



DÍOSPÓIREACHTAÍ PARLAIMINTE
PARLIAMENTARY DEBATES

SEANAD ÉIREANN

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

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SEANAD ÉIREANN

Dé Máirt, 10 Iúil 2018

Tuesday, 10 July 2018

Chuaigh an Cathaoirleach i gceannas ar 10.30 a.m.

Machnamh agus Paidir.
Reflection and Prayer.

Business of Seanad

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

The need for the Minister for Culture, Heritage and the Gaeltacht to provide an update on the implementation of the EU Habitats Directive insofar as it applies to the Gearagh as a Natura 2000 site.

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

The need for the Minister for Education and Skills to provide an update on the next steps in respect of the construction of a new school building at Mungret community college, Mungret, Limerick.

I have also received notice from Senator Pádraig Mac Lochlainn of the following matter:

The need for the Minister for Education and Skills to provide an update on the site selection process for the new three school campus at Buncrana, County Donegal.

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

The need for the Minister for Education and Skills to consider an increase in capitation funding for schools.

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

The need for the Minister for Employment Affairs and Social Protection to consider unilaterally restoring the State pension guidelines which applied prior to budget 2012.

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

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The need for the Minister for Health to provide an update on access to consultant psychiatrists for those under 18 years of age in the north Lee area of Cork.

I have also received notice from Senator Máire Devine of the following matter:

The need for the Minister for Health to provide an update on the closure of the day service at the Linn Dara CAMHS, Dublin 10.

I have also received notice from Senator Fintan Warfield of the following matter:

The need for the Minister for Justice and Equality to introduce hate crime legislation.

The matters raised by the Senators are suitable for discussion and I have selected Senators Kelleher, Kieran O'Donnell, Mac Lochlainn and Murnane O'Connor and they will be taken now. The other Senators may give notice on another day of the matters that they wish to raise.

Commencement Matters

Natura 2000

Senator Colette Kelleher: I welcome the Minister of State, Deputy Catherine Byrne, who has been sent into the Seanad to do the work of other people but I appreciate her being here.

This matter concerns the lack of management, protection and development of the Gearagh conservation site in County Cork and the Department of Culture, Heritage and the Gaeltacht's lack of leadership and action about this. The Gearagh national nature reserve on the River Lee in County Cork is a globally unique site of international importance, both for its primeval river forest and its wintering wildfowl. As a priority Natura 2000 site under the EU Habitats Directive, it has several different forms of legislation theoretically protecting it. It is a special area of conservation, SAC, a special protected area, SPA, a world Ramsar site, a biogenetic reserve and part of the Lee Valley natural heritage area.

Despite this raft of legislation and protections, the fact that it is the property of the State, under the control of the semi-State body, the ESB, means it is without any effective management plan. As a consequence, this State-led neglect has prevented the local community from developing the area as a significant recreational, educational and eco-tourism destination.

The Gearagh is a designated SAC to primarily protect its alluvial woodland. However, the lack of good water management in the river catchment upstream from the forest, as required under Article 6(3) of the Habitats Directive, is causing the site's islands to disintegrate. This is flying in the face of the intended EU protection enshrined under Article 6(2). The SPA status was originally designated on the site due to the thousands of wintering wildfowl that used the area. Today, however, the numbers of wintering birds are much reduced. Each winter the ESB allows access to the protected area by a local gun club. The hunting had been so substantial that it was claimed that the carcasses of the birds were ferried out in wheelbarrows. These are the very birds which are meant to be protected.

Although the site featured as a centre page spread in Cork County Council's biodiversity action plan, not a single sign has been erected directing the public to the nature reserve, nor has any money been used to promote the Gearagh as a tourist site. One could pass the entrance to the site without noticing it. Nobody would see that it is such a special area and understand it is on a par with the Burren.

Having won the Young Scientist Competition in 1983 and the Ford European Conservation Awards in 1987 for a sustainable management plan to protect and develop the Gearagh, both as western Europe's last primeval river forest and as an international wetland wildfowl reserve, attempts by the local community to engage with the ESB and the Department in order to implement such a plan have been met with short-sighted dismissal. It is disappointing the Minister did not attend to take this matter today. That does not bode well for this issue being taken seriously. The apparent disregard of both the Department and the ESB is extremely disappointing. It would lead one to wonder whether the Government is true to its commitments to its environmental protection obligations at local and national level, as well as at European level where its obligations are enshrined under EU law.

What is the Minister's opinion on the reports of violations by the ESB of Ireland's environmental protection commitments in the Gearagh site under the EU habitats directive and other legally-binding principles? Why does the Department not appear to be active in empowering the local community to develop this spectacular site, as a major ecotourism boost for the region, creating jobs, protecting the environment and boosting the poor environmental image of the ESB and the Department? Why is the EU habitats directive not being actively enforced in the site by prohibiting the gun clubs and the sufficient and level-handed restoration of the Gearagh's forest? Will the Minister establish an all-inclusive management plan, a plan that protects the Gearagh and allows the local community develop the site in a sustainable way?

During a recent Seanad debate on our oceans, we heard good and successful examples of community-led management plans about marine protected areas in Scotland by Dr. Ruth Brennan of Trinity College Dublin, which could act as a template for the Gearagh.

Minister of State at the Department of Health (Deputy Catherine Byrne): I am taking this matter on behalf of the Minister for Culture, Heritage and the Gaeltacht, Deputy Josepha Madigan.

Ireland, like all EU member states, is bound by the requirements of the habitats directive and the birds directive. They are the cornerstone of the EU's nature conservation policy and establish the EU wide Natura 2000 ecological network of protected areas. These directives aim to ensure the protection of habitats and species which have been selected for conservation within special areas of conservation and special protection areas. These directives have been transposed into national law by the European Communities (Birds and Natural habitats) Regulations 2011, the Wildlife Acts and the Planning Acts. In Ireland, 439 sites have been selected for conservation as special areas of conservation while 154 sites have been selected for conservation as special protection areas.

The Gearagh, which is located approximately 2 km south-west of Macroom, County Cork, comprises a stretch of the River Lee that was dammed in the 1950s as part of a hydroelectric scheme. According to the site synopsis, the principal habitat is a shallow lake or reservoir which is fringed by wet woodland, scrub and grassland that is prone to flooding. Alluvial forest occurs on islands within the site. The Gearagh was selected for conservation as a special area

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of conservation in March 1997. It was also designated as a special protected area in 1996. The site is a statutory nature reserve in the ownership of the ESB. The qualifying interests of the special area of conservation site are floating river vegetation, old oak woodlands, alluvial forests and the otter. Despite about half the original area having been destroyed, the Gearagh still represents the only extensive alluvial woodland in Ireland, Great Britain or west of the River Rhine in Europe.

In response to a complaint lodged with the European Commission and the subsequent pilot infringement case relating to concerns over apparent erosion on the River Lee downstream of Toons Bridge at the western extent of the Gearagh special area of conservation where there is an extensive area of alluvial woodland, the Department of Housing, Planning and Local Government convened a working group of key stakeholders for the Gearagh site in 2016, comprising representatives from that Department, the Department of Culture, Heritage and the Gaeltacht, Cork County Council and the ESB. The group agreed that a scoping exercise was required to identify damage that appeared to be occurring within the alluvial woodland of the Gearagh. The ESB carried out this exercise and the report of the scoping exercise was published in 2017. It proposed a number of recommendations, including monitoring surveying and studies on the site to establish baseline data and for the development of a management plan. Work commenced on the implementation of these recommendations in November 2017. To date, terrestrial laser scanning of the main channel flowing through the Gearagh site has been completed. Locations for a hydrometric gauge and depth loggers have been identified with installation due for completion by the end of this summer.

The carrying out of these studies is to establish a baseline of robust data for the area. It is expected that the period of monitoring will be for a minimum of two years. The aim is to define the presence or absence of any erosive or other abnormal changes within the alluvial woodland of the Gearagh. If no such impacts are evident, it can be concluded that the objective of the conservation of the alluvial woodland within the area is being achieved and no further measures will be necessary. If evidence of erosive impacts is found, it is intended that a management plan will be developed with targeted physical restoration measures aimed at reducing the risk to the integrity and functioning of the alluvial woodland within the special area of conservation.

Based on ongoing consultation between the ESB and the National Parks and Wildlife Service of the Department of Culture, Heritage and the Gaeltacht, further scientific studies are planned for the eastern section of the Gearagh site. These will encompass monthly bird surveys, botanical studies around the periphery of the reservoir and drone photography of the reservoir substrate revealed during low water. These studies are at the scoping and procurement stage.

An Cathaoirleach: As the Minister of State dealing with this matter is not the line Minister, she probably will not have the answers Senator Kelleher would like to extract.

Senator Colette Kelleher: The Minister of State did her best in coming here today but the Minister who is responsible needs to be here. Her failure to attend marks the disappointing and rather hopeless response to the Commencement matter. The Gearagh national nature reserve on the River Lee is a unique site of international importance both for its primaeval river forest and its wintering wildfowl. The Department can carry out all the bird surveys it likes but letting a gun club loose on the site is hardly the way to protect birds.

The ESB, the current owner of the Gearagh site, is flying in the face of EU laws providing for the protection and conservation of the Gearagh site as part of the Natura 2000 network. The

Minister of State spoke about stakeholders but failed to mention the local community. I know every inch of the Gearagh. I know where Toons Bridge is, where the entrance is and where the islands are - these beautiful and amazing islands that are unique to Ireland - yet we are getting this very poor response, not from the Minister of State, but from the line Minister. While I am extremely disappointed, I am encouraged to pursue this matter further. I do not understand the hesitation to enforce the ESB's respect for the site and its obligations under the EU habitats directive. If the Minister and Government are to be true to their responsibilities at national and EU level, surely they will establish an effective management plan for the area. I would like the Minister to act with urgency and I hope she will look into this matter more seriously. I intend to follow through on this and make sure she gives it the attention it deserves and requires.

An Cathaoirleach: Obviously, Senator Kelleher is very passionate about this. Could the Minister of State arrange a meeting between Senator Kelleher and the line Minister?

Deputy Catherine Byrne: I, again, thank Senator Kelleher and acknowledge some of the difficulties she has raised that have not been addressed in the response. I apologise to the Senator for the Minister not being here. In saying that, I will convey to the Minister some of the issues she raised, specifically the use of the site by a local gun club, the absence of signage and the lack of proper consultation with the local community. As the Senator stated, there is considerable interest in this issue and people are concerned about it.

An Cathaoirleach: I suggest the Minister of State ask the line Minister to meet Senator Kelleher for a few minutes before the recess?

Deputy Catherine Byrne: I will contact the Minister.

An Cathaoirleach: Senator Kelleher is passionate about the issue and knows the area inside out in the same way I know the Sheep's Head peninsula.

Senator Colette Kelleher: I would appreciate if the Minister of State made a commitment to arrange a meeting with the Minister.

Deputy Catherine Byrne: I will commit to telephoning the Minister when I return to my office.

Senator Colette Kelleher: I would appreciate that.

An Cathaoirleach: I hope a meeting will be arranged. If not, I will deal with the matter after the recess. The next topic is in the name of Senator Kieran O'Donnell.

Deputy Catherine Byrne: I am taking all of the Commencement matters.

An Cathaoirleach: I noticed that. The Minister of State has been given a poisoned chalice.

Schools Building Projects Status

Senator Kieran O'Donnell: This matter concerns the need for the Minister for Education and Skills to provide an update on the next step for the construction of a new state-of-the-art school building for Mungret community college, Mungret, County Limerick. Mungret community college was established in August 2017 as a new school for the Mungret, Raheen and Dooradoyle areas. It is under the principalship of Liam O'Mahoney, Limerick and Clare Edu-

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cation and Training Board is its patron and the CEO is George O'Callaghan and the chair of the school board is Councillor Daniel Butler. It has proven to be an extremely successful school. In its first year, it had an intake of 96 students. In its second year, it will take in 120 students, which demonstrates substantial demand for the school in the area. The Mungret, Raheen and Dooradoyle areas are projected to have a combined population of approximately 22,000 by 2022, which is less than five years away. A large plan is under way for Mungret Park, which is a development by Limerick City and County Council.

