.

**Senator Alice-Mary Higgins:** Excuse me, I can just about hear. We do not yet have the groupings in front of us. Can I clarify are these all Government amendments that are being discussed now?

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**An Leas-Chathaoirleach:** I have just been reading that amendments Nos. 1, 25 to 30, inclusive, 38 and 39 may be-----

**Senator Alice-Mary Higgins:** Sorry, I am not able to hear.

**An Leas-Chathaoirleach:** I have moved Government amendment No. 1 and I pointed out it arises out of committee proceedings. Amendments Nos. 1, 25 to 30, inclusive, 38 and 39 are related. Amendments Nos. 26 and 27-----

**Senator David Norris:** Sorry, is it amendments Nos. 1 to 25, inclusive?

**An Leas-Chathaoirleach:** No. It is amendments Nos. 1 and 25 to 30, inclusive. Has Senator Norris got the sheet there?

**Senator David Norris:** I have it now.

**An Leas-Chathaoirleach:** That the amendment be made, is that agreed?

**Senator Alice-Mary Higgins:** Is the amendment being-----

**An Leas-Chathaoirleach:** I moved it.

**Senator Alice-Mary Higgins:** Is it being proposed now?

**An Leas-Chathaoirleach:** I moved it.

**Senator Martin Conway:** Agreed.

**Senator Alice-Mary Higgins:** Why? Sorry, if this is an amendment, with great respect to the Leas-Chathaoirleach, we need to be given the opportunity to speak to it.

**An Leas-Chathaoirleach:** There is no need for respect, everybody will get the opportunity. I have already read that. A Senator may speak once on each amendment, except in the case of the proposer who may reply at the end of that particular amendment.

**Senator Alice-Mary Higgins:** Sure.

**An Leas-Chathaoirleach:** Now, that is agreed. Does the Minister want to speak on this?

**Minister for Justice and Equality (Deputy Charles Flanagan):** I do but when the Leas-Chathaoirleach said, "There is no need for respect."-----

**An Leas-Chathaoirleach:** I did not mean it that way.

**Senator David Norris:** That is what the Leas-Chathaoirleach said.

**Deputy Charles Flanagan:** -----let me offer my respect to the Chair and, indeed, to the Members of the Upper House. In accordance with the Leas-Chathaoirleach's implied, if not expressed, suggestion, I will be brief.

Amendment No. 1 inserts a definition of "political party" in section 2 of the Bill, while amendments Nos. 25, 38 and 39 replace sections 43, 53 and 54 with updated text. These three sections contain references to "political party" and that is why they have been grouped with amendment No. 1.

Arising from our Committee Stage discussions and in particular, certain concerns that had been raised regarding the scope of section 43, I undertook to submit a revised text of section 43 and that is the purpose of amendment No. 25. In the meantime, there has been considerable media focus on this section in recent days and I want to take this opportunity to provide some further clarification on its purpose in the Bill.

Article 9.1 of the general data protection regulation, GDPR, generally prohibits the processing of special categories of personal data, including “personal data revealing political opinions”. Paragraph 2 of Article 9 lifts the prohibition in paragraph 1 in respect of a broad range of situations listed in paragraph 2.

While Article 9.2 itself does not provide for the processing of personal data revealing political opinions, recital 56 of the GDPR – the purpose of recitals is to provide guidance to interpretation of the GDPR’s articles – introduces uncertainty in respect of the extent of the prohibition on processing of personal data revealing political opinions in Article 9 by stating “Where in the course of electoral activities, the operation of the democratic system in a Member State requires that political parties compile personal data on people’s political opinions, the processing of such data may be permitted for reasons of public interest, provided that appropriate safeguards are established.”

In short, while Article 9.2 does not do so, recital 56 refers to the processing of such personal data subject to appropriate safeguards. I should add that an identical recital is included in the 1995 EU Data Protection Directive under recital 36 and a provision almost identical to section 43 can be found in section 2B(b)(x) of the Data Protection Act 1988. The difference is that section 43 of this Bill will impose stronger safeguards on the processing. This section is in compliance with the GDPR.

The Government’s main objective for including section 43 in the Bill has been, therefore, to continue to prevent misuse and to impose the appropriate section 33 safeguards on the processing of personal data revealing political opinions.

Section 43 imposes the following safeguards. It limits processing of personal data revealing political opinions to political parties; candidates for election to, or holders of, political office; and the Referendum Commission. It makes any such processing subject to “suitable and specific measures being taken to safeguard the fundamental rights and freedoms of data subjects”. This refers to the toolbox of safeguards set out in section 33 of the Bill. We had an opportunity earlier of discussing this, both on Second Stage and on Committee Stage. In short, processing cannot take place unless such safeguards are in place.

The safeguards include a broad range of measures to protect the rights and freedoms of individuals. Section 33 permits the relevant Minister to make the application of specific safeguards mandatory for specific types of data processing, including the processing of data revealing political opinions.

The revised wording of section 43 also makes it clear that the electoral activities to which reference is made are electoral activities carried out in the State by a political party registered under section 25 of the Electoral Act 1992; a candidate for election to, or a holder of, office in the State; or the Referendum Commission.

There are no grounds for fearing that this State can in any circumstances become a hub for the carrying out of electoral activities in respect of elections taking place outside the jurisdiction

or in other countries.

I will take this opportunity to point out that section 43 provides a legal basis for elected representatives, Members of this House and members of other institutions, whether members of political parties or not, to engage in data processing for electoral activities, including canvassing.

This represents an important aspect of the manner in which we engage in our democratic system. It allows elected representatives and candidates for elective office to reflect the concerns, anxieties and priorities of the citizens of the State, that is, the electorate. Supervision and enforcement of data protection standards and rules, including section 43, will be a matter for the independent office of the data protection commission.

Government amendments Nos. 38 and 39 incorporate the revised wording in respect of the Referendum Commission into sections 53 and 54, respectively. As regards amendments Nos. 28 to 30, inclusive, I cannot accept amendment No. 26. I probably need to speak to these amendments now in anticipation of their being moved.

**An Leas-Chathaoirleach:** Some of them are included in the group. Amendments Nos. 25 to 30, inclusive, are up for debate now.

**Senator Michael McDowell:** On a point of order, I respectfully submit that the matter be recommitted for Committee Stage treatment so that we can have a conversation about this rather than set speeches. I am slightly-----

**An Leas-Chathaoirleach:** I am on Report Stage.

**Senator Michael McDowell:** Yes, but I am entitled to move that it may be recommitted. I want to tease a few things out and speeches will not be the way to do it.

**An Leas-Chathaoirleach:** I am advised that Senator McDowell could move for recommitment of relevant amendments within the group if the House agrees.

**Senator Michael McDowell:** Yes. I so move.

**An Leas-Chathaoirleach:** Which ones are you referring to?

**Senator Michael McDowell:** The ones we are discussing in this group.

**An Leas-Chathaoirleach:** Amendment Nos. 25 to 30, inclusive.

**Senator Michael McDowell:** Amendment Nos. 1, 25 to 30, inclusive, 38 and 39.

**An Leas-Chathaoirleach:** Is that agreed? Agreed.

Bill recommitted in respect of amendment No. 1.

**Deputy Charles Flanagan:** I will not accept amendment No. 26 which would delete section 43 in its entirety, nor will I accept amendment No. 27 because it would remove the reference to Referendum Commissions.

**Senator David Norris:** We will move them anyway.

**An Leas-Chathaoirleach:** We will deal with that when it arises.

**Deputy Charles Flanagan:** I do not see the added value of amendment No. 28 which refers to a private or commercial company, which is not defined in the amendment. Section 43 confines the processing of data revealing political opinions to candidates, political parties, holders of or aspirers to elected office in the State and the Referendum Commission. In conclusion, I fear that amendments Nos. 29 and 30 are based on a misinterpretation of Article 9.2(d) of GDPR in that they appear to transpose that provision into national law. There is no need for that because it has direct effect without any need for national law. I cannot accept amendments Nos. 29 and 30.

**Senator David Norris:** I welcome the Minister to the House and the discussion on the Bill. I also very much welcome the move by Senator McDowell to open the matter up for discussion. I imagine that some of these amendments arise from the situation caused by the revelations about Cambridge Analytica. They are indeed extremely worrying.

As an aside, with regard to university elections and access to data, it is a significant hindrance that candidates in university elections are disbarred from access to the database which provides details of email addresses. I have had a long battle about sending out manifestos and using allowances. One of the responses I received was that I could easily do such work by email. One cannot do work by email when one does not have the email addresses. It seems to me there should be some flexibility.

The Minister said that the Bill would prevent Ireland becoming a hub for interference in other countries' elections. I hope he is right, but I do not know whether that is the case. People are now so extraordinarily sophisticated, especially in Russia, that it is difficult to predict exactly what they can or cannot do. It is important that we allow freedom to candidates in elections to use information from databases.

Some of the data protection issues are a little bit fussy. Some time ago I sent an email to a small section of the electorate and asked my secretary to contact the agency which looked after this for me. I wanted to advise it that I wished to exclude the people to whom I had already sent material. When we contacted the company, it told us it had destroyed that information under data protection rules. It is a bit mad that when one selects a target group and instructs a company to send out materials, on contacting the company later it then says it no longer has the information under data protection law. Who is being protected? There are some significant issues.

I welcome the fact that we appear to be addressing the kinds of situations which have been revealed to us by Cambridge Analytica. I welcome what is being done. I say that even though I am computer illiterate and hope to remain so.

**Senator Fintan Warfield:** We are speaking to the first group of amendments. I am supportive of the amendments, except for amendments Nos. 25 and 39. On amendment No. 25, I wish to quote from Article 9.1 of the GDPR, which states:

Processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation shall be prohibited.

The key phrase is “shall be prohibited”. I understand that there are exemptions under Article 9.2, but Sinn Féin is of the opinion that the amendment presented by the Minister today does not fit the definitions of any of those exemptions outlined. Therefore, we have reached the conclusion that what the Minister has proposed directly contradicts Article 9.