A commitment has been given to build a new school, initially to accommodate 600 pupils. I have had discussions with the Department and the Minister about increasing the size to accommodate a larger number of students, hopefully 800, and devolving the project to Limerick and Clare Education and Training Board to ensure the school is built as quickly as possible. I want to raise the current state of play in terms of the project being devolved to Limerick and Clare Education and Training Board to allow the building of the school to get under way. It is being increased to an 800-pupil school on the basis of 120 students being taken in per year. The school recently secured planning permission for an additional six modular buildings to create eight additional classrooms. The site for Mungret community college school is a greenfield site of 10 acres on the Mungret Park grounds. Everyone involved - the parents, principal, board of management and education and training board - wants this school to be built. Everyone is ready to get the process under way. The key element is for the Department to put the service level agreement in place to allow the project to be devolved in order that Limerick and Clare Education and Training Board can get the process of appointing a design team under way. The parents of students at the community college and pupils coming out of primary schools in the area, for example, St. Nesson's and St. Paul's national schools, Gaelscoil an Ráithín and Mungret Educate Together, are keen to see work on this state-of-the-art school building commence. They deserve no less.

Deputy Catherine Byrne: I am taking this Commencement matter on behalf of the Minister for Education and Skills, Deputy Richard Bruton. I thank the Senator for raising the matter as it provides me with an opportunity to update the House on the current position and the next steps in relation to the construction of Mungret community college.

As the Senator will be aware, the provision of a new school for Limerick city west, Mungret community college, is included in the Department's six-year capital programme. The school will provide capacity for approximately 800 students and will also include a two-classroom special needs unit. The delivery of this new post-primary school has been devolved to Limerick and Clare Education and Training Board, ETB, which is the patron body of the school. A service level agreement, SLA, was issued to the ETB on 5 July 2018. When this is signed by the ETB and returned to the Department, it will be then signed and sealed by the Department. The ETB will then commence the process of appointing a design team to design and plan the new school and obtain the necessary statutory approvals, including planning permission, a fire certificate and a disability access certificate. Following that, the ETB will put the project out to tender for a building contractor to construct the school.

The Minister is not in a position to give a timeframe for these steps as it will be a matter to be determined between the ETB and the design team when appointed. The Department will continue to work closely with the ETB in the context of delivery of the school building project for Mungret. I thank the Senator again for giving me the opportunity to update the House on the new school building project for Mungret.

An Cathaoirleach: I suspect the Senator will wish to probe the matter further but we are not dealing with the line Minister. In fairness, the Minister, Deputy Bruton, regularly attends the House for Commencement Matters.

Senator Kieran O'Donnell: I thank the Minister of State for that update. I very much welcome that the service level agreement was issued to Limerick and Clare Education and Training Board on 5 July. I have no doubt it will wing its way back to the Department very quickly and allow it to appoint the design team. I commend the school, its principal, Liam O'Mahoney, chairman of the board, Councillor Daniel Butler and the Limerick and Clare Education and Training Board under chief executive, George O'Callaghan, for the work they have done in progressing this project. I have enjoyed working with them in bringing it to fruition.

The school is located in a temporary building on the grounds of the old Mungret College, which is an historical building. As the Minister of State will appreciate, many of the buildings are temporary in nature and will have to remain until such a time as the new school is built. Will the Minister of State indicate where matters stand in terms of the location and acquisition of a site from Limerick City and County Council?

Deputy Catherine Byrne: Further additional temporary accommodation has recently been approved for the school in question to meet the accommodation needs for 2018-19. The new school, with a long-term projected enrolment of 800 pupils and a two-classroom ASD unit, will be located in Mungret on the greenfield site acquired by the ETB from Limerick City and County Council.

Senator Kieran O'Donnell: I thank the Minister of State. I will keep an eye on these matters to ensure the building of Mungret Community College and the acquisition of the site on the Mungret Park grounds from Limerick City and County Council proceed as quickly as possible. This is a tremendous addition to the educational fabric of Limerick and the Mungret, Dooradoyle and Raheen area. It is something parents deserve and need.

Schools Building Projects Status

Senator Pádraig Mac Lochlainn: A debacle has been going on for well over ten years in respect of finding a site for a three-school campus. The three schools in question are Crana College secondary school in Bunrana, serving the Inishowen Peninsula, Gaelscoil Bhun Cranncha and Gaelcholáiste Chineál Eoghain. In the case of Crana College, the school is having to use up its leisure and amenity space to erect more prefabs. It is a fantastic school that recently got top marks in an evaluation by the Department. However, it is completely overcrowded. The school desperately needs a new site and has raised the matter again and again.

Gaelscoil Bhun Cranncha is another fantastic school but it is in an inappropriate location. It is based in a youth and community development building that is used for multiple purposes, which gives rise to child protection concerns and challenges. The school is grateful to its hosts for accommodating it for nearly 20 years now. In a whole-school evaluation in 2006, the inspector indicated that acquisition of a new building for the school was urgently required. That was 12 years ago and the school has been trying to do so.

Gaelcholáiste Chineál Eoghain is also located in a community facility, Tullyarvan Mill. It, too, is very grateful to be hosted there but it is not appropriate for the school's growing educa-

tional needs.

These are three schools where the parents and teachers have been generous enough to come together. One might think that would have made it easier and more cost effective, yet all these years later we still do not have a solution. Two years ago, the Minister of State, Deputy Joe McHugh, announced that he was delighted to be informed that a preferred site had been identified. We thought an announcement was imminent and we would be able to go to planning, design and tendering. Recently, colleagues of the Minister of State have said they have some good news. I am hoping the Minister of State, Deputy Catherine Byrne, can today officially confirm on behalf of the Government that a site has been secured and we can move urgently to the planning phase and start to get these schools ready in order that we can have a bright future for our children, teachers and parents in the Inishowen area.

Deputy Catherine Byrne: I thank the Senator for raising this matter, which I am taking on behalf of my colleague, the Minister for Education and Skills, Deputy Bruton. I am pleased to outline to the Seanad the current position on the site selection process for the new school campus at Buncrana. The project in respect of the education campus in Buncrana is included

11 o'clock on the Department of Education and Skills capital programme and this project requires the acquisition of a site to facilitate the new school accommodation.

In that context, the Department has been working closely with Donegal County Council under the memorandum of understanding for the acquisition of school sites with a view to securing a location for the campus project. A significant number of site options were identified and thoroughly technically appraised by both Department and council personnel. Unfortunately, despite the best efforts of all parties, the site acquisition process to date has been protracted due to technical challenges with identified site options and difficulties in reaching agreement with landowners.

Department and council officials recently undertook an exercise to identify the best next steps in order to advance this site acquisition process. A number of options to progress the site acquisition process were identified and a significant amount of work has been undertaken by both council and Department officials to thoroughly appraise these to ensure value for money for the State. This exercise included the consideration of further information regarding the availability of the preferred site and, in light of this and in the context of the identified options for progression, negotiations recommenced with the landowner in respect of that preferred site option, with a view to reaching agreement on mutually acceptable terms. These negotiations are currently under way and appear to be progressing.

Should agreement on the proposed acquisition be reached, the process will advance to the conveyancing stage when draft contracts are prepared and legal due diligence is undertaken in respect of the proposed transaction. Once a site for the school is secured in State ownership the project to deliver the new school accommodation can progress to architectural planning stage.

The Senator will appreciate that commercial sensitivities attach to site acquisitions such as this and given that negotiations are at a critical point I am not currently in a position to disclose further information. On behalf of the Minister, Deputy Bruton, I assure the Senator that the school authorities are being kept apprised of the situation and will be informed of the permanent location for the campus as soon as it is possible to do so.

Senator Pádraig Mac Lochlainn: More than two years ago, the Minister of State, Deputy Joe McHugh, announced that he was delighted they had moved to a preferred site, yet here we

are two years later. The Minister of State, Deputy Catherine Byrne, will appreciate that the people in the Inishowen area are exasperated with the delays. If we get this deal over the line, and I wish the negotiators every success, I appeal to the Minister of State and the Minister, Deputy Bruton, to ensure that everything is fast tracked from that point on. We have lost years in this process. We urgently need full prioritisation in terms of staff, resources, personnel, planning, legal documentation and so on. I urge that the normal delays do not apply. Once this land deal is agreed, we must urgently address the other matters and move bricks and mortar on to the site in order that children, teachers and parents have schools that befit the standard of education currently being provided there. They are fantastic education institutions and they need fantastic buildings, facilities and amenities for their children.

Deputy Catherine Byrne: I will bring the Senator's concerns back to the Minister, Deputy Bruton, and I will speak with the Minister of State, Deputy Joe McHugh, also. I do not have any further information other than what I have given, so I cannot comment further on the negotiations.

An Cathaoirleach: If there is no progress, I am sure that Senator Mac Lochlainn will be back again to raise the issue before the days get too short.

Capitation Grants

Senator Jennifer Murnane O'Connor: I echo my colleague's comments. It is very disappointing that the Minister for Education and Skills, Deputy Bruton, is not here today. Three extremely important Commencement matters this morning are about education issues. The Minister should be here. I thank the Minister of State, Deputy Catherine Byrne, for being here but the Minister should be here. I put forward another education issue on Commencement matters last week and it was answered by the Minister of State, Deputy English, who is the Minister of State with responsibility for housing. I was very disappointed. I am aware that it is not the fault of the Minister of State, but it is unfair. The Minister should address our Commencement matters. I will make this known to the Minister when I see him.

Ireland has long prided itself on its terrific education system. We rely too heavily, however, on an entire network of support that is not acknowledged. I wish to ask the Minister of State about the cuts to the capitation grant. In a written answer to my Dáil colleague, Deputy Jack Chambers, in March the Minister said: "I recognise the need to improve capitation funding for schools having regard to the reductions that were necessary over recent years ... restoring capitation funding as resources permit is one of the actions included in the Action Plan for Education."

There are great schools in Ireland with great school principals, great teachers and great students. Right now we are putting huge pressure on parents to keep the lights on in some schools. It is just not good enough given that parents are already paying taxes for this very reason. It is unacceptable that parents are, effectively, paying extra taxes in this regard.

The capitation grant is supposed to cover the overall cost of running a school but in reality it does not. While it costs the same amount of money to run a large primary school as a second level school, the rate of pay for one is almost three times that of the other. The primary schools are losing out unless the parents reach deep into their pockets. Some schools are very lucky to have amazing fundraising committees but some schools have parents stressed out about volun-

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tary contributions that they really cannot afford. While we spin the idea of free education if one was to ask any parent he or she will tell one that education in Ireland is far from free.

Principals in primary schools are calling for the capitation to be restored to its pre-cut level of €200 annually per child. I support this call. There are more than 500,000 children enrolled in 3,000 primary schools in Ireland. Many of these schools are small with over 50% of them having four or fewer teachers. According to the chief inspector's report on schools, Government spending per pupil has fallen by 15% since 2010 and Ireland is now spending less per primary pupil than the EU or OECD average. Of the 28 countries in the EU there are only five countries that spend less than Ireland on primary and pre-primary school age children, with Romania and Bulgaria being two examples.

According to a recent report by Grant Thornton the capitation grant now covers an average of only 52% of the running cost of a school. Last year, parents and local communities paid at least €46 million to support their local schools, which works out at an average of €14,000 per primary school or €82 per primary school pupil. This is for so-called free education. This payment is a stealth tax on parents.

I call on the Minister of State to ask the Minister to make a pledge to restore the capitation grant, by means of a phased structure or otherwise, and to relieve schools of the worry about maintenance and the minor works grant paid every year as a non-discretionary payment by the Government.

I applaud the Minister for Education and Skills for admitting that he would like to see a situation where education is 100% funded by the State, as he said in the media recently when this issue came up. The Minister also said there has always been a little tradition of the locals helping out. That this is not acceptable anymore. We have a massive problem in the second level school system whereby some schools are due to open on the Minister's watch with fixtures, fittings and furniture for which subcontractors have not been paid. I have already spoken to the Minister about this issue.

At some point we need to invest in children and give the taxpayers the investment they all deserve. Our children deserve our full commitment to give them all the best chance, not just the children with wealthy parents and machine-like fundraising committees.

Can the Minister of State, Deputy Byrne, indicate if the Minister for Education and Skills will put an increase in capitation funding high on the priority list in the budget? I expect to see an increase because it is so important. I am disappointed that the Minister for Education and Skills is not in the House to answer these matters this morning.

An Cathaoirleach: It is important to note that Senator Murnane O'Connor's points were raised by a number of others also. While not being in any way disparaging to anyone, I suggest that the Senators take it up on the Order of Business so the Leader can raise it.

Senator Jennifer Murnane O'Connor: Absolutely.

An Cathaoirleach: I am only the referee.

Senator Jennifer Murnane O'Connor: I know.

An Cathaoirleach: In some instances, it would be more appropriate that the line Minister was present, but we cannot blame the Minister of State, Deputy Catherine Byrne, for being here

today. She is just the messenger.

Deputy Catherine Byrne: Do not shoot the messenger.

An Cathaoirleach: The Minister of State will not be shot in this Chamber.

Deputy Catherine Byrne: The Minister thanks Senator Murnane O'Connor for raising the important issue of schools funding. Unfortunately I am here on behalf of the Minister for Education and Skills, Deputy Bruton, and I do not have any information as to where he is.