The Minister may point to Recital 56, but that is an interpretation rather than actual law and for Sinn Féin does not provide sufficient safeguards. It is on that basis that we will oppose the Bill in its entirety, along with other reservations we have outlined during the debate. Aside from being contrary to the GDPR and, by extension, European law, it is far too ambiguous. It creates a situation in which an unintended loophole may arise, leading to an infringement of rights in the context of data protection for our citizens. I will also oppose amendment No. 39 for the same reasons.

**Senator Michael McDowell:** I have a number of issues. I want to be clear about what we are actually doing. Section 43 of the Bill in its present form-----

**An Leas-Chathaoirleach:** The Senator should read his sheet again.

**Senator Michael McDowell:** Maybe I am being-----

**An Leas-Chathaoirleach:** If you wish, we will hear you out.

**Senator Michael McDowell:** Section 43 of the Bill deals with a political party and uses a definition of a political party. I am not trying to stray outside the groupings. The section reads:

Subject to suitable and specific measures being taken to safeguard the fundamental rights and freedoms of data subjects, the processing of personal data revealing political opinions shall be lawful where the processing is carried out in the course of election activities for the purpose of compiling data on peoples’ political opinions by—

(a) a political party,

(b) a body established by or under an enactment (other than the Act of 2014 or a former enactment relating to companies within the meaning of section 5 of that Act), or

(c) a candidate for election to, or a holder of, elective political office.

The problem I want to tease out slightly here is that we are talking about processing carried out in the course of election activities. That is temporally limited. To take a concrete example, Joe Soap is standing as an Independent candidate in the constituency of Kerry. He has a group of canvassers out working for him. Those canvassers work door to door with the registers in, for example, Tralee. They note that Senator David Norris has said that he is concerned about issues A, B and C. He lives in Tralee for the purposes of this example.

**Senator David Norris:** It is only A and C. I am not interested in B.

**Senator Michael McDowell:** Fair enough. In any event, he is noted as somebody who is particularly interested in some particular issues, issues A and C. The question is then whether processing of that material is lawful in the context of an election but unlawful at a later point. For instance, if the Senator says that he is hugely interested in having a referendum on issues X, Y and Z - we will leave out Y to be fair to the Senator - is the political party or candidate effectively required to stop processing that information thereafter? Are they allowed to come

back to him, process his data and put him on lists of people who are interested in issues X and Z thereafter?

I have no doubt that the Data Protection Commissioner is a very reasonable officer, but will people be able to ring up political parties or Joe Soap, the Independent candidate, and say that canvassers had visited them two years ago, that they expressed some opinions, and that they want the party or candidate to never visit that issue again? Is that the kind of territory we are in? If we are to have this provision in respect of a candidate for office, if that is what we are going to do, is it personal to the candidate or are people or a movement supporting a candidate, other than a political party, also required not to process the data? Do these protections arise in that context?

I will use a topical example. Suppose there was a party which had strong pro-life views and that it canvassed strongly on that issue, or that there was an individual who was standing on a pro-life ticket. Suppose that individual amassed, through his or her canvassing, a picture of people's preferences in respect of that issue, one way or the other. Is that person obliged to cease processing outside of the electoral process? Does it become unlawful to process those opinions other than for an electoral purpose?

I am slightly worried that in putting all of this in such explicit detail we are ruling out a lot of things which could be perfectly legitimate as part of the democratic process. That is really what I would like to tease out here. I feel that we are putting in place fairly strict constraints on the processing of these kinds of materials. For instance, in my years standing for the Dáil - and I stood six times, winning three times and losing three times - I could have accumulated a fair amount of information from registers about what people thought, what they did not think and whether they were going to vote. I would like to have some indication as to whether I am entitled thereafter to use that material or whether I will be suddenly told that I will only be able to process that material for electoral purposes.

**Senator Alice-Mary Higgins:** I will begin by responding on the wider set of amendments. I will address the concerns raised by Senator McDowell. I do not think that he needs to be concerned in respect of those areas, although there are very serious reasons for concern in respect of other inadvertent consequences and loopholes which are opened up by section 43 of the Bill.

I will pick up on one or two points which the Minister made because it is important to clarify them. This will allow me to answer Senator McDowell's questions. The Minister suggested that Article 9(2) of the GDPR did not in itself address the question of political processing and that therefore he had turned to the recital in generating the responses and the elements within this Bill. Article 9(2) is, in fact, very clear. To spell it out, Article 9 is the section of the General Data Protection Regulation that sets out special categories of information. These are data above and beyond. It is not names, addresses and ages. It is information considered to be particularly sensitive such as information on one's health, sexual orientation, or religious or political beliefs. The General Data Protection Regulation seeks to give special protections to those areas of sensitive data.

Article 9(2) sets out a number of circumstances under which such data can be processed, because it is a realistic set of regulations which recognises the need to process data such as this at certain times. Again this refers to processing data at certain times without consent. Consent is a key issue to which I will return. It recognises that there are circumstances in which consent may not explicitly need to be sought in order to process data. One of those circumstances is

laid out in Article 9(2)(d).

It refers to situations in which “processing is carried out in the course of its legitimate activities with appropriate safeguards by a foundation, association or any other not-for-profit body [the inclusion of not-for-profit bodies is important in terms of the rationale for one of my amendments] with a political, philosophical, religious or trade union aim and on condition [this part relates to the questions which Senator McDowell has asked] that the processing relates solely to the members or to former members of the body or to persons who have regular contact with it in connection with its purposes [that is in connection with those political purposes] and that the personal data are not disclosed outside that body without the consent of the data subjects”. To clarify, certain of the actions which the Senator has described are completely appropriate and still possible. Other actions may be required to pass the extra bar of consent. That is appropriate.

To look at the register, it has been made very clear by the Minister and his Department that electoral registers are a completely separate issue to section 43. Electoral registers are not included as a special category of personal data. Perhaps they might be if there were markings on them or so on.

**Senator Michael McDowell:** I was referring to remarks on the register.

**Senator Alice-Mary Higgins:** Under the GDPR and under my amendment, processing the data of persons who are in regular contact with a candidate or party is allowed under the GDPR. These might be, for example, people who have said that they would really like a referendum on a given issue and whom the candidate or party reverts to, has correspondence with and notes that they are interested in that area if the issue arises subsequently.

What is probably not allowed under the GDPR but which may be allowed under this section is for a candidate to take data which falls under special categories of personal data relating to a person’s sexual orientation or religious, philosophical or political beliefs, which he or she has gathered in a completely different context, and to simply transfer them over to somebody else without consent. That is not allowed under the GDPR, however it might be allowed under the Government’s amendment and that is a concern.

The debate on section 43 which we have heard in recent days addresses the processing of personal data revealing political opinions for the purposes of electoral activities. There has been increased concern about this. I have been concerned about this area for a long time and spoke on this area at the World Forum for Democracy last autumn. It is a deep concern for parliamentarians right across Europe. What we have seen brought to the fore again in recent weeks is just how dangerous unregulated processing of personal data can be in affecting and distorting political outcomes and the political process. We have seen the cynical and manipulative work carried out by Cambridge Analytica. I am sure Members have heard how the data of 50 million voters was harvested so that the personal information that they had shared on a social platform could be used by political actors to microtarget advertisements to them to sway their position, without them giving any consent or having any knowledge that this process was happening. The company accessed the data of 50 million users, advertised to them in a microtargeted way, played on their specific fears and concerns in order to influence their votes and allegedly used 40,000 to 50,000 variants of advertisements every day. The response was continually measured and the targeting was adapted and evolved based on that response. This is a dangerous new development in the distortion of democracy and it has rightly been a cause for alarm.

There is nothing in section 43 of this Bill or the amended section 43 proposed by the Minister to stop that from happening in Ireland. I recognise that the amendment to section 43 seeks to limit it to electoral activities within the State. However, if a political party, a candidate for election or a holder of elected political office in the State wishes to hire Cambridge Analytica, or the many hundreds of clones of Cambridge Analytica which now proliferate in countries across the world, there is nothing in this section of the Bill to stop that from happening.

I am conscious that this Bill will not affect the current referendum because it will probably only come into effect at the time of the referendum. Senator McDowell mentioned actors who may be affiliated with a pro-life campaign. They are not compiling canvassing records. We know that one of the sides in the referendum, those who are advocating against repeal, have already hired a former analyst from Cambridge Analytica. They are already working with that person. App developers who worked with the Trump-Pence campaign to harvest data are working with political actors here in Ireland now. It is happening, and it is a real and present danger.

There may be an attachment to some of the old ways of doing things and a concern about which activities might need to be re-evaluated. However, I genuinely believe that genuine political activities, for example the taking of an electoral register or going door-to-door to canvass those who are on the electoral register, are still completely legitimate. The danger arises from the new kind of activity, which is legitimised and allowed for under this section. It is a very serious concern. I acknowledge that the Minister has taken on board one of our recommendations from Committee Stage, in that the provision has been narrowed to refer to the Referendum Commission in the performance of its functions, rather than a wide framing of multiple bodies. I acknowledge that narrowing. It is constructive.

I also acknowledge that the Minister has listened to the genuine alarm expressed across Europe that Ireland should become a hub for this kind of dangerous electoral manipulation and targeting. The Minister has sought to limit it to electoral activities in the State. However, with respect, the fundamental problem still remains. There is nothing here to limit this activity and to ensure that private companies are not hired to do it.

I also support those who are seeking to have this section removed, reframed and reconstructed. That is something the Minister might want to genuinely consider. He has a chance to reconsider this entire area. Nonetheless, I propose three new sections which I think could ameliorate some of the worst impacts of section 43.

My amendment No. 28 specifically refers to, “The processing of any special category of personal data [those special categories of personal data include sexual orientation, religious and political beliefs, and several other enumerated items] by a private or commercial company [the Minister may query the term “commercial company”, but it gets to the core of what is intended by Article 9 of the EU GDPR] for political or electoral purposes shall be prohibited without explicit full and informed consent of the data subject.”

To be clear, RED C polling, focus groups and market research can all continue. This amendment simply provides that if a candidate or party brings a private commercial company into the electoral process and charges it with gathering and processing data, whether in the form of polling, market research or focus groups, there must be certainty that those participating are aware that it is for political purposes and agree to it. They must at least agree that political purposes are part of the function of what they are doing. Article 9.2(a) of the GDPR makes that clear. This proviso is the clearest and most important provision, “the data subject has given explicit

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consent". I have responded to polls on the phone and I have given my consent to ask questions. I am sure many will continue to do so. My amendment seeks to prevent those situations where people's information is gathered, they have not given consent to that information being used politically and it is used to target and manipulate them.