The Department of Education and Skills is very conscious of the need to improve capitation funding for schools having regard to the reductions that were necessary since 2011. Restoring capitation funding as resources permit is one of the actions included in the action plan for education and the Government remains committed to achieving this. We must, however, be prudent in the context of ongoing budgetary pressures and prioritise where it is not possible to do everything that we would like to do in the education sector in any one year. Schools must also take responsibility for achieving value for money and for managing their finances responsibly. To assist schools in this regard, the services of the financial service support unit are being rolled out to the primary and the community and comprehensive sectors on a phased basis. This will be an important source of advice and support for schools on financial governance matters. In addition, the Department established the schools procurement unit in 2014 as a central resource to provide guidance to primary and post-primary schools on procurement-related issues. Budget 2018 marked the second year of major reinvestment in the education sector, as we continue to implement the Action Plan for Education, which has the central aim to make the Irish education and training service the best in Europe within a decade.

In 2018, the budget for the Department of Education and Skills increased by €554 million to more than €10 billion. In the last two budgets, provision was made for 6,000 extra teachers, 3,000 extra special needs assistants and more than 3,000 new middle management posts. Extra supports were also provided to 110 schools in disadvantaged areas which will benefit 20,000 students, and to build nearly 20,000 extra school places a year. That is the priority this Government puts on education. These resources were allocated to improve the learning experience right across the sector, with a particular focus on children with special educational needs.

Improvements have been made in the restoration of grant funding that is used by schools to fund the salaries of ancillary staff to enable schools to implement the arbitration salary increase for grant-funded school secretaries and caretakers and to implement the restoration of salary for cleaners arising from the unwinding of the financial emergency measures in the public interest, FEMPI, legislation. The cost of restoring the standard capitation grant to all schools at primary and post-primary level is estimated at some €35 million. However, as I indicated, in considering future investment it will not be possible to satisfy all of the demands placed on the education system at one time. It is therefore important to focus on the top priorities. It is the Minister's hope that funding, while limited in nature, will continue to be made available over the next few years to invest in our schools and to add to the significant progress already made on implementing the Action Plan for Education.

Senator Jennifer Murnane O'Connor: I thank the Minister of State for addressing me this morning but I am very disappointed with the Minister's reply. I welcome the fact that we are building up schools with extra services but there will be no increase in the capitation grant and I am very disappointed for primary school principals who have been fighting hard for this.

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I ask the Minister of State to relay to the Minister for Education and Skills that I will fight this with all school principals throughout Ireland. We need an increase to the capitation grant for primary schoolchildren. It is a priority for me and I will address the Minister on the issue.

Deputy Catherine Byrne: I thank the Senator. I understand the difficulty around capitation grants because I regularly deal with the issue in the context of my local schools. I will bring the concerns of the Senator to the Minister and ask him to reply to her. I do not know if an increase in capitation will be in the budget, to be honest.

An Cathaoirleach: The Minister of State might also convey to the Minister that Senator Murnane O'Connor does not give up easily.

Senator Jennifer Murnane O'Connor: That is for sure.

Message From Dáil

An Cathaoirleach: Dáil Éireann agreed on 6 July 2018 to amendments Nos. 1 to 40, inclusive, and 43 to 82, inclusive, made by Seanad Éireann to the Planning and Development (Amendment) Bill 2016. Dáil Éireann has not agreed to amendments Nos. 41 and 42 and desires that Seanad Éireann should not insist thereon.

Sitting suspended at 11.15 a.m. and resumed at 11.30 a.m.

Order of Business

Senator Jerry Buttimer: The Order of Business is No. 1, motion regarding a reasoned opinion and a proposal for regulation of the European Parliament and of the Council and streamlining measures for the advancing of the realisation of the trans-European transport network, to be taken on conclusion of the Order of Business, without debate; No. 2, Road Traffic (Amendment) Bill 2017 - Second Stage, to be taken at 1 p.m. and to be adjourned no later than 3 p.m. if not previously concluded, with the contributions of group spokespersons not to exceed eight minutes and those of all other Senators not to exceed five minutes; and No. 3, Judicial Appointments Commission Bill 2017 - Committee Stage (resumed), to be taken at 3 p.m. and adjourned no later than 10 p.m., if not previously concluded.

Senator Catherine Ardagh: Today I will raise an issue on behalf of the Irish Haemochromatosis Association. Haemochromatosis is a common hereditary iron overload disorder and one in 83 Irish people are predisposed to have this condition. More than 20,000 Irish people have already been diagnosed with haemochromatosis and there are still well over another 20,000 people in Ireland who are undiagnosed. The most common symptoms are chronic fatigue and joint pain. Anyone who is concerned about same should go to their GP to get a ferritin test.

What is of major concern is that every time people with haemochromatosis go to get what is called a venesection, where their blood is cleaned, it costs €80. This has to be done up to 100 times per year. It is of major concern to people who do not have a medical card or health

insurance. These people should not be charged for this and should be treated in the same way as those on dialysis or receiving chemotherapy. The long-term illness scheme is very outdated and does not take into account many illnesses which we now have much more information on, such as haemochromatosis. I ask the Leader to relay this matter to the Minister to consider waiving this €80 fee.

I refer to the schoolboys trapped in the cave in Thailand. I commend the boys for their resilience and the rescuers for their perseverance and professionalism in risking their own lives to save these boys. The eyes of the world are on this situation. I understand that to date there are two boys left in the cave as well as their coach, some rescuers and an army doctor. We also send our sympathies over the diver who lost his life trying to rescue these boys and we hope that this ends as a happy story and they all come out safely.

I mention the visit of Mr. Harry Windsor and Ms Meghan Markle to Ireland. I hope we all wish them a céad míle fáilte and that they have a lovely time visiting our beautiful country.

Senator Ian Marshall: On Saturday afternoon, a sad and tragic accident claimed the life of William Dunlop in the Skerries 100 motorcycle race in north Dublin. The Dunlop name is synonymous with road racing in Ballymoney and across the island of Ireland, the UK and among the international motorcycle racing fraternity. I extend our sympathy and support to William's wife and daughter and to the wider family circle. A huge void has been left in the wake of this sad and heartbreaking loss for the family, the sport of motorcycle racing and for Northern Ireland.

In 1939 there was estimated to be 350,000 horses involved in farming in Ireland. Most farms and rural families had a horse or horses for work, as part of recreation or a revenue generator for the family. The horse was and continues to be a critical component of the rural fabric of Ireland. Ireland is currently the world's third largest thoroughbred breeding nation and it is with this in mind and the current impasse in Brexit negotiations that I raise concerns about the thoroughbred industry.

To its credit, Horse Racing Ireland commissioned a study by Deloitte into the economic impact of Irish breeding and racing in 2017 which uncovered some significant figures. Irish racing and breeding generated a total expenditure of €1.84 billion in 2016 and is without question one of the most important industries on this island. *Per capita*, Ireland has 50 thoroughbreds per 10,000 people, amounting to ten times that of any other country. It generates around 28,900 direct and indirect jobs, mostly in rural economies. Jobs across a wide range of industries and skill sets are evident in this industry. In addition, the value of Irish foal exports sold at public auction in 2017, 80% of which was to the UK, was a staggering €271.6 million.

For this industry, Brexit uncertainty is a massive concern. There are 26 racecourses in Ireland, two of which are in Northern Ireland and it attracts over 1.28 million people annually with over 80,000 tourists swelling the numbers, often combining business with pleasure, taking in a race meeting while sampling a rural landscape, local culture, food and drink and the hospitality in the area. Tens of thousands visit from Great Britain and further afield, regarding Ireland as a Mecca for quality bloodstock, breeders, trainers and race yard staff. They regard Ireland as the shining light in the thoroughbred industry globally and it is. That is so especially when one considers that up to 75% of runners at British fixtures are Irish or French bred. Britain and Ireland operate currently a single entity for stud book purposes and a tripartite agreement exists between Ireland, Britain and France to facilitate the free movement of stock between the

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three jurisdictions. Any threat or challenge presented by Brexit could prove catastrophic for the industry.

Brexit raises serious questions. What will the impact be on the movement of horses and labour? What are the implications for the all-island status of the industry and the potential impact on the two Northern Irish racecourses? What tariffs or restrictions will be imposed which could impact on trade or movement? What taxation incentives could be introduced to Britain that could disadvantage the Irish industry? The industry is not resting on its laurels. It is professional, proactive and it is making plans. It has already submitted a proposal to the European Commission to establish a third equine category under EU animal health law that will protect movement and trade for breeding and competition horses, require official veterinarian control and oversight and which could facilitate trade and movement with any other qualifying country, not just Great Britain. Uncertainty and lack of clarity is unhelpful to the industry, the importance of which to the Irish economy cannot be underestimated, irrespective of whether one is urban or rural.

These concerns should be raised across a number of Departments, including the Department of Transport, Tourism and Sport, the Department of Business, Enterprise and Innovation and, given the importance of agriculture and the rural economy, the Department of Agriculture, Food and the Marine, which is inextricably linked to this and could be adversely impacted. I ask, therefore, that the Government make representations in the House to address the concerns of the thoroughbred industry and answer these pressing questions.

Senator Paul Gavan: “The dream is dying” declared Boris Johnson yesterday in his resignation letter to Theresa May. It reminded me of the old Waterboys Song “England is dying”, from which it is worth quoting a couple of lines. It is particularly apt when one thinks of Boris:

Still he sings an empire song,
Still he keeps his navy strong,
And he sticks his flag where it ill belongs,
Old England is dying.

While it is easy and, yes, enjoyable to see the Tory Party with its illusions of empire sink ever further into crisis on Brexit, the consequences for our country North and South grow more serious by the day. The gleeful declaration by Andrea Leadsom last night that the European Court of Justice would have no more say over matters involving Britain and that there would be an end to freedom of movement for EU citizens are just two of a number of worrying statements coming from this quarter. Like many, I worry that this British Government may well prove incapable of negotiating a Brexit agreement. By accident, rather than by design, we may end up with a hard Brexit. As such, I call for a further debate on this issue, in particular to discuss the Government’s readiness for this possibility and its contingency plans at EU level to ensure there is no hard border on this island. Brexit was a Tory solution to a Tory problem. The backstop or Irish protocol agreed last December is the bottom line for Ireland and the British Government cannot and must not be allowed to negotiate downwards from that position.

The second issue I raise today is the Government’s decision to proceed with plans to delete the reference to a woman’s place in the home from the Constitution. I understand a referendum is scheduled for 26 October. Instinctively, one wants to think this is a good thing to do, but I

join those who have expressed concern as to why the Government chose to ignore the advice of the Constitutional Convention and its own departmental task force on the matter. Both the Convention and the Department of Justice and Equality advised against repeal simpliciter and recommended instead making the constitutional clause gender neutral and including carers within or beyond the home. This is an opportunity to do something positive, recognising the rights of carers and the crucial role they play in our society. A third option not considered but highlighted by Laura Cahillane, a law lecturer at the University of Limerick, would be to recognise that care work in the home is of such importance that the State will ensure that those who choose this role are sufficiently supported financially. Given the huge costs of holding a referendum, all options surely should be explored before the question is brought to the people. Rather than rush in to hold a referendum on this issue in the absence of any real discussion, it is important to ensure there is proper debate. Frankly, that has just not happened so far. As such, I call for a debate on that issue.

Senator Ivana Bacik: On behalf of the Labour Party group, I welcome the news that President Michael D. Higgins has announced that he will seek a second term in office. He has served this country with great distinction as our President. I hope that colleagues of all parties and none will see fit to support his candidacy for a second term.

I welcome also the launch this morning by our Labour Party colleagues, Deputies Jan O'Sullivan, Brendan Howlin and others, of the party's national housing strategy. I ask the Leader to arrange for a debate on housing when we return in September to ensure we have the opportunity to debate these important and original proposals for affordable housing for all. The proposals include the delivery of 80,000 housing units in a five-year period of Government on the basis of an investment of €16 billion through the mechanism of a single national State agency to be called the national housing development bank. The idea is that the bank would be given the powers, land, expertise and money to deliver housing and to replace existing agencies like the Housing Agency and the Housing Finance Agency. Of particular importance is the proposal that housing executives would be created in a selection of local authorities on a regional basis to ensure the consolidation of expertise and resources to enhance the capacity of local government to deliver and develop social and affordable housing. We have a range of other proposals and I ask colleagues to look at the policy document so that we can have an informed debate in September on this vitally important issue.

I welcome the Leader's announcement that we will have the Road Traffic (Amendment) Bill today on Second Stage. It is an important initiative to make our roads safer for all. I appeal to the Leader to arrange a further debate with the Minister for Transport, Tourism and Sport in September on the need for more initiatives for road safety, in particular the safety of cyclists. Colleagues will be aware that there have been horrific fatalities among cyclists this year on the roads and there is a real problem in the lack of resources and policies on cycle safety. Things like the Luas tracks have made cycling in Dublin city centre much more dangerous. There have been a huge number of accidents where people have got tyres stuck in Luas tracks. There is a way to make Luas tracks safer for cyclists and we need to debate that as well as more general initiatives to ensure cycle safety and that we see a decrease in the number of accidents and fatalities among cyclists. I urge colleagues who are car drivers to be mindful of cyclists on the roads.

Senator Maria Byrne: I rise today out of concern at the fact that St. John's Hospital in Limerick had to close its small minor injuries emergency department yesterday. This was helping to relieve the significant pressure on the accident and emergency department at the Univer-

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sity Hospital, which is overcrowded again today. It is because there were not enough staff to manage the unit, albeit it reopened at 8 a.m. this morning. I am very concerned that St. John's Hospital which was helping to deal with minor injuries could not open yesterday. It is a big problem. Patients were diverted to the University Hospital.

The second matter I raise is the Creative Ireland programme and the €200 million announced to provide for things like film production. Troy Studios is a film studio based in Limerick. As part of the €200 million Creative Ireland programme, there is discussion of increased tax incentives and funding for training. I have raised here on many occasions the importance of training and apprenticeships. There are people on an apprenticeship programme in Troy, which is a positive, good news story. I am just using this as an example. No matter what high end film production companies come to film in Troy, people will have the skills sets to apply for positions. It is very important. I ask the Leader to bring the Minister for Culture, Heritage and the Gaeltacht to the House to debate the future of the Creative Ireland programme and the way it can be used productively on a national basis.

Senator Gerry Horkan: I thank the Leader for outlining the Order of Business which I welcome. I welcome also the proposal to adjourn this evening at 10 p.m. The Leader might guarantee to the House that there will be no extension of that as there were a lot of rumours yesterday to the effect that we might sit later. While they were obviously unfounded, it would be nice if the Leader confirmed that we will adjourn this evening at 10 p.m.

Senator Jerry Buttimer: That is up to other Members. They are after gestating some parts.

Senator David Norris: That is rubbish. We are dealing seriously with a ridiculous Bill which the Leader's party does not support.

Senator Jerry Buttimer: Senator Norris's behaviour yesterday was play acting.

An Cathaoirleach: Order, please.

Senator David Norris: Mine was superb.

Senator Jerry Buttimer: The Senator's behaviour yesterday-----

Senator Gerry Horkan: I did not interrupt Senator Norris.

Senator Jerry Buttimer: -----was such that he might have been on stage in the Gaiety as the dame in a pantomime.

Senator David Norris: Sexism is rampant in County Cork.

An Cathaoirleach: Members might listen attentively to one another.

Senator Gerry Horkan: This is a discussion about the Order of Business, which is not necessarily what everyone talks about on the Order of Business. Yesterday we resumed on amendment No. 22 of 111 amendments to the Judicial Appointments Commission Bill and we finished at 10 p.m., not having concluded the debated on amendment No. 29. Therefore, 83 amendments have yet to be dealt with. It was helpful yesterday to have a sos between 6 p.m. and 6.30 p.m. I ask the Leader to amend the Order of Business to include a small sos to allow the Minister and his officials, as much as anybody else-----

Senator Paul Gavan: A sos between 7 p.m. and 9 p.m. would be good.

Senator Gerry Horkan: The Senator can watch the match on his phone.

Senator Jerry Buttimer: The garden party will be on.

Senator Martin Conway: We all want to go.

Senator Gerry Horkan: I am trying to make my contribution. I saw the Leader's tweet this morning. He must be getting tired because it is the second last Tuesday of the session. He is anticipating not only the last week but the second last one. I will be nice to him on the Order of Business.

I met a man at the weekend who told me that one has to tell people about a matter 40 times to ensure they remember it. I remind the House of my contribution last week regarding the confidence and supply agreement last week. The agreement was signed up to by the negotiators for Fine Gael, Deputies Leo Varadkar and Simon Coveney, now the Taoiseach and Tánaiste, the then Taoiseach and leader of Fine Gael, Deputy Enda Kenny, and my party leader. It provides for a review by the end 2018. While I am sure any preliminary talks would be welcome, the deal to which everybody signed up provides for a review. Perhaps the signatories did not believe we would get this far and they may not have read as far as the bottom of the second page when they signed it but that is what was in it.

The main point I wish to raise is that of cycling safety, to which Senator Ivana Bacik alluded. We have a Minister for Transport, Tourism and Sport, Deputy Shane Ross, who is very interested in judges and judicial appointments. It seems he is less interested in his own brief. He has a junior Minister, the Minister of State, Deputy Brendan Griffin, dealing with tourism and sport and he seems to be doing that adequately and well----

Senator Jerry Buttimer: Hear, hear.

Senator Gerry Horkan: ----but the Minister seems to be spending far more time on judicial appointments and other matters, including Garda stations, than he is on his own brief of transport. Cycling is a positive activity for all of us. I want to acknowledge the death at the weekend of Shane Duggan, a 16 year old from Straffan. We must make our cycling infrastructure safer and spend more money on it. That would be to everybody's benefit, including car users as the more cyclists there are, the fewer motorists there will be. Cycling in this morning, I shaved one minute off my personal best time for the journey. Almost everyone who cycles is taking a car off the road which makes it easier for everyone else. It reduces emissions and fossil fuel use. It is important that the House has a discussion on cycling. We are about to spend €4 billion on MetroLink, about which Senator McDowell outlined many concerns. Cycling infrastructure is very cheap to provide and it delivers a great deal. I request that we have an urgent debate on cycling, including cycling safety but not only that aspect, possibly before the recess if that is possible.

An Cathaoirleach: I think the Senator was quicker on the bike this morning than he was on the Order on Business.

Senator Gerry Horkan: The Cathaoirleach was not here for all of it,

An Cathaoirleach: The clock was set. I call Senator McDowell.

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Senator Jerry Buttimer: That is very harsh on Senator Horkan.

An Cathaoirleach: That was a compliment to him.

Senator Jerry Buttimer: He is an extraordinary Acting Chairman.

(Interruptions).

An Cathaoirleach: I will have to amend that.

Senator Michael McDowell: I am saving my voice for-----

Senator Gerard P. Craughwell: He is saving himself.

Senator Jerry Buttimer: He is wearing a jacket.

Senator Gerard P. Craughwell: I request the Order of Business be changed to provide for a sos between 6 p.m. and 7 p.m. It is inhumane to expect people to continue straight through from early afternoon until 10 o'clock at night.

Senator David Norris: Hear, hear. The three or four of us who were here.

Senator Gerard P. Craughwell: I ask the Leader to consider that proposal and to be gracious enough to accept it. He is silent for the first time.

Senator Jerry Buttimer: I will reply to it when I am replying to the Order of Business.

An Cathaoirleach: If the Leader does not accept it, the Senator can always take a certain course of action when the Order of Business is being agreed to.

Senator Gerard P. Craughwell: It is a formal request to change the Order of Business.

Senator Jerry Buttimer: The Senator should launch a campaign for the Presidency.

Senator Gerard P. Craughwell: My colleague, Senator Bacik, welcomed the announcement by the President of his intentions. It is deeply regrettable that he has gone back on his word and decided to seek a second term. However, he can explain that to the electorate over the period of the election. I am deeply disappointed at some of the political elites in this House who have decided to close off the nomination process-----

Senator David Norris: Hear, hear.

Senator Gerard P. Craughwell: -----for those who would seek to run for the highest office in the land. We must look within and ask ourselves where our democratic souls are. It is rather disgusting that we, as political elites, seek to close off an election process but such is life.

Senator David Norris: Absolutely.

Senator Gerard P. Craughwell: Despite the regret I feel today, we will move on and upwards. I ask those in Leinster House who still have a democratic soul to think of nominations and to ensure that we have a competition for this office as we move forward.

Senator Anthony Lawlor: I agree with Senator Marshall on the importance of the horse racing industry for the country. I wish the incoming chairman of Horse Racing Ireland, Mr.

Nicky Hartery, well in his new role. He performed very well before an Oireachtas committee last week when he spoke about funding for Horse Racing Ireland. A review of the betting tax, currently set at 1%, could generate a key part of HRI funding. I ask the Leader to request that the Minister review the tax in the run-up to the budget.

I also raise the draft guidelines on wind turbines. There is a code of practice regarding interaction with the community and a proposal on a preferred draft approach. Will the Leader indicate when the draft proposal will become a proposal?

My greatest bugbear of all time is Seanad reform. The cathaoirleach of the new Seanad reform committee is present. Perhaps he will give us an update on the progress that has been made since he was made chairman of the committee.

Senator Gerry Horkan: He is preoccupied with something else.

Senator Anthony Lawlor: He might give us a brief summary of what has happened to date.

An Cathaoirleach: I am not sure that is within his remit but I am sure he will be able to answer for himself. I call Senator Devine and apologise for surprising her.

Senator Máire Devine: That is fine. I was just conversing with my colleague. I will raise two issues, the first of which is the closure of Linn Dara child and adolescent mental health service, CAMHS, in Cherry Orchard. This day service programme was closed on a hush-hush basis on Friday. That means there will be no day programme services for child and adolescents suffering with mental health throughout the Dublin-mid Leinster region, which covers not only Dublin but Kildare, Wicklow and the counties in between. I intend to raise this issue as a Commencement matter and I hope it will be chosen to allow me to address the Minister on it.

Senator Jerry Buttimer: Could the Senator repeat that? I missed the start of her contribution.

Senator Máire Devine: That is because the Leader was talking, but I will forgive him.

Senator Jerry Buttimer: I was not talking. I was just trying to take a note of the matter.

Senator Máire Devine: It is Linn Dara CAMHS.

Senator David Norris: It is based in Cherry Orchard.

An Cathaoirleach: The Senator has tabled a Commencement matter and the issue might be dealt with in that way.

Senator David Norris: It is a juvenile service-----

Senator Máire Devine: It is not, it is a day programme service. I wish Members would stop interrupting me.

Senator Jerry Buttimer: The Senator should look at herself.

Senator Máire Devine: Can I start again?

An Cathaoirleach: I remind the Senator it is difficult for me to allow a debate on the issue if it is also likely to be selected as a Commencement matter. In other words, she cannot have

two bites of the cherry.

Senator Máire Devine: I wish to again raise the case of Emma Mhic Mhathúna. As we know, cancer has spread to her brain. She, this brave warrior for Ireland and Irish women, is using her compensation money and calling out for cytologists and the use of the laboratories in universities that are quiet over the summer period. In her own words, “there’s no point in waiting for CervicalCheck - we need to ... [do this] ourselves.” The 3,000 smear slides must be examined and this brave woman who is gravely ill has taken it upon herself to do what the HSE should be doing and to do it out of the compensation she received from the HSE and Quest Laboratories.

Senator David Norris: I am glad that Michael D. Higgins has at last announced his candidacy. I hope there will be a contest and an election as I believe it is important for the office of President. I might find myself voting for him if he is the best candidate but the people who are on the wireless all the time should stop farting about and should start looking for nominations. It would show that they are serious about it.

In respect of the resignations of Boris Johnson and David Davis, I am absolutely delighted they are gone. Mrs. May should have fired them long ago as they are useless. As Senator Bacik pointed out yesterday, Boris Johnson made a complete and utter bags of his resignation letter.

12 o'clock He put in two paragraphs blackguarding the European Union for preventing him, as Lord Mayor of London, from introducing regulations that would have affected the windows of articulated lorries and the placing of mirrors when, in fact, it was the British Tory Government that prevented it and the proposal actually came from the European Union. What an idiot. Now he is up the creek polishing one of his own little turds, to use his own words. I laughed at him when he said the poor United Kingdom would be a colony. It is about bloody time. It colonised three quarters of the rest of the world so they might have a lash at what it feels like to be a colony. I am half English but I am bloody delighted.

Senator Martin Conway: Will the Senator say that to Harry?

Senator David Norris: I will say that to Prince Harry. I am one of the few people in this House who received an invitation, in deference to my strong royalist sympathies.

An Cathaoirleach: If Senator Conway does not interrupt again, I will call on him to speak.

Senator Martin Conway: I also welcome the clarification from Áras an Uachtaráin this morning that President Higgins will seek a second term. It is inevitable that we will have a presidential election.

Senator David Norris: Good.

Senator Martin Conway: We need an ethical presidential election because many presidential elections in recent times have descended into a farce.

Senator David Norris: Hear, hear.