I want to be clear. Cambridge Analytica and Facebook are only the beginning of this problem unless we address it. There are 100 clones of Cambridge Analytica. Many of those who worked for Cambridge Analytica have set up their own companies. There are multiple companies seeking to work in this way. Facebook has allowed those data to be harvested. We should not rely on social media platforms not to allow data to be harvested from them. For every Facebook there will also be apps, small companies or fly-by-night social media platforms that appear for a while simply for the purposes of gathering data. We know that there are apps whose entire purpose is to gather data which can then be sold. If the operators come under pressure, the apps can disappear and the companies can fold and reopen as different companies. We are looking at a dangerous landscape in which mercenary actors can seek to actively influence political outcomes, unless we get this right and regulate it.

It is important to note that when I talk about the harvesting of personal data, I refer to the processing of personal data revealing political opinions. There is no constraint on what kind of personal data it is or where it is found. Is it found in a Snapchat conversation or a Facebook conversation? There is no limitation. There are three elements here. The first question concerns who is doing the processing. Whether it is carried out by private companies is a key issue. I know that addressing this is the intention the Minister has set out for section 43. The other two issues are whose data is being processed and what kind of data is being processed.

My amendments Nos. 29 and 30 relate to the question of whose data are being processed. In these amendments I have returned to the language of Article 9.2(d) of the GDPR, which provides that the data should be that of "members or to former members of the body" carrying out the processing, namely, persons who are in pre-established contact with a candidate or a party around political issues. In that respect, the Minister has said that he does not feel that it is necessary to put the language from Article 9.2(d) into the Bill, because the GDPR applies. If the Minister will not accept my amendments, which I think would add clarity and be very useful, can he confirm that under section 43 it is only those categories set out Article 9.2(d) whose data can be processed? My amendment is complementary to section 43 and would ensure that any actions taking place under the section come into line with those appropriate and acceptable data subjects for processing identified in the GDPR. Could the Minister clarify that?

The Bill has been recommitted in respect of these amendments but I hope we will not have to go back and forth too much. However, I have a serious concern in respect of amendment No. 39 and section 54 overall. I am aware that it is being opposed. We talked about how appropriate it might be to seek consent when one is choosing to process personal data people give - for example, in respect of their religious beliefs or faith - for political purposes. There will be situations whereby people's faith alone will be used to target ads at them, potentially politically, under section 43. In the context of amendment No. 39, not only are we removing the requirement for consent, we are also saying that the right of a data subject to object to the processing of personal data concerning him or her shall not apply. There is a real danger in this section. Not only are we not requiring consent, we are also removing the possibility to object.

As a basic principle, a person should surely have the option to object if his or her data are being processed in an inappropriate way for electoral purposes. Senator McDowell said that an

individual should be able to make a phone call and say that he or she does not want his or her information processed. People should be able to do this. If somebody is sufficiently concerned at how his or her personal data are being processed in the context of political or electoral activities, it should be possible for him or her to take that active step and say “I do not want to be part of this particular processing by this party or by this candidate.” He or she should have the right to object and to be removed from the list. If I am receiving microtargeted ads again and again from a candidate, then I should be able to say I do not want them any more and that I would like to be removed from the relevant database. All of us will have had one or two people over the years who have said that they did not want to be in our database. That is an appropriate thing to ask. We say “Yes” and remove them from it. It is a basic right and I am very concerned at it being removed under amendment No. 39.

**Senator Michael McDowell:** Perhaps Senator Higgins misunderstands me. I am not just dazzled in this context by Cambridge Analytica or Big Brother doing X or Y with data they have harvested around the world; I am concerned with very basic, ordinary aspects of our political process.

**Deputy Charles Flanagan:** It is the bread and butter with which the Senator is concerned.

**Senator Michael McDowell:** Exactly. I am not suggesting for one moment that Senator Higgins is not right to be concerned about the other issues. They are probably much more contentious and more newsworthy this week than they were previously. However, I am actually concerned with the whole process of participating in the political life of our country. I do not have all the answers and do not claim to be expert in all of this. I do have reservations, for example, about confining this to processing in the course of electoral activities. Political purposes are often different from simple electoral activities.

The Bill has to go to the Lower House and there will be time to consider these matters further. I am not going to be obstructive in any way. However, I ask the Minister to consider whether this is perhaps too narrow a focus. What would be the position if one could not canvass other than in the context of elections? I remember talking to the former Taoiseach, Bertie Ahern, and he said that in order to see how the wind was blowing, he used to spend a Saturday afternoon talking to people on their doorsteps.

**Deputy Charles Flanagan:** The electoral wind.

**Senator Michael McDowell:** One could say it was the electoral wind but he would have said it was something different.

The other point is that in this context, the term “electoral” may have to be defined as including campaigns to amend the Constitution and referendum campaigns. Elections are different from referendums. A political party, its members or a candidate for election to or a holder of electoral office are very personal and restrictive categories and I think they should be broadened and the phrase “by or on behalf of” should be introduced. To grant the right to process data to an independent candidate in Kerry South is not much good. He cannot sit at home processing all his own data. Somebody has to do it on his behalf. Likewise, a party’s members may or may not be the people who sit down to draw up the lists and collate the information that has come back.

I fully agree with Senator Higgins that we have to have an eye on the Big Brother aspects of Cambridge Analytica. I note that the latter has Steve Bannon among its former directors, which

sets alarm bells ringing in many people's minds. However, I am much more concerned with what happens in Ireland. I do not want to talk about the pro-life referendum at this stage in this context because that will only distract people. However, it is perfectly legitimate for groups of people who are not members of political parties to organise in order to change the Constitution or to resist change to the Constitution. I know, for example, in the context of the upcoming referendum, there are campaigning groups that are not political parties being formed on both sides of the issue. I am worried that the language being proposed here is very narrow in scope and should be broader if we are really to have a healthy democracy.

The other aspect Senator Higgins might take into account is that processing data does not necessarily mean giving it to somebody or receiving it from somebody else. Processing refers to anything one does at all, such as, for example, converting a list of people who said they would vote for one into a list of those to whom one might write reminding them that polling day is the day after tomorrow or whatever. It is not just a matter of people harvesting data from Facebook sites internationally, moving them around the world and engaging in this kind of "Star Wars" existence, which is frightening. The more I hear about it, the more frightened I become. The bit that worries me, however, is that what we are legislating for here, if it is going to be upheld by the Data Protection Commission from here on, could be extremely restrictive.

As somebody who has contested many general elections, one thing that I always am slightly annoyed about is "no junk mail" notices. If I want to communicate with my voters through a newsletter or whatever, I do not consider my newsletter to be junk mail. Rather, I consider it my right to tell them why I am standing and, at the very least, communicate with them in an ordinary way. Unless it is going to be done by post with a stamp for every communication or whatever, the only way we can do that is to get our material through their letterboxes. I am afraid that the no-junk-mail mentality would apply to data subjects, which would make it extremely difficult for political parties or non-party political movements to carry out their activities.

A group was established to oppose the referendum to abolish this House. I was part of that group and was a member of one of its committees. There were approximately 200 or 300 people in the group. When I was standing for election to the Seanad on the NUI panel, I wrote to the individuals who had been in that group whom I could identify as NUI voters to say that I was standing on a reform the Seanad campaign. I got two snotty replies to say how dare I process data and communicate with people about a subject about which we were supposedly all in agreement about a year earlier. For a few weeks I feared that I would be reported to the Data Protection Commissioner for abusing one list in order to write to people when I knew they had an interest in the subject.

I apologise if I am not soaring into the heights of Cambridge Analytica. I am concerned about what happens on people's doorsteps. I am concerned that groups that want to campaign in referendums should have their rights protected and accommodated in the same way as party politicians. I am concerned that a political party and its members are in one category but that a personal candidate or the holder of an office is put in the other category. Most personal candidates are not in a position to process much data by themselves. I ask that we consider the language here and, not to be obstructive or negative, I ask the Minister to give some indication that he will look at these issues again because it has to be brought to the other House, even if it has to come back here after this Report Stage. I want to ensure that these issues are addressed.

**Senator Alice-Mary Higgins:** I recognise the concerns, and that is why there is some tension about Article 9.2(d). I urge Senator McDowell to look again at Article 9.2(d). That provi-

sion permits a wide range of activities. It is important because it applies not just to political parties but is much wider than that. It refers to any “not-for-profit body with a political, philosophical, religious or trade union aim”. In many ways the general data protection regulation, GDPR, provides a wider vision of the kinds of activities that might be taking place than those set out in section 43. I have tried to bring in one part of Article 9.2(d) by way of amendments Nos. 29 and 30. I agree with the Minister about the other parts of this provision. A trade union must be able to process political opinion, including that of its members and those who are in contact with it. That is envisaged and allowed for in the European regulations.

I have canvassed and gone door to door at length in many campaigns, for example in the Seanad referendum, alongside the Senator. I believe that canvassing, market research and polling are allowed under this legislation. Market research and polling must be done by consent, and those responding must be aware that they are participating in political polling or political market research. That is appropriate. The information that is not in the special category of personal data, such as age and address, is not covered under the professional categories and personal data headings in the same way. Special categories of personal data, the categories we are talking about trying to protect, are sensitive categories, and that is why they must be used sensitively and appropriately. Those kinds of data can be processed under Article 9.2(d) where they are being used for purposes that are appropriate. The key here is the reference to “not-for-profit body”. If an NGO or a grouping wishes to campaign on a referendum it is free to do so, but if a company established to make a profit wants to get involved, that is different. That is why amendment No. 28 seeks to bring in stronger rules when a for-profit company is involved. These companies may have multiple clients. We need to have an extra safeguard against these companies. I believe that the normal, healthy activities of a vibrant political state can continue without section 43.