Senator Martin Conway: I refer to what happened with RTÉ’s “The Frontline”. I call on the Standards in Public Office Commission to have another look at the guidelines for presidential elections because they seem to be very dirty elections. It should not be like that and it does not have to be.

Senator David Norris: Hear, hear.

Senator Martin Conway: It does not do anything for the dignity of the office of President to have a campaign of skulduggery, so it is time the Standards in Public Office Commission brought out firm guidelines on managing it and on making it clear what should and should not be done, and what can and cannot be done.

Senator David Norris: Well said.

Senator Martin Conway: We have had a great period of sunshine and tourism is doing exceptionally well. Tourism is our oil and our gas, with our scenery and our people being our greatest natural resource. I would like a debate with the Minister with responsibility for tourism on a long-term strategy. We need significant capital investment in tourism because we do not get this weather too often. We need to ensure we have a tourism infrastructure that is not weather-dependent and embraces the different weather we have by giving people the opportunity to have a great experience irrespective of the weather.

Senator Jennifer Murnane O'Connor: On this morning's Commencement matters, three Senators had very serious issues we wanted to address to the Minister for Education and Skills but he was not present. I understand that he cannot be here all the time but three of us wanted to raise our matters with him. The Leader responds to the points we raise by telling us he will bring the Minister into the House, but last week I had another Commencement matter on education that was replied to by the Minister of State at the Department of Housing, Planning and Local Government, Deputy English. I am not being disrespectful to any Minister but the Leader needs to make this a priority. If we put forward a Commencement matter, the Minister to whom it is addressed should come to the Seanad and not send in other Ministers who cannot answer the points we make. We put forward Commencement matters to get the Minister in to reply.

Senator Paul Gavan: Senator Murnane O'Connor is right.

Senator Jennifer Murnane O'Connor: I ask the Leader to make this a priority from September. If the Minister cannot address us, the Commencement matter should be put off until another date. We can wait. I came in today to meet the Minister for Education and Skills but did not get him.

Senator Michael McDowell: I propose an amendment to the proposed Order of Business, that there be a sos between 6 p.m. and 7 p.m.

An Cathaoirleach: Is the Senator seconding Senator Craughwell's proposal?

Senator Michael McDowell: If Senator Craughwell formally moved it, I formally second it.

Senator Jerry Buttimer: On what basis does the Senator want a sos?

Senator David Norris: On humanitarian grounds.

Senator Michael McDowell: People are entitled to an evening meal.

An Cathaoirleach: The Senator does not have to explain. An amendment has been proposed.

Senator David Norris: Three or four of us were here for six, eight or 12 hours at one time.

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Senator Rónán Mullen: May I ask the Senator why he wants a sos?

Senator Michael McDowell: It is so that we can have a tea break during the long debate.

An Cathaoirleach: The Senator does not have to explain.

Senator Michael McDowell: Any reason for opposing the amendment is a pretence that this matter is urgent and needs to be rushed through the House. There is plenty of time to discuss it and the only person who thinks it is urgent is one member of the Cabinet. The Minister told us it would take many months, possibly between eight and 18, to get the whole process going once the Bill is passed, so there is no huge urgency and we do not have to pretend there is.

On the presidential election, the Constitution provides that it is an elected office and it envisages that four county councils or 20 Members of the Oireachtas are entitled to nominate somebody for the position. The Constitution also states that an outgoing President can renominate himself without any such formalities so it is undemocratic to do a dog-in-a-manger act and prevent people from standing by not using the nomination powers we are given as Members of the Oireachtas to ensure there is a contest. Sinn Féin has at least 20 seats in both Houses and I hope it exercises its right.

Senator David Norris: Hear, hear.

Senator Michael McDowell: There are another 30 or 40 Members of this House who are in a position to see if there is anybody, not necessarily from within this House, who is a worthy and appropriate candidate. This is a democratic State so we should not have shoo-ins by the arrangement of the powers that be.

An Cathaoirleach: Is Senator McDowell seconding Senator Craughwell's presidential campaign?

Senator Michael McDowell: I come from a group of Independents which has all the talents. We have at least three aspiring Presidents among us and I ask if any other group in the House can match that.

Senator Frank Feighan: I cautiously welcome the outcome of the Chequers negotiations last weekend. I think British politicians are eventually coming to their senses. It is time for reflection now because a bad deal for the United Kingdom is a bad deal for Ireland and for the European Union. I hope there will be a change of mind regarding Brexit. I hope also that Brexit will not happen and that this is good news.

I agree with Senators Conway and Norris on the presidential election. The previous presidential election was a race to the bottom.

Senator David Norris: Yes.

Senator Frank Feighan: It was a jamboree of insults. People's good character was dragged through the mud, and nobody appeared to apologise.

Senator David Norris: No, but they paid for it. There were ten libel actions.

Senator Frank Feighan: I suppose Senator Norris is well able to stand up for himself after that. It is time the Seanad debated this issue and came up with some code of conduct regarding the media and various political parties because the previous presidential election sent out

the wrong signal in terms of all the candidates. No one would get involved in such an election, particularly if it were similar to the previous one.

On a more sombre note, tomorrow, 11 July, we will remember Srebrenica, which became synonymous with those dark days in 1995 when in the first ever United Nations declared safe area, thousands of men and boys were systematically murdered and buried in mass graves. The victims, predominantly Muslim, were selected for death on the basis of their identity. That was the worst atrocity on European soil since the Second World War. We should remember what happened in Srebrenica in 1995, which must never happen again. I hope we will remember it.

Senator Kevin Humphreys: I ask the Leader for a debate on home care packages with the Minister of State at the Department of Health present. I acknowledge the significant increase in the provision of home care packages in the previous budget but for some reason since January or February, certainly in respect of the south side of Dublin city, almost no home care packages have been awarded. People have contacted me who wanted to bring their parents home to pass away in their home but they have not been able to access a home care package. I want to be fair. There has been an increase in the provision. There was an effort to reduce the trolley crisis in that respect but people are entitled to a home care package. It helps the hospital system because it takes the patients out of acute beds. If something has gone wrong in the way they are being awarded, it needs to be addressed. I hope the Minister of State will come into the House at some stage and address the matter, not on a localised basis but on a national basis.

I have raised Commencement debates in respect of the Poolbeg west or former Irish Glass Bottle Company site on which an additional 500 affordable rental and social housing units were to be built, which was a deal done to get the strategic development zone. Nothing seems to be happening in that respect and rumours are rife around the city that because of the cost of those units, it will not happen. NAMA is involved in respect of the site; the receiver is acting on behalf of NAMA. We need action. We cannot forgo 500 units in a key location in the city centre and be left with a huge loss in that respect and a major gap in the Government's policy on the provision of affordable and cost rental housing. The matter was raised in Commencement debates in the House on several occasions but we have heard nothing back since it was announced that negotiations were taking place. An Bord Pleanála will make a decision shortly and we are in danger of losing 500 units for the capital city, which are badly needed. The Minister of State needs to address the House on this issue.

Senator Aidan Davitt: First, I raise an issue brought to my attention by a bus driver in Mullingar, which culminates in respect of news I heard on the wires this morning about a Bill, framed by my colleague, Senator Gallagher, on assault and abuse of people working in the emergency services. Given the horrific accounts I heard at the weekend from a local bus driver, it is possible we could consider extending that Bill and the good work Senator Gallagher is doing to include other people who serve the public such as bus drivers, council workers, and so on. There are many people who come in for both physical and verbal abuse in their work that is not canvassed or necessary. They need our protection. Senator Gallagher is framing a very good Bill and it is possible that it could be extended further to include such workers.

Second, I agree with Senator McDowell on the great work he is doing on the Judicial Appointments Commission Bill.

Senator Jerry Buttimer: Will he be back with his own Bill?

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Senator Aidan Davitt: He is right that all these issues need to be teased out and ventilated. I put off work on what would have been an extremely busy day yesterday, unannounced, to be here to support the topics being discussed. As Senator McDowell is Chairman of the Seanad reform committee, I hope he will ensure they will be ventilated robustly in this House, including all the changes and every issue that needs to be brought before the House, and that, as Chair, he will give it as much attention and fervour as he has shown in respect of the Judicial Appointments Commission Bill.

Senator Michael McDowell: I certainly will.

Senator Jerry Buttimer: In equally the same manner.

Senator Colm Burke: Yesterday, despite all the votes taking place in the House, and I was here for most of them, I was still able to attend a conference in the Royal College of Physicians of Ireland where Professor Ian Frazer, who developed the human papilloma virus, HPV vaccine, gave a lecture. It is sad that there were protests outside the college and outside the Dáil by people who were alleging that the vaccine has negative effects. The evidence in Australia is that there has been a 90% drop in the number of women under the age of 30 who are infected with the virus as a result of the comprehensive programme operated in Australia since 2007. Australia introduced the programme of vaccination for girls in 2007 and for boys in 2013. The number of women with the HPV virus between the ages of 18 and 24 has dropped from more than 22% to 1%. That is clear evidence from Australia that the HPV vaccine works. It is successful in respect of nine strains of the virus. It has worked very well yet we are hearing negative comments being made about the vaccine programme here in Ireland. The uptake of the vaccine here dropped to an uptake of 50% two years ago but that is back up to 60%. From September, we should have a comprehensive programme to get out the information on the vaccine to ensure the uptake is increased to 70% or 75%. We should also introduce the vaccine for boys, which was done in Australia. I ask the Leader to bring this matter to the attention of the Minister and that, if possible, the Minister would come into the House at the start of the next term to outline the programme to ensure that Oireachtas Members are fully aware of its benefits. At a time when we are talking about failures in the system, we should talk now about the positive developments that have occurred in this area. In that regard, we need to make a big effort in the coming months.

Senator Rónán Mullen: The Seanad is scheduled to debate the Judicial Appointments Commission Bill for more than 18 hours over the next two days but as we spend our time debating what really results from a pet topic and a petty grievance of the Minister for Transport, Tourism and Sport, Deputy Shane Ross, life is going on in the real world. If we were to consider the necessary reforms around the appointments of judges, we should be considering the serious problems that continue to face the legal system. Indeed, both the Minister for Transport, Tourism and Sport and the Minister for Justice and Equality should direct their minds to what the President of the High Court, Mr. Justice Peter Kelly, said when he placed a statement on the website of the Courts Service last Friday. His statement is worth reading into the record. He said:

As a result of a shortage of judges in the High Court, it is necessary to redeploy judges from their designated duties so as to ensure that trials in the Central Criminal Court, Family Law, Wards of Court and Commercial List cases do not have to be postponed. As a result, it is regretted that all cases in every other High Court list are at risk of having to be adjourned at short notice.

It is extraordinary that Mr. Justice Kelly has been placed in this position. There are currently three vacancies in the High Court. We have delays in hearing cases, which already have been added to by the shenanigans of the Minister, Deputy Ross, in delaying appointments to previous vacancies. He has, effectively, held these appointments hostage in order to secure political concessions on other issues.

Last May, the President of the Court of Appeal, Mr. Justice Birmingham, stated the court was facing “an immediate crisis” due to the shortage of judges. There is currently a 20-month waiting time for appeal hearings in that court. Last week, an entire jury panel was sent home as there were no judges available to hear cases on the list. The problem is not confined to the higher courts. An “RTÉ Investigates” programme in December 2017, as we will recall, showed a shocking level of chaos at District Court level with drink-driving legislation not being properly applied, lengthy delays in bringing prosecutions, cases being struck out due to a lack of resources and administrative chaos allowing repeat offenders to evade proper justice. This is what undermines confidence in our justice system not the current arrangements for the appointment of judges. It is populist attacks on the Judiciary led by Government figures in recent years that has undermined public confidence in the justice system. We should direct our minds to these matters. What is going on is certainly not good governance in respect of the administration of justice.

Senator Robbie Gallagher: Last week, Mr. Justice Frank Clarke published his report into the tragic circumstances surrounding the death of Sergeant Mick Galvin at Ballyshannon Garda Station in County Donegal in May 2015. Sergeant Mick Galvin’s death was a terrible tragedy for his wife, Colette, their three children, their wider family circle and his Garda colleagues and community in that particular region.

The report raised serious issues about the way the Garda Síochána Ombudsman Commission, GSOC, goes about its business. The report highlighted shortcomings in how GSOC went about its work. Mr. Justice Clarke stated there can be no doubt but that he “was both an outstanding member of An Garda Síochána and also an outstanding person”. He continued by stating Sergeant Michael Galvin was not involved in any wrong-doing. This is, and was, the clear outcome of the Garda Síochána Ombudsman Commission, GSOC, inquiry.