**Deputy Charles Flanagan:** These issues will of course be subject to further consideration as the Bill travels from the Upper House to the Lower. I very much value the opportunities we have had over the past hour or more, having recommitted the legislation to Committee Stage. I acknowledge the breadth of the debate with Senator Higgins on one end of the argument and Senator McDowell on the other. The legislation attempts to reach a balance. Its essence is about the protection of the data of our citizens. This is important legislation for the consumer and the citizen, and for those whose data may well be the subject matter of abuse. Section 43 is important because it allows for something of a special status for the conducting of political activity, which as both Senators have said is important in the context of our democracy. We are traversing the terrain between Cambridge Analytica on the one hand and Cambridge Road, Rathmines, on the other. We need to address the balance here.

Senator McDowell is of the view that the section as currently constructed is too narrow and that in many ways it could well curtail or restrict what he, and I am sure all of us here present, would regard as lawful political activity. I remind Members that the revised text of section 43 refers to “electoral activity” rather than “election activity”. Undoubtedly electoral activity is considerably broader in context than what might be described as a narrower election activity, lest Members be of the view that this provision would only apply within a certain timeframe, namely, during an election campaign, once an election has been announced or after these Houses have been dissolved. That is not the case. Electoral activity is considerably broader and, to my mind, will cover the issues as raised by Senator McDowell in terms of flexibility, or in terms of the processing of data for political activity. It will not just apply during the timeframe of an election campaign but perhaps at any stage in the context of our political deliberations. I feel

that the element of flexibility in the revised text will meet the concern of Senator McDowell. It is broader, and it does denote a greater level of flexibility.

I found the debate useful, and while I do not accept amendments Nos. 28 to 30, inclusive, tabled by Senator Higgins, I acknowledge the importance of the issues she raised. The issue will be given further consideration. Even though Senator Higgins is not a Member of the Lower House, when the House is considering the matter I know she will be keeping a close eye on matters in any event, having regard to her interest in this issue.

Article 9.2(d) of the GDPR relates to membership bodies, including political parties, but it does not refer to candidates, nor does it cover people going for electoral office, people entering an electoral contest or people engaging in political activity who are not members of a political party, for example, an Independent member seeking election to political office in this State. I also recall Senator Higgins using the phrase “pre-established contacts”. If they are pre-established contacts, they are not new and if they are not new, they could well disadvantage, or be to the exclusion of, somebody who decides, not having engaged in the particular process, to run for office, not having done so in the past. Those people represent a very important aspect of our political engagement. It is important they would not be placed at something of a disadvantage.

**Senator Alice-Mary Higgins:** “Regular contact” is the actual phrase in the Bill but I accept the Minister’s point.

**Deputy Charles Flanagan:** I thank the Senator for that.

**Senator Alice-Mary Higgins:** I clarify that the amendment contains the phrase “regular contact”.

**Deputy Charles Flanagan:** My section 43 will allow for Independents who are not members of registered political parties to process data that does not seem to me to be covered by Article 9.2(d) of the general data protection regulation, GDPR. If I were to accept the Senator’s amendments, having regard to the very positive and helpful nature that is intended, I would be concerned, for example, that Independent candidates would be allowed to process political opinions of members or former members of political parties only but that it may not allow for the processing of data for the public at large. If that were to be an interpretation, acknowledgment or a ruling in that respect, that, in essence, would be bizarre.

**Senator Alice-Mary Higgins:** In any event it would be linked to section 43, so the interpretation would be that of the Minister’s section 43.

**Deputy Charles Flanagan:** I would be happy to give it further consideration but I believe over the last while, between Senator McDowell on the one hand and Senator Higgins on the other, we have seen the need to engage in a type of balancing that will allow for ongoing engagement with the public on the part of people running for office, having particular regard to this being a special aspect of engagement that might not necessarily be the case in other countries.

I refer to the concept of door-to-door canvassing and the level of competition in the course of an election, in the run up to an election or during times when an election is not taking place, the type of engagement we have with our electorate being probably somewhat closer or perhaps even more personal than might be the case in other jurisdictions. It is precisely because of this that I believe section 43 is important, the importance of it also being in the context of it confin-

ing the processing of data revealing political opinions to parties and candidates for elections, those going for office, a referendum commission and those engaged in active political participation. I am a little concerned that amendments Nos. 29 and 30 do not fully accord with the reading of Article 9.2(d) of the GDPR. They would appear to merely transpose that provision into national law which, to my mind, is not as clear or as potentially wide in scope as section 43.

**Senator Michael McDowell:** I welcome the Minister's openness to look at all these issues again. There is quite a difference between Cambridge Road, Rathmines, and Cambridge Analytica. Perhaps I am much more pedestrian in my focus but I am looking at it from that point of view.

There is now an explicit reference to a referendum commission carrying out a processing of political opinions. I would make one observation on that. It is a long-established phenomenon in politics that people lie in retrospect about what they did in elections and referenda when they are surveyed afterwards. John Kennedy scrapped home with a tiny margin when elected to office in America but as soon as the opinion polls were done shortly afterwards, the number of people who claimed to have voted for him suddenly shot up to 55% or 60% just like that.

The findings in several referenda in which the Referendum Commission here has published its post-referendum analysis are interesting. I noted, for instance, that the margin in the referendum to keep the Seanad suddenly shot up when people told the Referendum Commission the way they had voted, the implication being that people almost always like to be on a winning side.

I would put this marker down for various referendum commissions in the future: they should not rely too much on their opinion polls. People will say they were confused but these are people who are already deceiving them as to what they actually did. People have said that they found the ballot paper confusing. In many cases the percentage of people who told the Referendum Commission they voted differs widely from the percentage of people who turned out. We should not put too much credence on opinion polls. Future referendum commissions should be circumspect in their reliance on post-referendum opinion research because it is nearly always untrue and distorted by wishful thinking on the part of the people to whom they have spoken. I will not push my points any further and I will not delay on this matter. I am happy that we go out of Committee Stage if everybody else is agreeable.

**Senator Alice-Mary Higgins:** We have much ground to cover today and we will move on to that shortly. Amendments Nos. 29 and 30 were an attempt to marry Article 9.2(d) with the provision set out by the Minister's Department in section 43. The language as to who is included is the language taken from section 43, which includes election candidates of every kind, Independent, party or otherwise.

I have taken the language used by the Minister's Department in the who does the processing element in section 43 and applied it to the who is processed element from Article 9.2(d). There is provision to perhaps have a better transposition of all of the spirit of Article 9.2(d), which would deal with those wider actors that were mentioned but for now I believe the concerns do not arise in respect of Independent candidates except as they arise potentially anyway under section 43.

The Minister drew on a recital in his initial speech around the functioning of democracy and

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so forth. It is the interpretation of such recitals which is perhaps justifying that slightly wider element but it is still in the spirit of Article 9.2(d).

Amendment No. 28 specifically relates to entities that are not not-for-profit bodies as envisaged under the GDPR but which are commercial entities and their role as actors in that context. That is a crucial amendment. In respect of the other amendments, I am happy to work with the Minister to see how we can marry Article 9.2(d) better with section 43.

I have to press amendment No. 28 on the role of private and commercial actors. Does the Minister have any last thoughts on that and could he address the concern about amendment No. 39 which makes it the case that people will not have the capacity to object to the data on their political opinions being processed?

**Deputy Charles Flanagan:** That is not unreasonable and if it is not clear in the legislation it is worthy of further consideration.

To return to Senator McDowell's point about junk mail or unsolicited material, it is very subjective. We probably all form the view that the other candidates' mail is the junk mail and ours is not.

**Senator David Norris:** The Minister's is.

**Deputy Charles Flanagan:** However, it is the person going to the polling booth who decides which is the junk and which is not.

I want to return to a point that I may not have made clear, and to go back to Cambridge Analytica, rather than Cambridge Road. There is absolutely no reason for anybody to fear that Ireland, our jurisdiction, will become a hub for the carrying out of any electoral activities in respect of elections not taking place within this jurisdiction or beyond. That is clear in my amendment to section 43. That is also important in the context of the current debate on the harvesting or alleged misuse of data as processed.

Amendment agreed to.

Bill reported with amendment.

**An Leas-Chathaoirleach:** Amendments Nos. 2, 14 and 15 are related and may be taken together by agreement. Is that agreed? Agreed.

Government amendment No. 2:

In page 11, to delete lines 27 to 29.

**Senator David Norris:** This amendment seems to be a bit odd because it purports to delete two lines and by deleting them it makes a complete grammatical mess of the whole paragraph which starts: "An appropriate authority (within the meaning of the Civil Service Regulation Act". The two lines deleted start with the end of the Title of the Act "1956) may, as respects all or part of the personal data kept by the authority, designate a civil servant in relation to whom it is the appropriate authority to be a controller and". We are left swinging with an "and" at the end. If it was so amended, and I hope I am right, "on page 11 to delete lines-----

**An Leas-Chathaoirleach:** Is the Senator speaking on the right amendment?

**Senator David Norris:** I think so. It is amendment No. 2.

**Senator Alice-Mary Higgins:** It is section 33.

**Senator Martin Conway:** There might be issues there. The Senator might not be right.

**Senator David Norris:** Am I not right? Please tell me.

**Deputy Charles Flanagan:** I will be helpful to the Senator but would never suggest that he is not right in anything.

**Senator Martin Conway:** Well then he is not correct.

**Deputy Charles Flanagan:** It could well be that he is reading an earlier draft.

**An Leas-Chathaoirleach:** I hesitated as well.

**Deputy Charles Flanagan:** This refers to the Bill as amended on Committee Stage. We are merely deleting subsection (2).

**Senator David Norris:** Do the two lines make sense?

**Deputy Charles Flanagan:** The two lines do make sense, ending with “section 33”.

**Senator David Norris:** I thank the Minister very much.

**An Leas-Chathaoirleach:** The Senator may be looking at the wrong copy of the Bill.

**Senator David Norris:** I was speaking from the copy of the Bill that was available-----

**An Leas-Chathaoirleach:** It could be the Bill “as initiated” rather than “as amended”.

**Senator David Norris:** The what?

**An Leas-Chathaoirleach:** The Bill “as initiated” rather than “as amended”. The Senator may have the wrong copy.

**Senator David Norris:** It does not matter a damn. It was the one that was left out for us in the corridor.

**An Leas-Chathaoirleach:** I am not responsible for what is left out for the Senators.

**Senator David Norris:** What was left out was the wrong Bill.

**An Leas-Chathaoirleach:** We will have it checked.

**Senator David Norris:** I am very glad to realise that any impugning of the grammatical proficiency of my dear friends on the seats behind the Minister is regarded as redundant. That is all I have got to say on the Bill. I am off, thank you very much. Bye-bye.

**Senator Alice-Mary Higgins:** These amendments relate to section 33 of the Bill. We discussed it at length on Committee Stage. It concerns the “Suitable and specific measures for processing”. These measures are a toolkit introduced by the Minister as suitable specific additional measures for processing. They are usually applied in a situation where the consent of the data subject, the person, is being bypassed. They relate to many sections of the Bill whereby a

legislative permission to process data is put in that does away with the requirement for consent.

The Minister has engaged with me in this area. I feel, however, that there may be a distance to travel. I knew this would be resubmitted so I have only touched on these areas. I will not go into great detail. Could the Minister explain why he has removed what was part (vi), “other technical and organisational measures designed to ensure that the processing is carried out in accordance with the Data Protection Regulation and processes for testing and evaluating the effectiveness of such measures.” That was in the previous version of the Bill and I thought it was positive. While “pseudonymisation” and “encryption” are kept, the tool, or option, to use other technical and organisational measures seems to have been removed.

Previously, the Minister would have regard to the public interest and the need for the protection of individuals in respect of the processing of their personal data. I may be incorrect but it seems to have disappeared from the section or it has been moved. There will be reference again and again to suitable and specific measures. Even in our last discussion the Minister invoked the capacity to introduce suitable and specific measures as an assurance to us. It is important, however, that while this amended section 33 states that the Minister can consult with other Ministers and the data commission, there is no guarantee that a Minister will take the advice of the data commission and we do not have a mechanism for transparency such that in those cases where a Minister chooses not to take the advice of the data commission we at least are informed of the rationale for that.

When we are being told about this toolkit it is important to remember that Ministers may or may not choose to use the toolkit fully. While I recognise and appreciate that when the Minister gives suitable and specific regulations they may be mandatory for the data controller, the target of the regulation, there is still nothing mandatory about the Minister’s action or indeed anything fully transparent and accountable about the Minister’s decision on how the regulations are formed. I acknowledge that the impact of the regulations is strengthened in some ways by the amendments here but the making of them leaves something to be desired. Perhaps we can pursue that further.

**Deputy Charles Flanagan:** I want to stress that the “toolbox” of safeguards as referred to by Senator Higgins, is in addition to, and not a substitute for, the technical organisational measures required under a risk-based approach in Article 24. These additional safeguards are justified by the fact that they will apply to the special categories of personal data under Article 9, to which we referred earlier. On Committee Stage I accepted the need to clarify the interplay between section 33 and later sections. I stated I would have a fresh look at section 33 in the light of earlier amendments tabled by Senator Higgins. Arising from that, I have tabled this group of amendments. Amendment No. 14 proposes to adjust the content of subsection (1), while amendment No. 15 proposes to replace subsections (2) to (5). I do not perceive section 2(2) as any longer serving a useful purpose, which is behind my proposal to delete it. If Senator Higgins believes there are further issues which need consideration, I would be happy to do so.

In amendments Nos. 14 and 15, however, I believe I have clarified the issues that were brought to the attention of the House by Senator Higgins in the earlier part of the debate.

Amendment agreed to.

**An Cathaoirleach:** Government amendments Nos. 3 to 6, inclusive, are related and may be discussed together by agreement.

Government amendment No. 3:

In page 13, line 4, to delete “The following provisions” and substitute “Subject to *subsection (4)*, the following provisions”.

**Deputy Charles Flanagan:** Government amendments Nos. 3 to 6, inclusive, are in respect of sections 7 and 8. Let me refer to Senator Higgins’s contribution to the Committee Stage debate during which she sought assurances that the setting up of the Data Protection Commission under Part 2 of the Bill would not in any way interrupt or disrupt investigations of complaints already under way under the existing legislation from 1988. Arising from a reassessment of the continued application of the Act of 1988 to complaints lodged before the establishment of the commission, I propose amendment No. 5 to insert a new subsection (4) in section 7, which makes clear that the repeals referred to in section 7 will not apply to complaints made or investigations commenced before the setting up of the commission. Other amendments in this group are merely adjustments to other provisions in sections 7 and 8. I wish to acknowledge the initiative of Senator Higgins in that regard and I thank her for raising the issue. I hope we have met her concerns.

**Senator Alice-Mary Higgins:** I thank the Minister for taking on board those concerns. I think they will give greater clarity, in particular in one of the significant investigations taking place at present, which is the investigation in respect of the public service card and the single customer view database, in which the Data Protection Commissioner is currently engaged. It is important that this would be able to proceed in a timely way. I think these are useful amendments. I thank the Minister for taking my concerns on board.

Amendment agreed to.

Government amendment No. 4:

In page 13, line 15, to delete “Section 14(2)” and substitute “Subject to *subsection (4)*, section 14(2)”.

Amendment agreed to.

Government amendment No. 5:

In page 13, between lines 17 and 18, to insert the following:

“(4) The repeals effected by *subsections (1) and (2)* shall not apply for the purposes of *subsection (2) of section 8*.”.

Amendment agreed to.

Government amendment No. 6:

In page 13, to delete lines 19 to 29 and substitute the following:

“**8.** (1) Subject to *subsection (2)*, the Act of 1988 shall apply to the processing of personal data for the purposes only of national security, defence and international relations of the State.

(2) The Act of 1988 shall apply to—

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- (a) a complaint by an individual under section 10 of that Act made before the commencement of this section,
- (b) an investigation under the said section 10 that was begun but not completed before such commencement,
- (c) a contravention of that Act that occurred before such commencement.”.

Amendment agreed to.

**An Cathaoirleach:** Amendments Nos. 7 and 65 are related and may be discussed together by agreement. Is that agreed? Agreed.

**Senator Alice-Mary Higgins:** I move amendment No. 7:

In page 21, between lines 9 and 10, to insert the following:

“(5) The annual report should include a list of organisations found in breach of this Act during the period covered by the report.”.

This amendment refers to organisations that are in breach of the Act and proposes that they be listed in the annual report of the Data Protection Commissioner. In these amendments we are trying to ensure that we would have greater transparency and a greater capacity to identify trends in data breaches or where we have a situation where multiple breaches are occurring that we are able to identify the sectors in which they are occurring and respond to them. At present the Data Protection Commissioner will report on those cases which have gone through court proceedings and moved to the courts. There are, however, many cases where breaches will have been recorded but may not proceed to a court. We would certainly not want a case where every breach would go through a lengthy and gruelling court proceedings. In order to ensure there is accountability without needing to have recourse to court proceedings, it would be very useful if, in the powers and in the intentions of the functions of the Data Protection Commission, that in its annual report it would also include a list of those organisations, public or private, that have been found to be in breach of the law. We would then have a sense and the pattern is public and that we are not simply reliant on those cases that have gone to the courts. I think it would be very useful and also would allow us to identify instances of multiple breaches. The Minister might respond to this point.

Amendment No. 65 brings a further layer of transparency and will ensure where complaint cases have been taken and decisions made that the information would be shared on the decisions made on the complaints.

**Senator Lynn Ruane:** I second the amendment.

**Deputy Charles Flanagan:** I am not in a position to accept these amendments. I point to section 145 of the Bill, which adequately deals with this issue and provides in an appropriate manner for the publication of convictions and certain other sanctions.

Amendment No. 7 would require the Data Protection Commission to publish in its annual report a list of controllers and processors who have been found to be in breach of the legislation. Section 145 already requires the commission to publish particulars of all serious breaches of data protection law, including all cases in which an administrative fine has been imposed. Section 145 also enables the commission at its discretion to publish details of less serious in-

fringements where it exercises a corrective power. The section also leaves it to the commission to decide how this information is to be published. It could decide for example to publish such material on an ongoing basis on the commission's website, in advance of or outside of the annual report.

Amendment No. 65 would require the commission to publish details of all decisions reached in complaint cases. This would be unduly burdensome. It would be an obligation that would be cumbersome, having regard to the fact that in 2017 almost 2,600 complaints were concluded by the Data Protection Commission. Annual reports of the commissioner over the years have contained summaries of interesting cases, cases that from time to time would be regarded by the commission - the authors of the report - as being very much in the public interest or those also involving unprecedented or perhaps novel instances or aspects of the data protection law. This is also in line with other bodies or offices, such as the Ombudsman's report.

I am of the view that this approach is more effective and perhaps more useful than publishing a full list of decisions taken. I will not accept these amendments for these reasons.

**Senator Alice-Mary Higgins:** I thank the Minister. I will not press the amendments at this point but my purpose was to highlight and capture the wider pattern of breaches and where they are occurring, not simply in terms of the examples.

I know this would add to the volume of work and I will not press for this at present but I will work with Members in the other House to address instances in which a large number of complaints may have been made in respect of one data controller, regardless of whether they have reached an administrative fine level. Where there has been a high volume of complaints and concerns, perhaps there should be some contexts whereby that would be reported. It might be a more nuanced approach and I am happy to work with the Minister and his Department on it. I think it is important that we do not wait until things have become serious before they appear in the reports but that we find ways to capture emerging trends.

**Acting Chairman (Senator Gerry Horkan):** Is the Senator withdrawing amendment No. 7?

**Senator Alice-Mary Higgins:** I will withdraw the amendment for now.

**Deputy Charles Flanagan:** The issues are probably covered in section 145.

Amendment, by leave, withdrawn.

**Acting Chairman (Senator Gerry Horkan):** Amendment No. 8 is in the name of Senators McDowell and Boyhan. Amendments Nos. 8 to 13, inclusive, are related and may be discussed together. Is that agreed? Agreed.

**Senator Michael McDowell:** I move amendment No. 8:

In page 23, line 6, to delete "is 13 years of age" and substitute "shall not be a lower age than already defined in Article 8".

I note the Minister's proposed amendment No. 9 on a review operating in respect of these subsections and I welcome it. My views have not changed since the previous occasion and repeating them would be somewhat needless. We have to be conscious of the role of parents and their entitlement, in respect of children under their guardianship, to make or be involved in

decisions that can have significant effects on those children.