I have a few questions arising from Mr. Justice Clarke’s report. Was there a need for a criminal inquiry? Why was the file sent to the Director of Public Prosecutions when GSOC’s inquiry found nothing to report? I also note that members of the force who were under criminal investigation were not informed they were being investigated. Tragically, in this case, Sergeant Mick Galvin was not informed of the outcome of the inquiry to the effect that he had no case to answer. I can only imagine the stress, worry and annoyance that this incident caused him and his family. As a result of the report, the Association of Garda Sergeants and Inspectors, AGSI, has sought an urgent meeting with GSOC on items that spring from the report. I ask the Leader to use his good office to facilitate a meeting. I fully appreciate there always will be tensions between GSOC and An Garda Síochána. Both have a job to do and both deserve space and time to do such work. The report has clearly shown there are many shortcomings that need to be addressed. Again, I ask the Leader to use his good offices to facilitate a meeting between An Garda Síochána and GSOC in order that all concerned know exactly where they stand and what is expected of them.

Senator Tim Lombard: I wish to mention the new Rural Link programme that seeks to alleviate rural isolation, which has worked well for the past few months. The programme has

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joined towns and villages. People now have an opportunity to connect with their community, to shop locally and meet grocers, butchers or whoever. The service has now been expanded and a pilot programme, comprised of an extra 60 routes nationwide, will commence between now until the end of December. Next Friday, a service from Kinsale to Clonakilty will commence.

I wish to note that the Local Link service will provide a night service. It will give people the opportunity to attend social events and ensure they are not tied to staying in their houses late at night. People will now have connectivity and, therefore, will be able to enjoy a normal lifestyle of meeting people and socialising in the local community. The initiative is very important and the pilot scheme must be supported. The public must get behind the initiative in order for it to be a success. I hope there will be general support for the pilot scheme and that people will avail of the service. If so, then we can argue for the scheme to be extended. The Local Link initiative has been a great success, as many towns and villages have been connected and I hope people will avail of the new scheme. The day service has been a great success and the night service has the potential to be as successful.

Senator Fintan Warfield: I support the contribution made by Senator Colm Burke. I was disappointed to see anti-vaxxers outside Leinster House yesterday. They have a right to protest but I could not help but notice the large number of young people and children among the protestors, that is, the people who these vaccinations protect. A number of months ago, I received my final vaccination at the gay men's health service clinic located on Baggot Street in Dublin. I wish to highlight that the HPV vaccine is available free of charge at the point of delivery for all men under the age of 26 who have sex with men. I wish to emphasise that vaccines work and they protect our future.

This is the time of year when every League of Ireland fan gets behind their representatives in Europe. I wish Cork City well as it takes on Legia Warsaw at Turner's Cross, Cork, in the Champions League. For the first time in 12 years, Cork City has qualified for the Champions League. The club had issues with Revenue, went out of business and then the fans took it over. I am excited about the future of domestic football and wish the club well.

Senator Michelle Mulherin: I welcome a significant milestone, namely, the approval by the Cabinet of the patient safety Bill at the end of last week. This legislation will now proceed to the Oireachtas Joint Committee on Health for consideration. This is a very concrete measure to address the serious shortcomings that exist and have been exposed by the CervicalCheck scandal. I refer to the fact that women were not given serious medical information about their health. People in authority lacked both common sense and decency and did not see fit to give the women vital information that not only impacts on their health but on their lives.

I hope the Bill will be passed by Christmas and it behoves us all to ensure that happens. The legislation will go beyond merely holding organisations responsible but also will hold responsible individuals in positions of authority. I believe the legislation will create a culture of mandatory open disclosure whereby it will serve to address and correct the current mindset of "we know best." I welcome the legislation and view it as progress.

The legislation also will include a definition of serious patient safety incident, which includes wrong site surgery, patient death or serious disability associated with a medication or diagnostic error. The legislation will make it crystal clear that people are entitled and deserve to know about serious health matters that pertain to them-----

Senator Máire Devine: The Senator voted against the legislation.

Senator Michelle Mulherin: -----and that they should not be kept in the dark.

Senator Rose Conway-Walsh: I would like to wish the England team well in its quest to win the World Cup. I congratulate Harry Kane on his work so far.

Senator Robbie Gallagher: Football is coming home.

Senator Rose Conway-Walsh: He has Irish connections. In fact, his uncle-----

Senator Kieran O'Donnell: He has Limerick connections.

Senator Rose Conway-Walsh: He has Mayo connections as well.

An Cathaoirleach: Excuse me, Senators. Four other Members wish to speak and, technically, we are over the limit. I ask for no more interruptions.

Senator Rose Conway-Walsh: Of course. I want to talk about a much more serious matter. This week, as we witness another Tory implosion, we have again to be concerned about the instability created for Irish business and jobs. One has to question the capacity of Westminster to resolve the Brexit issue. The fact remains that in order to-----

Senator Michael McDowell: There are six or seven that would make all the difference.

Senator Rose Conway-Walsh: I had to listen to the Senator all day yesterday. Give me a chance today.

The fact remains that in order to avoid a hardening of the Border and to protect the rights of the Irish and EU citizens in the North, the island of Ireland must remain in the customs union and the Single Market and must remain part of the EU human rights framework. Theresa May has to explain in detail how her proposals will achieve that. She talks about honouring the letter and spirit of the Belfast Agreement but we await the publication of the British Government's White Paper. Irish business exports equate to €26 billion right across the sectors, from agriculture and fisheries to manufacturing, food and beverage, motor industry, education and services, as well as health, energy, transport, tourism, social protection and pensions. We need certainty in all of these areas. Two years down the line, we need more than ambiguous comments on a soft Brexit. We certainly need the backstop agreed in principle and this needs to be enshrined in legal text.

I ask that the Tánaiste and Minister for Foreign Affairs and Trade, Deputy Simon Coveney, would come to the House next week to debate the details of the White Paper that is due to be published tomorrow. In the run-in to the October EU meeting, it is vital we would have a summit in September. We must iron out all these issues because all the businesses and sectors that I mentioned need certainty to be able to plan their business. Many jobs across this island depend on it.

Senator Ray Butler: I would like to offer my sympathies to the families of Jack Kenneally and Shay Moloney, who were drowned in a disused quarry on the outskirts of Ennis. I spoke about this issue many months ago given many quarry owners went bust during the recession and just walked away. In my constituency, there are several quarries like this and there are others all over the country. The bonds that quarries paid were just a fraction of what it took to fix

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those quarries and get them back into some shape or form, whereas most of the quarry owners just went bust and walked away. At Longwood, Rathmolyon, there is a quarry where young kids from the area swim. People were dumping their cars into the quarry and when anyone came around the corner and saw it, it was like landing on the moon. It is a massive, open, man-made lake. These quarries are the legacy we have left for future generations. They are all over the country and it is a crying shame.

I am sorry to say this is not the last tragedy we will have. We need strong legislation when it comes to quarry owners and the opening of new quarries because the legislation in place is not sufficient. I call on the Minister for Housing, Planning and Local Government to come to the House to discuss new legislation for quarries as we move forward.

Senator Kieran O'Donnell: I join with Senator Rose Conway-Walsh in her congratulations to Harry Kane. His grandmother was from Caherconlish and Caherline. In what might be a good omen for Limerick hurling, his great-great-grandfather was a member of the first all-Ireland hurling team for Limerick in 1897, so that could augur well for Limerick in the hurling final this year.

Senator Rónán Mullen: I am sure that thought will sustain him.

Senator Michael McDowell: He might keep putting a few over the bar.

Senator Kieran O'Donnell: My own grandmother is from Caherconlish.

An Cathaoirleach: We are already over the allotted time.

Senator Kieran O'Donnell: On a more serious matter, the weather is an issue for farmers in Limerick. Extremes of weather are very difficult for farmers and agriculture is a huge element of our industrial and business base. We had extremes of rain not long ago and we now have extremes of sunshine. Many farmers are being forced to do their second cut of silage now because the grass is burning up. While I know time is limited, I ask that the Minister for Agriculture, Food and the Marine would make a brief appearance in the Seanad prior to it breaking up. In some cases, yields have reduced by two thirds. Not only is the grass burning up, but farmers are being forced to take a second cut of silage ahead of time, which is bringing the yields back. Prevention is far better than the cure.

I ask the Leader to make contact, if possible, with the Minister, Deputy Creed, with regard to having a brief discussion on the matter. It is hugely important that we deal with this. Farmers are making contact with me because they are getting worried. I request the Cathaoirleach and the Leader to arrange for the Minister to come to the House. While a census is ongoing with regard to farmers' fodder requirements into the future, the problem is that current extreme weather conditions are having an impact on farmers.

Senator Paul Coghlan: I would also like to refer to the statement on the Courts Service website last Friday by Mr. Justice Peter Kelly, President of the High Court, where, among other matters, he reminded us that a core guarantee of the Constitution is that justice is done within a reasonable timeframe. It is vital that criminal cases are dealt with expeditiously to protect both the victim and the rights of the accused person and vital that commercial cases are dealt with in good time so businesses and international investors can be confident their interests will be protected. We need a fundamental discussion about the Judiciary and the courts system, which is not covered, if I may respectfully say so, by the Judicial Appointments Commission Bill which

is occupying so much time.

Senator Jerry Buttimer: The Senator must have missed some of the debate.

Senator Paul Coughlan: I was here for a lot of it.

An Cathaoirleach: The Senator can raise that with the Minister later.

Senator Paddy Burke: I ask that we would, at some stage, have the Minister for Education and Skills to the House to discuss school buildings. There are many situations where an extension to a school is taking place and it might suit to have a larger classroom that the community is able to use after school hours. This would probably require a change of policy in regard to the type of classrooms or extensions to national schools or secondary schools that are permitted. I ask that the Minister would come to the House to discuss such a change of policy in the context of a community advocating a different size classroom, which would help the community provide other activities after school.

An Cathaoirleach: I ask the Leader to respond as efficiently as he can.

Senator Jerry Buttimer: I thank the 27 Members for their contributions. Senator Ardagh raised the important issue of hereditary haemochromatosis patients and the issue around therapeutic venesection services for patients. The whole issue of therapeutic venesection services for medical and GP visit card holders is being considered by Government as part of the consultations with GP representatives on the GMS contract. The Department of Health and the HSE met with the Irish Medical Organisation, IMO, in May and articulated and outlined the Government's position. It is to be hoped that we will see amendments to the Health Act 1970 which will accommodate what Senator Ardagh referenced in her contribution.

I join with the Senator in commending all involved in the heroic rescue of those children rescued to date in Thailand. I sympathise with the family of the diver who drowned and commend him for his dedication and bravery. It is an awful tragedy and we are all watching with collective deep breaths, hoping and praying that these young boys and their coach will be rescued. I commend all involved.

In their very fine contributions Senators Marshall and Lawlor outlined the importance of the Irish thoroughbred industry in the context of Brexit and the fact that it is an industry worth €1.84 billion to our country. In yet another thoughtful contribution Senator Marshall outlined the importance of the industry. For the information of those of us who are interested in horse racing, two thirds of our horses are exported to the UK, but the professionals and workers in the industry will also be affected. Our thoroughbred industry, North and South, is faced with a huge issue in terms of the racecourses and the services ancillary to racing in the context of Brexit. I know the Irish Thoroughbred Breeders Association held a briefing in the early part of this year on the issue of Brexit. It is an issue that needs to be continually monitored and addressed. I commend Senator Marshall on his contribution. Horse Racing Ireland has also been involved in negotiating with the Government on the issue.

I join with Senator Marshall on my own behalf, on behalf of Fine Gael and on behalf of all of the House, in sympathising with the family of William Dunlop who died so tragically last Saturday. When we heard the news on Saturday afternoon it was another reminder of the tragedies the family has had to endure in a sport they very clearly love and are so good at. No words of mine will adequately express our condolences and sympathies to his wife and family.

Ar dheis Dé go raibh a anam dílis.

Senators Gavan, Davitt, Feighan and Conway-Walsh raised the issue of Brexit. The resignations in the UK Government are a matter for the House of Commons and the Prime Minister. I welcome the publication of the White Paper.

A Senator: It is not published yet.

Senator Jerry Buttimer: There is a continuing uncertainty around what the UK Government actually wants and stands for. That does not help anybody, especially not those of us who are the UK's near neighbours. I was hoping Senator Gavan would launch into a tune or two but he did not. I am not sure whether it is the case that he is afraid that it is coming home. The Government will continue to work with our European partners on the issue of Brexit to get the best deal for us, as the Senators all know. I would be happy to have a debate on Brexit before the summer recess if we can. I know that the Minister, Deputy Coveney, the Minister of State, Deputy McEntee, and the Taoiseach have been very involved in discussions and in communicating with our UK counterparts over the last 48 hours.