I support the proposals made by Senators Ruane and Higgins in amendments Nos. 10 and 11. I welcome the Minister's amendments Nos. 12 and 13. Will he indicate whether the role of the commission in encouraging the drawing up of codes of conduct has teeth? Will he explain how it would work and why people would be likely to draw up such codes of conduct and comply with them? How does he envisage his new section 31 operating? I strongly welcome the new section 32 on the right to be forgotten. It is important. I reiterate what I said to the Minister on a previous occasion. Whatever procedures are laid down in respect of the right to be forgotten, especially if we are dealing with young, immature people, they have to be so simple that they can be easily implemented. One cannot ask 14 or 15 year olds to behave as if they are law students, law graduates or law professionals in respect of their own affairs. There has to be a simple way of exercising the right to be forgotten. I hope that whatever is done will not merely exist as a remedy on paper but will be capable of being exercised by children so as to allow them, with the benefit of hindsight, to tidy up their profiles on social media platforms in particular.

**Senator Lynn Ruane:** I second the amendment. I thank the Minister for his time and for his engagement to date, especially on the issue of child protection as it relates to this amendment. It was raised in the Committee Stage debate on the legislation and it is great to see Government amendments in the area that I welcome overall. I am happy to see Government amendments Nos. 12 and 13, which allow for codes of conduct on how the data of children is processed. I will get to it in a few minutes. As Senator McDowell said, the issue is whether it has any teeth. The word "encouragement" is used instead of the word "require".

I welcome the review of the age of consent in amendment No. 9. It seems an appropriate response to many concerns. The right to be forgotten is also a welcome measure.

I am concerned that the data protection issues in my amendment No. 10 would still not be comprehensively addressed under the code of conduct system proposed in amendment No. 12. The fact the legislation only uses the word "encourage" as opposed to "require" is of concern. It would seem to make such codes optional instead of a duty. We want strong, rigorous regulation in this area. I would appreciate if the Minister could outline the enforcement mechanism to ensure data controllers prepare the codes of conducts. The word "encourage" does not fill me with confidence that the codes will be binding, accountable and enforceable. If the codes of conduct are broken by controllers, what will be the penalties? How will the State ensure that they are adhered to? In the UK counterpart to this Bill, an amendment has been tabled in the House of Lords to make the codes of conduct for data controllers a requirement rather than advised. Will the Minister explain why the word "encourage" and not "require" has been used? The UK could risk infringement proceedings as such a move goes beyond the text of the GDPR. Will the Government consider putting such a legal requirement on the data protection commission, making the regulation in this area stronger and more robust? What is there now is a good start. How does the Minister envisage it will work in practice? Where will oversight and enforcement responsibilities fall? Perhaps it is an issue that can be worked out further in the Dáil. The stronger move of making it unlawful for a data controller to process the data of children for commercial and marketing purposes as proposed in my amendment No. 9 will work as a stronger deterrent to the inappropriate uses of children's data. I will listen to the Minister with interest to decide what I will do with my amendments. Will he consider making some of the language a little bit stronger in his proposed amendment with regard to words such as "encourage"?

**Senator Alice-Mary Higgins:** I will speak to the amendments in order. Very strong arguments were made across the House on the previous occasion regarding the question of the age of digital consent. I have already indicated that I have moved back and forth on the issue. I have serious concerns about the younger age of consent in terms of the protections that might be afforded. One of my key concerns is about the right to be forgotten. I highlighted the importance of the right to be forgotten previously and I very much welcome Government amendment No. 13 to address the issue. I also welcome the review clause that has been introduced because we need to be open to examining the issue. I am open to it and have found very persuasive arguments on the different perspectives on the digital age of consent. It is very important to have that openness and that we have the review conducted in a timely manner. When the review occurs it should look at the evidence on how the differing ages of consents have been implemented across Europe. Various European jurisdictions have taken a different perspective on the digital age of consent. We should ensure that the review is fully informed by the concerns and consequences that may have arisen from the ages of consent that have been set.

I will return to the right to be forgotten. It is fundamental. I am glad it is made clear. If 16 or 17 year olds wish to remove information they have shared on a social platform and the Internet, for example, when they were 13 or 14, it is vital it is done in a timely way and is something that can be done quickly. On issues such as cyberbullying and digital safety, I support the introduction of a digital safety commissioner but it is vital it is practicable.

The amendment is very good. I would like if it had made more explicit reference to the points in Recital 58 of the GDPR, which is very clear that the way it is put into effect needs to be concise, easily accessible, easy to understand, in clear and plain language and with visualisation and visual images where necessary. It is something to which the ISPPC and others have referred. The importance of ensuring that information such as the right to be forgotten is presented in a child-friendly manner in order that a 17 or 18 year old, without having to go to their parents, can activate the right to be forgotten.

My colleague has spoken very clearly on the code of conduct. It is a lovely thing to see the code of conduct but it is very concerning that it is not clear how it is to be enforced and is not clear that such codes of conduct will even need to be in place because the commission shall only encourage the drawing up of codes of conduct. It needs to be a lot more robust. I suggest that we still will be obliged to put forward amendments Nos. 10 and 11, which deal with the actual nuts and bolts and which say that we should not have the commercial processing of data. When we spoke earlier in this debate today, we talked about micro-targeted advertisements. My colleague has spoken about the micro advertisements that appear on of the websites of 14 and 15-year-olds such as Facebook. Can the Minister see his way towards supporting our amendments and ensuring that such inappropriate commercial targeting does not place in respect of those under 16? A key question in respect of amendment No. 11 is crucial in respect of the Facebook issue because the key issue there was not simply the information people shared about themselves but the information of those with whom they were in contact, the information they inadvertently shared and the information relating to their friends and families. The key issue relating to the Facebook scandal was the ease with which people could inadvertently share information about those close to and around them. This amendment tries to tackle that issue. Perhaps the Minister might clarify the position regarding information shared previous to the digital age of consent in terms of the right to be forgotten or eliminated. In many cases, persons will not even know that the information has been shared and consequently are not in a position to exercise consent or indeed seek removal. I have a suggestion the Minister might

take on board as this Bill goes to the Dáil. As a complementary measure to the code of conduct, would it be possible to introduce specific regulations that would give the Minister the power to introduce mandatory requirements in order that he can produce a set of regulations under that section 33, which would include consent as is appropriate, as well as those additional safeguards relating to the processing of the previous special categories of information in respect of children such that there might be a higher bar on the processing of personal data in respect of children using that section of the Bill? It may be a way of approaching this and giving us a more robust requirement. On the right to be forgotten, I thank the Department for taking that on board. It will make a real concrete difference in children's lives.

**Deputy Charles Flanagan:** Arising from the rather lengthy discussions we had on Committee Stage, I again recognise the strongly-held views of Senators on this issue. Arising from the discussions we had, I am, therefore, tabling amendment No. 9, which provides for a new subsection (3) for a review of the digital age of consent no later than three years after the entry into force of this section. Amendment No. 8 in the name of Senators McDowell and Boyhan proposes that the age of 13 years be replaced by 16 years. I am unable to accept that for reasons we elaborated on during the last occasion that were referred to by Senator McDowell earlier. I still remain of the view that the digital age of consent should be set at 13 years but that we should build in the review within a period of three years.

Regarding amendments Nos. 10 and 11, Senators Ruane and Higgins tabled similar amendments on Committee Stage. I saw the opportunity at that time to reflect on these amendments. Arising out of the consideration given, having particular regard to the matter of children and taking into account the direct effect of the GDPR on our law, I propose amendments Nos. 12 and 13 as alternatives. Amendment No. 12 introduces a completely new section 31 on the matter of codes of conduct and children. It provides for a code intended to contribute to the proper application of the GDPR with regard to the following specific areas, namely, the protection of children, the information to be provided by a controller to children, the manner in which the consent of the holders of parental responsibility over a child is to be obtained for the purposes of Article 8 and integrating the necessary safeguards into processing to protect the rights of children in an age-appropriate manner for the purposes of Article 25. Putting an EU-wide code of conduct in place will have a great advantage in so far as it will provide protection for children irrespective of the location of the controller or processor.

I should point out that the Minister can have no role in the process of making regulations because any such involvement would cut across both the independence of the data protection commission and the role given to the new European Data Protection Board under the GDPR. I make this point in response to Senator Higgins's later comments that the independence of the data protection commission needs to be acknowledged and appreciated at every remove. There is no role for the Minister in the process of making regulations that could well have the effect of interfering with, disrupting or indeed undermining the role of the data protection commission, having regard to the role it has in law. The first step is that the data protection commission will use its powers to encourage controllers targeting children with goods and services to draw up and then submit a draft code. Second, the commission will provide an expert opinion on whether the draft code complies with the GDPR. If it does not, it will immediately go back for adjustment. Where the code relates to processing within the State only, the commission will register the code and publish it and it will apply within the State. If the code relates to processing of children's data across several member states, for example, a draft code prepared by Facebook and other social media would also relate to processing in other member states, the commission

will be obliged to refer it to the European Data Protection Board, which is made up of representatives of the supervisory authorities of all member states, for its approval. The board will have the power to seek require further adjustments as may be necessary and appropriate. Where the European Data Protection Board is satisfied that the code is GDPR-compliant, it will submit its opinion to the European Commission. The European Commission can then adopt a formal implementing act, which will give the code legal validity right across the EU.

This new section makes provision for consultations with children, bodies that represent their interests, holders of parental responsibility over children and the Ombudsman for Children's Office. I believe that their input will ensure that all relevant matters are taken into account and that children will enjoy a level of data protection that takes full account of their needs, status and vulnerability. I believe that it is worthwhile developing a statutory code that will have the force of law across the European Union, thereby protecting all children irrespective where they live in the Union and the state in which they might reside.

Amendment 13 introduces a specific right to be forgotten for children. I acknowledge the initiative on the part of Senator Ruane in particular and Senators Higgins, McDowell and Boyhan. The right to be forgotten was also recommended by the joint committee in its report during pre-legislative scrutiny of the Bill. This will strengthen the right of children to erasure of any data collected during the provision to them of information society services referred to in Article 8.1 of the GDPR.