Senator Gavan also raised the issue of women's place in the home. As a former member of the Constitutional Convention, I remind the House that the Government is not obliged to take the convention's advice. Making that decision is a matter for the Government. The Government has made a decision to delete Article 41(2) of the Constitution, or at least to propose that deletion to the Irish people in the hope that they will acquiesce. I know Senator Gavan agrees with that but the Government believes it should not seek to confine the place of women in the Constitution. It also believes, as the Minister, Deputy Flanagan, said, that men and women should live the lives they choose. I know that Orla O'Connor of the National Women's Council of Ireland welcomed the referendum. I hope the referendum can take place. As part of what the Senator has said, what needs to happen is an informed debate as to what we are campaigning to abolish, and why, in order to educate people on the reasons for the change. I hope we will see the Citizens' Assembly and the Constitutional Convention continue to do their work. I am a big advocate of that.

Senators Bacik, Craughwell, Norris, Conway, Feighan and McDowell all referenced the announcement by an tUachtarán, Michael D. Higgins, that he intends to nominate himself to run as an Independent candidate for the presidency when his term of office expires in the autumn. I wish all who seek the office well. It is my belief not as Leader, but as an individual Member of the House, that there should be a contest. It would be healthy for our democracy, notwithstanding the fact that I believe Michael D. Higgins will win the presidency given the level of support he enjoys. I do believe we should have a contest however. As Senator McDowell said, there is an avenue open to all people who seek a nomination to do so by gaining the support of four county councils or 20 Members of the Oireachtas. It is not about the elite of the elite. There is an avenue prescribed under the Constitution. If Members want to change the Constitution, they should put forward a constitutional amendment.

Senator David Norris: Fianna Fáil has closed off its councillors.

Senator Jerry Buttimer: Well there is an avenue. To be fair to Senator Norris, he strove manfully and courageously to achieve nomination the last time. He had many a setback before he got the nominations but, to be fair to him, he got there.

Senator Michael McDowell: Hear, hear.

Senator Jerry Buttimer: That is what democracy is about. It is about allowing people to exercise democracy by casting their votes. On Senator Bacik's point, I look forward to having the debate on housing and to reaffirming the Government's commitment under the action plan for housing, Rebuilding Ireland. We will have a debate with the Minister, Deputy Ross, on the Road Traffic (Amendment) Bill today. We will have further debate on the matter in the autumn.

Senator Byrne raised the issue of St. John's Hospital in Limerick and the very disappointing news that it was temporarily closed yesterday. The Senator is right to highlight the issue. It is annoying to see a hospital accident and emergency department closed for any reason. That issue should be worked on by management on the ground. I join with the Senator in welcoming the Creative Ireland fund. Senator Byrne has become a very strong advocate for Troy Studios in Limerick. She is right to highlight its wonderful work. It is a beneficiary of Creative Ireland and it is of benefit to the region.

Senators Horkan, Davitt, McDowell and Craughwell all raised the issue of the Judicial Appointments Commission Bill 2017 and the matter of a sos. I am not saying the case was otherwise, but the business of the Seanad and the business put forward by the Government or in Private Members' time takes precedence over any other business. That is the priority. We do not take a break for committee meetings or other events around the House.

Senator David Norris: There are three or four people who were here for the entire eight or 12 hours.

Senator Jerry Buttimer: We might be better off if Senator Norris was not here at all sometimes.

Senator David Norris: The Leader might think that because I am doing my job, which he does not particularly like.

Senator Jerry Buttimer: Some of the Senator's rhetoric yesterday was bordering on the hysterical. He would have been better advised to stay shtum to be honest.

Senator David Norris: That is the Leader's nonsensical point of view.

Senator Jerry Buttimer: I will not take lectures from Senator Norris or from anybody else about the role my party played in the formation of our State, about how we appoint judges or about why they are appointed.

Senator David Norris: I do not have the slightest idea what the Leader is talking about.

Senator Jerry Buttimer: We have certainly always looked for independence for the Judiciary. I will not take hysterical lectures from anybody.

Senator David Norris: Who, I might ask, is hysterical now?

Senator Jerry Buttimer: I will defend the work Fine Gael has done since we came into government. I will not listen to the windbaggery of some around here who are playing to the Gallery and the Fourth Estate-----

Senator David Norris: Hysteria, hysteria.

Senator Jerry Buttimer: -----and trying to get cheap headlines. The Senator would be better off working to make amendments to the Bill rather than getting hysterical headlines.

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An Cathaoirleach: The Leader should not be sidetracked. He should address the Chair.

Senator David Norris: Hysteria, hysteria.

Senator Jerry Buttimer: The record of the Fine Gael Party of appointing judges in government is second to none and we will continue to do the right thing as the Minister, Deputy Flanagan, said yesterday. We will not take lectures from Senator Norris, or from anybody else for that matter.

Senator Diarmuid Wilson: It is never the wrong time to do the right thing.

Senator David Norris: That was a great little stunt.

An Cathaoirleach: Is the Leader agreeing to the amendment?

Senator Jerry Buttimer: I am coming to that. I know the Senators are all in summer eve or holiday mode today. Some of them are bordering on being cranky, hysterical and whatever.

Senator Rónán Mullen: The Leader is bordering on something himself now.

An Cathaoirleach: The Leader has a little bit of heat rash himself.

Senator David Norris: Hear, hear.

Senator Jerry Buttimer: If the Cathaoirleach had to listen to some of the 27 Members who spoke in the House this morning and to some of the stuff they have said, he would be like that himself. I always try to work with people in the spirit of goodwill. Yesterday we had a sos from 6 p.m. to 6.30 p.m. As such, I propose that we have a sos from 6 p.m. to 6.30 p.m.

Senator David Norris: 7 p.m.

Senator Jerry Buttimer: We started at 2 p.m. yesterday and finished at 10 p.m., with a break from 6 p.m. to 6.30 p.m. We are resuming the Judicial Appointments Commission Bill at 3 p.m. If business is extended to 10 p.m., then instead of breaking from 7 p.m. to 7.30 p.m., I propose that we break from 6 p.m. until 6.30 p.m. If Members want an hour, we will extend to 11 p.m.

Senator David Norris: Fair enough.

Senator Jerry Buttimer: That is up to Members.

Senator Martin Conway: I suppose Senators will-----

(Interruptions).

Senator Jerry Buttimer: I would be happy to do that, but let us be clear. There is a job of work to be done.

Senator A: Some will not be here.

Senator Jerry Buttimer: The House's priority is to do its business, not to go off elsewhere. I am not saying that Senator McDowell would. He wants to break for food, which is fair enough.

Senator Rónán Mullen: The sos is for sustenance.

An Cathaoirleach: Is the Leader proposing an amendment on a 6 p.m. to 6.30 p.m. sos?

Senator Jerry Buttimer: That break would be fair enough, and if Members want an extra hour after 10 p.m., I can extend our sitting to 11 p.m. I am happy to have a break between 6 p.m. and 6.30 p.m.

Senator Gerry Horkan: If the Leader is happy, then we are happy.

Senator Jerry Buttimer: Go raibh maith agaibh.

Senator Gerry Horkan: We thank the Leader.

Senator Jerry Buttimer: Senator Lawlor raised the issue of draft guidelines for wind turbines. A code of practice is available and in place, but I would be happy to have that debate. Equally, the impeccable Chair of the Committee on Seanad Reform will at some point bring an interim report to the House. I am not sure, as we have not discussed this, but we would be happy to work together on Seanad reform. There is a job of work to be done, but holding the debate on it that has been requested by Senator Lawlor for now would be premature.

Senator Horkan raised the issue of the confidence and supply arrangement. I understand that there was a request from An Taoiseach to Deputy Micheál Martin to meet. I am told that this request has either been responded to or is being responded to. I hope that both gentlemen will sit down and have a detailed conversation that will be mutually beneficial to them and the country.

Senator Gerry Horkan: Stability is important.

Senator Paul Gavan: A merger.

Senator Jerry Buttimer: I agree with Senator Horkan on the need to continue improving our cycling infrastructure. Our roads are a dangerous and busy place and there is a code of behaviour that needs to be upheld by motorists and cyclists. I would be happy to arrange for a debate.

Senator Devine raised the issue of Linn Dara, which the Cathaoirleach has said may be better taken as a Commencement matter. That is good advice.

The tragic scandal affecting Emma Mhic Mhathúna and all of the other women involved is one that none of us condones. We all want to see an outcome that is to the benefit of the women and families involved. I hope that the Scally inquiry will have a clear, crystallised outcome and that we will be able to hold people to account, put a structure in place to prevent a recurrence and provide answers.

Senator Conway discussed tourism. The growth in numbers from the UK, wider Europe and North America is to be welcomed. He is right, in that our scenery and people are important assets. I hope that the céad míle fáilte will continue to be given to everyone.

Senator Murnane O'Connor referred to her education Commencement matter this morning when the Minister was at a Cabinet meeting. I have no jurisdiction to require Ministers to take Commencement debates. I have asked them to attend the House to address issues specific to their Departments, but the Senator will recall that we sat yesterday and, therefore, commenced

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today at 10.30 a.m., which coincided with the Cabinet meeting.

Senator Jennifer Murnane O'Connor: On a point of order, we would have no problem with delaying our Commencement matters-----

Senator Jerry Buttimer: That is not a point of order.

Senator Jennifer Murnane O'Connor: -----until another time. The Leader must ensure that happens. There is no point in Senators wanting to address a Minister if he or she does not attend.

An Cathaoirleach: A number of people have complained. The only point I will make is that-----

Senator Jennifer Murnane O'Connor: It will be on the agenda the next time.

An Cathaoirleach: -----the leaders group might consider in the new term whether there is a better way of doing this.

Senator Jennifer Murnane O'Connor: It is not working this way.

Senator Jerry Buttimer: It never works for the Senator, to be fair.

Senator Jennifer Murnane O'Connor: That is not-----

Senator Robbie Gallagher: That is not very charitable, Leader.

(Interruptions).

Senator Jennifer Murnane O'Connor: Excuse me. Take that back, Leader.

Senator Jerry Buttimer: I will not.

Senator Jennifer Murnane O'Connor: That was disingenuous. I am here to do a job and address the Minister. That comment was not-----

Senator Jerry Buttimer: I explained two things to the Senator, but she did not listen to me.

Senator Jennifer Murnane O'Connor: I listened.

Senator Jerry Buttimer: Then the Senator chose to ignore me.

Senator Jennifer Murnane O'Connor: I did not.

Senator Jerry Buttimer: First, I have no jurisdiction to require Ministers to attend for Commencement matters. Second, the Minister was at a Cabinet meeting this morning. He is a good Minister, but he has not perfected the power of bilocation yet. If the Senator had listened to me-----

Senator Jennifer Murnane O'Connor: I did.

Senator Jerry Buttimer: -----and not chosen to ignore me, she would have heard me say that Ministers should attend the House to take Commencement matters relevant to their portfolios. I agree with the Senator on that.

Senator Jennifer Murnane O'Connor: They are not attending. The Leader needs to look at this issue.

Senator Jerry Buttimer: The Senator is not listening to me.

An Cathaoirleach: When we-----

Senator Jennifer Murnane O'Connor: I am listening. Go on.

Senator Jerry Buttimer: I believe the Cathaoirleach is-----

Senator Jennifer Murnane O'Connor: Put it on the agenda. Many of us are in the same-----

Senator Jerry Buttimer: The Cathaoirleach's point is that this could be examined as part of the ongoing debate on Seanad reform.

(Interruptions).

Senator Jerry Buttimer: I have not finished yet.

Senator Jennifer Murnane O'Connor: Seanad reform-----

Senator Jerry Buttimer: The day's commencement is the wrong place to raise Commencement matters. We should have a part of the day given over to Topical Issues like in the Dáil or we should revert to having Adjournment debates. The issue with the latter is that Ministers do not know when we will finish, so we should have a built-in time for Topical Issues. The commencement of the House should involve the ordering of our business, not Commencement matters.

Senator Paul Coghlan: The Leader is right.

Senator Martin Conway: We should have Commencement and Adjournment debates.

Senator Jennifer Murnane O'Connor: We should have both.

Senator Máire Devine: It needs to be on the agenda.

Senator Jennifer Murnane O'Connor: Yes.

Senator Jerry Buttimer: It is on the agenda.

Senator Máire Devine: The Committee on Procedure and Privileges should consider it.

Senator Jerry Buttimer: I join Senator Feighan on the need to remember those whose lives were lost in the atrocity at Srebrenica. We should always remind ourselves that nation states around the world must be vigilant in upholding people's right to practise different faiths. I commend the Senator on raising the matter and thank him for calling on us to remember those who died.

Senator Humphreys mentioned the important issue of home care packages. I agree that there is an issue locally and nationally. We will debate the matter with the Minister. The housing units in Poolbeg should also be addressed.