I am unable to accept amendments Nos. 10 and 11 in the names of Senators Ruane and Higgins. I say that with confidence that these are matters which can be covered by the codes under the new section 31 that I have proposed.

**Senator Lynn Ruane:** Does it get to the point where those codes of conduct are never drawn up because the role of the commissioner is only to encourage rather than require? That almost gives an option for the codes of conduct not to be drawn up, not to get to the point where they could be a legal requirement.

**Deputy Charles Flanagan:** I have no doubt that when somebody is encouraged, the controller concerned has little alternative if they wish to avoid further consequential action, such as an audit or an investigation of their practices and enforcement. I gave some consideration to what Senator Ruane might regard as being somewhat stronger than encouragement. I do not want to run the risk of infringing the GDPR. I want at all stages to remain on the right side of it but I do take the Senator's point. I do so, however, in the belief that in these circumstances the word "encourage" fits the bill.

Amendment, by leave, withdrawn.

Government amendment No. 9:

In page 23, between lines 9 and 10, to insert the following:

“(3) The Minister shall-

(a) not later than 3 years after the coming into operation of this section, commence a review of the operation of *subsection (1)*, and

(b) complete that review not later than one year after its commencement.”.

Amendment agreed to.

**Senator Lynn Ruane:** I move amendment No. 10:

In page 23, between lines 9 and 10, 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.”.

**Senator Alice-Mary Higgins:** I second the amendment.

Amendment put and declared lost.

**Senator Lynn Ruane:** I move amendment No. 11:

In page 23, between lines 9 and 10, to insert the following:

“(3) 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.”.

**Senator Alice-Mary Higgins:** I second the amendment.

Amendment put and declared lost.

Government amendment No. 12:

In page 23, between lines 9 and 10, to insert the following:

**“Codes of conduct: children**

31. (1) Without prejudice to the generality of Article 40, the Commission shall encourage the drawing up of codes of conduct intended to contribute to the proper application of the Data Protection Regulation with regard to-

(a) the protection of children,

(b) the information to be provided by a controller to children,

(c) the manner in which the consent of the holders of parental responsibility over a child is to be obtained for the purposes of Article 8, and

(d) integrating the necessary safeguards into processing in order to protect the rights of children in an age-appropriate manner for the purpose of Article 25.

(2) For the purpose of considering whether a draft code of conduct or an extension or amendment to an existing code of conduct referred to in Article 40 provides sufficient appropriate safeguards referred to in that Article, the Commission may, where the draft, extension or amendment, as the case may be, concerns the application of the Data Protection Regulation to children, consult with such persons as it considers appropriate including-

(a) children and bodies who appear to the Commission to represent the interests

of children,

- (b) the holders of parental responsibility over children, and
- (c) the Ombudsman for Children.”.

Amendment agreed to.

Government amendment No. 13:

In page 23, between lines 9 and 10, to insert the following:

**“Right to be forgotten: children**

32. (1) Subject to subsection (3), in accordance with Article 17, a controller shall, at the request of a data subject, without undue delay erase personal data of the data subject where the data have been collected in relation to the offer to that data subject of information society services referred to in Article 8(1).

(2) Subject to subsection (3), where a controller has disclosed the personal data which are the subject of a request under subsection (1) to another controller or controllers, the first-mentioned controller shall, taking account of available technology and the cost of implementation, take all reasonable steps, including technical measures, to inform the other controller or controllers which are processing that personal data that the data subject has requested the erasure by such controllers of any links to, or copy or replication of, that personal data.

(3) Subsections (1) and (2) shall not apply to the extent that the processing of the personal data concerned is necessary for the purposes set out in Article 17(3).”.

Amendment agreed to.

Government amendment No. 14:

In page 24, to delete lines 19 to 23 and substitute the following:

- “(iv) pseudonymisation of the personal data, and
- (v) encryption of the personal data.”.

Amendment agreed to.

Government amendment No. 15:

In page 24, to delete lines 24 to 37, and in page 25, to delete lines 1 to 5 and substitute the following:

“(2) Regulations may be made for either or both of the following purposes-

(a) to identify additional suitable and specific measures (to those referred to in paragraphs (a) to (e) of *subsection (1)*) that may be taken to safeguard the fundamental rights and freedoms of data subjects in the processing of personal data of those subjects for the purposes of the requirement referred to in *subsection (1)*,

(b) to specify that a measure or measures referred to in paragraphs (a) to (e) of *subsection (1)* or an additional measure or measures identified under *paragraph (a)*, or both, is or are mandatory in respect of the processing to which they are stated to apply.

(3) Without prejudice to the generality of *subsection (2)(a)*, additional suitable and specific measures identified in regulations made under that subsection may relate to-

(a) governance structures,

(b) processes or procedures for risk assessment purposes,

(c) processes or procedures for the management and conduct of research projects, and

(d) other technical and organisational measures designed to ensure that the processing is carried out in accordance with the Data Protection Regulation and processes for testing and evaluating the effectiveness of such measures.

(4) Regulations under *subsection (2)* may-

(a) identify different measures for different categories of personal data, different categories of controllers, different types of processing or categories of processing, and

(b) specify that a measure or measures referred to in *subsection (2)(b)* is or are mandatory in respect of the processing of different categories of personal data, processing by different categories of controllers and in respect of different types of processing or categories of processing.

(5) Regulations under *subsection (2)* may be made by-

(a) the Minister following consultation with such other Minister of the Government as he or she considers appropriate and the Commission, or

(b) any other Minister of the Government following consultation with the Minister, such other Minister of the Government as he or she considers appropriate and the Commission.”.

Amendment agreed to.

**Acting Chairman (Senator Gerry Horkan):** Amendments Nos. 16, 17, 37, 49 and 54 are related. Amendment No. 17 is a logical alternative to amendment No. 16. Amendments Nos. 16, 17, 37, 49 and 54 may be discussed together by agreement. Is that agreed? Agreed.

**Senator Alice-Mary Higgins:** I move amendment No. 16:

In page 25, between lines 16 and 17, to insert the following:

“(7) If the Minister intends to set out regulations under this section which are not compliant with the advice of the Commission, he or she must lay a rationale for his or her proposed regulation before the Oireachtas Committee on Justice and Equality and any other relevant committee.”.

These amendments all relate to the same core issue. The two points I highlighted on Committee Stage were that too free a hand was given to the Minister in how to set out regulations, limit data subjects' rights and choose to enforce or not enforce the legislation. There are many places in the Bill where the same formula occurs - that the Minister will make a decision, having consulted with whichever other Ministers he or she thinks appropriate and with the data protection commission. In all those sections, which these amendments seek to address, there is no guarantee that the Minister will, having consulted with the commissioner, in any way abide by, or take on board, the advice offered. The Minister can proceed to make regulations, take action, exercise restrictions and so forth even when that may be in direct contravention of the considered advice of the data protection commission, which we put in place to ensure that Ireland is in full compliance with the GDPR.

One of my amendments is a caveat in respect of section 33 regarding special and specified measures that relate to sensitive areas of personal data. If the Minister chooses not to take the advice of the commission in respect of how that sensitive data should be processed and what the special safeguards should be, a rationale should be provided. My amendments seek to ensure that the Minister does not have a free hand but that where he or she takes a decision which contravenes the advice of the data protection commission, he or she should provide a written rationale for that decision and present it to the Joint Committee on Justice and Equality and any other committee that may be appropriate. If, for example, a case relates to the area of health, it would also be relevant to the Joint Committee on Health. This is in order to provide a useful and appropriate level of transparency to ensure that the Legislature can be confident that the decisions made by the Minister can be justified and will not lead us, as a State, into inadvertent breach or violation of the GDPR, and, more importantly and in immediate terms, that they will not lead to inappropriate protections or violations of people's data rights.

Having raised this issue on Committee Stage, however, and having tabled these amendments, I recognise that the phrasing in amendments Nos. 32 and 35 tabled by Sinn Féin is more nuanced than mine. Acknowledging that Fianna Fáil, Sinn Féin and many Independent and Labour Senators are concerned about this issue because we do not want the Ministers to have a free hand but transparency in how decisions are made, I am happy to withdraw my amendments and, instead, lend my support to the complementary amendments tabled by Sinn Féin. I note, however, that there are one or two places where there is not a corresponding Sinn Féin amendment. I will withdraw mine in the hope that those areas might be addressed when the Bill goes to the Dáil. However, this gives the Minister an opportunity to engage with us on the issue.

**Senator Lynn Ruane:** I second the amendment.

**Acting Chairman (Senator Gerry Horkan):** Is Senator Higgins withdrawing amendment No.16?

**Senator Alice-Mary Higgins:** Yes, I am withdrawing it. However, I would like to hear the Minister's response on that issue.

**Acting Chairman (Senator Gerry Horkan):** I invite the Minister to speak to these amendments in the knowledge that they are being withdrawn.

**Deputy Charles Flanagan:** It is extraordinary that I am required to speak to amendments that are going to be withdrawn. However, I defer to the Chairman on the matter.

**Acting Chairman (Senator Gerry Horkan):** I am suggesting to the Minister that he does

not have to be overly verbose as they are being withdrawn.

**Senator Alice-Mary Higgins:** I am happy also to put them to a vote. I was simply trying to expedite the process so that we did not gratuitously have to put them forward. As amendment No. 16 is not covered by a Sinn Féin amendment I will not withdraw it if that makes it easier for the Minister.

**Acting Chairman (Senator Gerry Horkan):** It is a matter for the Minister to respond or not.

**Deputy Charles Flanagan:** I merely want to point out that if people believe that the Minister has a free hand they are mistaken. Sections 33, 35, 50, 68 and 90 contain provisions for the making of statutory instruments to give further more detailed effect to various provisions in the Bill in accordance with Article 36(4) of the GDPR. Section 79(12) of the Bill provides that the commission must be consulted in advance of any regulations being made. The Minister intends to make regulations and will already have consulted with the Attorney General to ensure that they are compliant with the policies and the principles outlined in the appropriate regulation-making provisions. The obligation in the GDPR and section 79 of the Bill is to consult with the data protection commission. It will be a matter for the commission to decide whether, and if so, to what extent it wishes to provide its opinion or, indeed, advice or guidance in regard to any proposed regulations.

Sections 19 and 25 of the Bill provide for accountability of the commission to the Oireachtas committees. It will be a matter for the relevant committees of the House to make any necessary arrangements for the provision of information to them on the activities of the commission, including the provision of the commission's views on secondary legislation such as statutory instruments made under this legislation. Moreover, Article 57(1)(c) of GDPR makes it clear that the commission may advise national Parliaments or other bodies on administrative or legislative measures relating to data processing.

I have a difficulty accepting the amendments but I do acknowledge the points made by Senator Higgins.

**Acting Chairman (Senator Gerry Horkan):** Is Senator Higgins withdrawing amendment No. 16?

**Senator Alice-Mary Higgins:** I propose to press it because what is provided for therein is not explicitly addressed elsewhere, but I will withdraw the other amendments.

In response to the Minister's comments on the amendments, the key concern is that while the committees may request a data commissioner to give testimony, they may not be aware of situations where there has been a divergence of view in respect of a Minister and the data commission. That is why the impact assessment conducted by the data commission, to be proposed later, to say what issues may arise from this divergence of views, and that being presented to a committee, will bring about due oversight. The concern is that a committee may decide to call in a data commission to speak on any issue but if such committee does not know that there is an issue then that power is not practicably exercisable. I propose to push amendment No. 16, which relates to section 33, and I will then withdraw the other amendments.

**Acting Chairman (Senator Gerry Horkan):** The only amendment that can be put is amendment No. 16.

**Senator Alice-Mary Higgins:** Fair enough.

Amendment put and declared lost.

**Acting Chairman (Senator Gerry Horkan):** Is the Senator withdrawing amendment No. 17?

**Senator Alice-Mary Higgins:** No. I move amendment No. 17:

In page 25, between lines 16 and 17, to insert the following:

“(7) If the Minister intends to set out regulations under this section which are not compliant with the advice of the Commission, he or she must lay a rationale for his or her proposed regulation before the Oireachtas Committee on Justice and Equality and any other relevant committee and receive approval from those committees.”.

**Senator Lynn Ruane:** I second the amendment.

Amendment put and declared lost.

**Acting Chairman (Senator Gerry Horkan):** Amendments Nos. 18 to 21, inclusive, are related. Amendments Nos. 19 to 21, inclusive, are physical alternatives to amendment No. 18 and amendment No. 20 is a physical alternative to amendment No. 19. Amendments Nos. 18 to 21, inclusive, may be discussed together.

**Senator Fintan Warfield:** I move amendment No. 18:

In page 26, to delete lines 1 to 39, and in page 27, to delete lines 1 to 14.

**Senator Paul Gavan:** I second the amendment.

**Senator Alice-Mary Higgins:** This is the same issue. I do not wish to impugn the commitment of any Minister or to put forward an expectation that any Minister would act. A very clear example of this is the very serious concerns expressed by the data commissioner in respect of the roll-out of the public services card. The Department of Public Expenditure and Reform and the Department of Employment Affairs and Social Protection intensified the roll-out of the public services card while serious question marks had been raised, and continue to be raised, and are still under investigation. This is one of the most serious forms of concern that the data commissioner can raise. This is not a hypothetical situation. This is a reality. There will be moments of tension between the data commissioner and what Ministers and Departments would like to do. It is appropriate that there would be absolute transparency around where the tensions are and how the issues might be addressed.

**Acting Chairman (Senator Gerry Horkan):** As there are no other speakers indicating I invite the Minister to respond.

**Deputy Charles Flanagan:** As the proposers of the amendments are not making a contribution I do not propose to respond.

Amendment put and declared lost.

**Senator Fintan Warfield:** I move amendment No. 19:

In page 26, lines 3 to 9, to delete all words from and including “(1) The” in line 3 down

to and including line 9.

**Senator Paul Gavan:** I second the amendment.

Amendment put and declared lost.

Government amendment No. 20:

In page 26, line 4, to delete “necessary” and substitute “necessary and proportionate”.

Amendment agreed to.

**Senator Alice-Mary Higgins:** I move amendment No. 21:

In page 26, to delete lines 26 to 30 and substitute the following:

“(a) the Minister, provided that—

(i) the Minister has consulted with such other Minister of the Government as he or she considers appropriate and has also consulted with and sought the advice of the Commission, and

(ii) the Minister has, if he or she intends to set out regulations which are not compliant with the advice of the Commission, laid a written rationale for his or her proposed regulation before the Oireachtas Committee on Justice and Equality and any other relevant committee,

(b) any other Minister, provided that—

(i) that Minister has consulted with the Minister and such other Minister of the Government as he or she considers appropriate and has also consulted with and sought the advice of the Commission, and

(ii) that Minister has, if he or she intends to set out regulations which are not compliant with the advice of the Commission, laid a written rationale for his or her proposed regulations before the Oireachtas Committee on Justice and Equality and any other relevant committee.”.

**Senator Lynn Ruane:** I second the amendment.

Amendment put and declared lost.

**Acting Chairman (Senator Gerry Horkan):** Amendment No. 22 is a Government amendment. Amendments Nos. 22, 24 and 36 are related and may be discussed together.

Government amendment No. 22:

In page 27, line 20, to delete “necessary” and substitute “necessary and proportionate”.

**Deputy Charles Flanagan:** The amendments in this group provide for the inclusion of the words “and proportionate” in a number of sections in the Bill. Arising out of Committee discussions I undertook to take a further look at the provisions as they applied a necessity test to data processing with a view to assessing whether a proportionality test should also be applied. Arising from this assessment, I am proposing amendments Nos. 22 and 36 to sections 36 and 50(3),

respectively, which will insert the words “and proportionate” after “necessary” in each case.

As regards, amendment No. 24 to section 41, I regret that I cannot accept the inclusion of the words “and proportionate” in this regard because this section gives faithful effect to Article 9(2)(b) of GDPR and that does not include a reference to proportionality. Including the words “and proportionate” in this section would lead to a divergence from the GDPR.

**Senator Alice-Mary Higgins:** I wish to speak to these amendments, which were put forward by Senator Ó Donnghaile, Senator Ruane and myself. Senator Ó Donnghaile regrets he cannot be here today and appreciates the Minister’s engagement on them. The amendments are about the importance of a proportionality test. I acknowledge the engagement of the Minister and the Department in agreeing to reinsert that vital proportionality test in a number of sections. There are a couple of other sections in which I still believe a proportionality test should be inserted. We may have a divergence of opinion on that but I want to acknowledge that regarding these three amendments, and the previous amendment No. 20, which I did not get a chance to speak to, the Government has taken on board that feedback.

**Acting Chairman (Senator Gerry Horkan):** The Senator did get a chance to speak to it. She chose not to.

**Senator Alice-Mary Higgins:** Yes. I spoke to amendment No. 21. I knew that these amendments would be taken together. I believe this is a good decision from the Minister that will stand to us, and I welcome it.

Amendment agreed to.

**Senator Fintan Warfield:** I move amendment No. 23:

In page 28, between lines 20 and 21, to insert the following:

“39. (1) No application to access data processed for journalistic purposes may be made by any party, including, for the avoidance of doubt, an authorised officer, An Garda Síochána, the Garda Síochána Ombudsman Commissioner, the Revenue Commissioners or the Defence Forces, except by way of application to the High Court by motion and affidavit and on notice to the journalist data processor.

(2) In determining whether to allow access to data processed for journalistic purposes, the High Court shall have regard to the importance of freedom of expression in a democratic society and to the importance of confidential sources of information to the right of freedom of expression.

(3) The High Court may permit access to data processed for journalistic purposes, including for the purpose of identifying confidential sources of information, only where the journalist processor whose data is sought is the subject of investigation for suspected commission of a serious criminal offence or for unlawful activity which poses a serious threat to the security of the State.

(4) (a) In exceptional cases, where the security of the State is under immediate threat or where it is suspected that a serious criminal offence is likely to be committed in the immediate future, an application may be made *ex parte* to the High Court for access to data processed for journalistic purposes.

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(b) Where an *ex parte* application under this section is made, the journalist processor whose data is the subject of the application shall be notified of the application by, and given the opportunity to make representations before, the High Court as soon as practicable.

(5) An appeal shall, by leave of the High Court, lie from a determination of that Court under this section on a question of law to the Court of Appeal.”.

**Senator Paul Gavan:** I second the amendment.

**Acting Chairman (Senator Gerry Horkan):** Does anybody wish to speak to it? Is the amendment agreed?

**Senator Alice-Mary Higgins:** I indicated that I wished to speak to it. I simply want to note that this is an issue that has been raised again. I supported it on Committee Stage and it is about addressing the issues expressed by journalists and the very important Fourth Estate. I request that it would be re-examined by the Dáil when it goes to that House.

**Acting Chairman (Senator Gerry Horkan):** Does the Minister want to say anything on it?

**Deputy Charles Flanagan:** No.

Amendment put:

The Seanad divided: Tá, 14; Níl, 16.	
Tá	Níl
Bacik, Ivana.	Burke, Colm.
Black, Frances.	Burke, Paddy.
Daly, Paul.	Buttimer, Jerry.
Gavan, Paul.	Byrne, Maria.
Higgins, Alice-Mary.	Coffey, Paudie.
Horkan, Gerry.	Coghlan, Paul.
Kelleher, Colette.	Conway, Martin.
Mullen, Rónán.	Feighan, Frank.
Nash, Gerald.	Hopkins, Maura.
O’Sullivan, Grace.	Lombard, Tim.
O’Sullivan, Ned.	McFadden, Gabrielle.
Ruane, Lynn.	O’Donnell, Kieran.
Warfield, Fintan.	O’Mahony, John.
Wilson, Diarmuid.	O’Reilly, Joe.
	Reilly, James.
	Richmond, Neale.

Tellers: Tá, Senators Paul Gavan and Fintan Warfield; Níl, Senators Gabrielle McFadden and John O’Mahony.

Amendment declared lost.

Debate adjourned.

**An Cathaoirleach:** When is it proposed to sit again?

**Senator Jerry Buttimer:** Leathuair tar éis a dó, Dé Máirt seo chugainn.

The Seanad adjourned at 3.15 p.m. until 2.30 p.m. on Tuesday, 27 March 2018.