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I have already addressed the issue raised by Senator Davitt.

Senators Colm Burke and Warfield discussed the HPV vaccine and the fact there is a need for us to advertise and promote the benefits of vaccination. Vaccination works, and we must reach the figure of 75%. I agree with Senator Warfield that, while people had the right to protest yesterday, the message they sent was wrong and out of kilter with what we are trying to achieve.

Senators Mullen and Coghlan referred to the remarks by Mr. Justice Kelly. As the Minister for Justice and Equality, Deputy Flanagan, stated yesterday, the Government will continue to appoint members of the Judiciary. There are vacancies. Three new Court of Appeal judges and one High Court judge have already been appointed. There has been an increase in the number of appeals. Prior to the establishment of the Court of Appeal, the Supreme Court had a four-year waiting list. The Government has taken the initiative and moved three judges from the specialised Commercial Court to the Circuit Court. The Government is appointing judges and will continue to do so. The Senators can raise this matter during the debate on the Judicial Appointments Commission Bill.

1 o'clock

Senator Gallagher referred to Mr. Justice Frank Clarke's report on the death of Sergeant Michael Galvin. The Senator is right about there being a tension between the Garda Síochána Ombudsman Commission, GSOC, and the Garda. It will always be there, but the matters identified in the report need to be resolved. I hope that whoever can broker a resolution will do so. It needs to be done urgently.

Senator Lombard discussed Rural Link and the welcome investment by the Minister for Rural and Community Development, Deputy Ring, in tackling rural isolation. It is good to see this initiative being unfurled across the country.

I join Senator Warfield in wishing Cork City every success tonight in its European endeavours.

Senator Martin Conway: Hear, hear.

Senator Jerry Buttimer: The team has a wonderful record in Europe. Turner's Cross will be a fortress tonight.

Senator Mulherin raised the issue of the Cabinet's decision on the patient safety Bill. It is an excellent decision by the Government and I hope that it will overcome the shortcomings that have been identified in the HSE cervical cancer scandal.

Senator Butler was right to mention the legacy of our quarries and to remember the two young lives that were lost. I sympathise with the families.

We in Cork would be happy to give England the World Cup and Cork rather than Limerick the All-Ireland. The issue of the fodder crisis is exercising farmers. The Minister for Agriculture, Food and the Marine has set up a fodder group, led by Teagasc. It met last week to address the effects of the warm weather, which has slowed down grass growth. The Minister has been communicating daily with the various stakeholders.

With the current spell of warm weather, it is a particularly stressful period for livestock and farmers. The advice from the Department is that the Minister will continue to monitor the situation. There is a need to monitor this with a view to taking action in the autumn. I will endeavour to have the Minister come to the House to address the matter.

Senator Paddy Burke raised education and the school building programme. He argued that the continually evolving curriculum is putting pressure and strain on school buildings and classrooms which need to be changed to suit the modern-day style of education. It is a very important debate.

If Senators McDowell and Craughwell are amenable to the request to suspend the sitting between 6 p.m. and 6.30 p.m. I would be happy to do that. If we go for the full hour, we will resume again to sit from 10 p.m. until 11 p.m. Rather than divide the House, I would be happy to suspend from 6 p.m. until 6.30 p.m. if that is what Senators want.

An Cathaoirleach: In a bit of breaking news, I am sure the House will be glad to hear that the 12 young lads and their coach have all been successfully rescued in Thailand. Congratulations to all those involved in the rescue. It was an amazing achievement and it ends on a happy note. While the sun has been shining here, they have gone through several days of extreme stress and difficulty.

Senator Craughwell has moved amendment No. 1 to the Order of Business: “That the Order of Business include provision for a suspension of the sitting from 6 p.m. until 7 p.m.” Senator Buttimer has moved an amendment to that amendment: “That “7 p.m.” be deleted and “6.30 p.m.” be substituted thereafter.” That would mean there would be a sos of 30 minutes.

Amendment to amendment No. 1 agreed to.

Amendment No. 1, as amended, agreed to.

Order of Business, as amended, agreed to.

Reasoned Opinion on a Proposal for a Regulation of the European Parliament and of the Council: Motion

Senator Jerry Buttimer: I move:

That Seanad Éireann:

(1) notes the agreed Report of the Joint Committee on Transport, Tourism and Sport under Standing Order 116 on the Proposal for a Regulation of the European Parliament and of the Council on Streamlining Measures for Advancing the Realisation of the Trans-European Transport Network - COM (2018) 277, which was laid before Seanad Éireann on 5 July, 2018, in accordance with Standing Order 116(3)(b);

(2) having regard to the aforementioned Report, and in exercise of its functions under section 7(3) of the European Union Act 2009, is of the opinion that the Proposal for a Regulation of the European Parliament and of the Council on Streamlining Measures for Advancing the Realisation of the Trans-European Transport Network - COM (2018) 277, does not comply with the principle of subsidiarity for the reasons set out in section 4 of the Report; and

(3) notes that, pursuant to Standing Order 116(4), a copy of this Resolution together with the reasoned opinion and the aforementioned Report shall be sent to the Presidents

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of the European Parliament, the Council and the Commission.”

Question put and agreed to.

Road Traffic (Amendment) Bill 2017: Second Stage

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

Minister for Transport, Tourism and Sport (Deputy Shane Ross): I am very grateful for the opportunity to introduce the Road Traffic (Amendment) Bill in this House. In other circumstances, saying so might sound like a cliché to some, but it is certainly not in this case, for two reasons. First, this is a focused and important Bill, which will save lives. Second, it is a Bill which should have reached this House long before now and would have, but for the reprehensible tactics of a small minority who were determined to delay its passage through the Dáil. This is why I am grateful, in every sense, to be in a position to present this Bill to the Seanad today. I know it will be taken seriously by Members of this House and I am grateful for that.

Road safety is one area of policy which is almost never a matter of ideology or political preference. We all want to make our roads safer for all of our people. We may disagree over how best to achieve our goals, but we generally do so in a spirit of pragmatism, with an understanding that all of us want to find ideas which will work. There are many factors involved in road safety. Vehicle standards, road conditions and above all driver behaviour have an impact on how safe our roads are. All of us as public representatives will have encountered the tragic consequences of a failure to deliver on road safety, through meeting with those bereaved or seriously injured due to road traffic incidents. We cannot forget that we are talking about people here, not statistics.

In the past two decades, we have seen a large drop in the number of deaths on our roads. In 1997, there were 472 road deaths in Ireland. Twenty years on, in 2017, we had 157, the lowest annual figure on record. This is a remarkable turnabout, particularly considering the increasing number of vehicles on our roads. Many people, many organisations and many initiatives were involved in achieving this success. No one, however, is complacent. We are still talking about 157 people who need not have died but did. Imagine if 157 people died in a single fire; it would impact on the national consciousness for decades. The same number of unnecessary deaths should have no less effect on us when spread over a whole year. I assure the House that neither I nor anyone else working in the area of road safety is going to let up the pressure to keep reducing the number of tragedies on our roads.

The Bill which I am introducing today is very focused. It will address two core issues, namely, drink driving and driving by unaccompanied learners. I am happy to say that there has been strong support for this Bill from road safety experts and advocates, including the RSA, the AA, Drinkaware, the Irish Road Victims Association and the PARC Road Safety Group.

First, let me talk about drink driving. We all know that alcohol impairs driving ability. The World Health Organization has examined the matter in detail and set out the evidence to show that even small amounts of alcohol can have a significant impact on driving ability. I do not think this is surprising. Even a little alcohol can dull people’s reaction times, and when it comes

to a car in front braking suddenly or a child running onto the road, quick reactions can mean the difference between life and death.

Senator David Norris: Without wishing to be discourteous to the Minister, may I ask if we will be getting copies of his speech?

Acting Chairman (Senator Paudie Coffey): It is being made available to the Senator. I ask the Minister to continue.

Deputy Shane Ross: In 2010, our national legislation on drink driving was overhauled. By and large, this served us well. In particular, the 2010 legislation reduced the legal alcohol limit for drivers from 80 mg to 50 mg per 100 ml of blood. In light of the international evidence on the effects of low levels of alcohol - evidence which has only increased since 2010 - this was a very sensible change. Unfortunately, there was a very unacceptable compromise made back in 2010. It was meant to be a matter of principle that all instances of drink driving would lead to a disqualification. The 2010 legislation however allowed that people in the new lower bracket of 50 mg to 80 mg of alcohol could in some circumstances receive penalty points rather than a disqualification. This was done to appease some people who were opposed even to the lowering of the limit. This was wrong. It was wrong to compromise the principle. It was wrong to allow people who had driven while over the limit to receive no disqualification and be able to drive away with a handful of penalty points. Finally, it sent very much the wrong message. It suggested that “a little drink driving” was no great harm.

I believe that we have to rectify this mistake. What I am proposing is to replace the three penalty points which people in this situation currently get with a three-month disqualification. Some people say this is harsh. I say that the consequences of serious behaviour must be serious. There is a further reason for doing this; hardly anyone goes from being a sober driver to being three or four times over the limit in one leap. If we do not apply serious consequences to drink-driving when the alcohol levels are low, we increase the chance that people’s behaviour will escalate and that they will eventually drive with far higher amounts of alcohol in their systems. We can have a great effect on the more dangerous behaviour by nipping it in the bud. We are not talking about small numbers. Between 2012 and 2016, 3,003 fixed penalty notices were issued to drivers in the 50 mg to 80 mg bracket. In 2017, the trend continued, with April 2017 showing the highest number of arrests for drink-driving of any month in five years. We need to reverse this trend and ensuring that all drink-driving merits a disqualification will help to do this.

The second matter addressed in this Bill is driving by unaccompanied learners. While this was not addressed in the original Bill, as published and introduced in the Dáil, I made clear that it was always my intention to address it and I introduced amendments to the Bill as it passed through the Dáil to deal with this dangerous behaviour. Learner drivers are required by law to have a qualified accompanying driver with them. All too many learners ignore this legal requirement. This cannot be acceptable. Driving is not a right; it is a responsibility. If someone wants to be licensed to drive on our roads, he or she must go through the learning process and pass a test to prove that he or she can safely be allowed to drive alone on our roads. This is in the interests of the entire road-using public, including the learner.

The consequences of learners driving unaccompanied were exemplified by the tragic case of Geraldine and Louise Clancy, a mother and daughter killed when their car was hit by a vehicle driven by an unaccompanied learner in December 2015. This appalling incident, like so many needless tragedies on our roads, should never have happened. It was in light of this that the

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Oireachtas decided, in passing the Road Traffic Act 2016, to create a new offence for the owner of a vehicle used by an unaccompanied learner. The Clancy family drew attention to the fact that the law currently applies no responsibility to the owner of a vehicle who allows an unaccompanied learner to take it out on the road. This cannot be right. If it is illegal for a learner to drive unaccompanied, the person who provides the vehicle is facilitating illegal activity. The Oireachtas therefore decided that in cases in which a learner drives unaccompanied, the owner of the vehicle, if it is someone other than the learner, must be held accountable.

The amendment inserted into the 2016 Act was an Opposition amendment which I supported, but I made clear at the time that I would have to take legal advice before commencing it. I undertook to amend it if necessary before commencement. Subsequent legal advice indicated a number of flaws in the 2016 provision. I therefore decided to repeal and replace the provision to give effect to the policy intention behind it. The key changes which I am making to the 2016 provision are recasting of the provision to reflect more appropriate legal language; extension of the provision to cover cases in which a driver is unlicensed as well as in which the driver is an unaccompanied learner; changing of the penalty in the interests of proportionality; and extension of Garda powers of detention of vehicles to cover cases in which the driver is an unaccompanied learner. I will explain each of these briefly.

The first point is self-explanatory. We all know that legal language is not the same as everyday language, and sometimes a provision which may seem clear in lay terms needs to be refined to ensure the intended effect in law.

On the second point, making it an offence for an owner to let an unaccompanied learner drive his or her vehicle without making it an offence to let an unlicensed person drive the same vehicle would create an anomaly. I ask the House to imagine a scenario in which a person was to be charged for letting an unaccompanied learner drive a car that person owned and the person offered the defence that the driver was not a learner but entirely unlicensed.

The third change concerns the penalty. In 2016, the penalty proposed for the owner of a vehicle driven by an unaccompanied learner was a fine of a maximum of €2,000 and-or a term of imprisonment of up to six months. The law must be proportionate. In this case, the primary offence is committed by the learner who drives unaccompanied, and the owner of the vehicle is a facilitator. We cannot make the owner's penalty higher than that for the driver. An unaccompanied learner faces the general penalty under the Road Traffic Acts. This is a fine of up to €1,000 for a first offence, up to €2,000 for a second or subsequent offence, and up to €2,000 and-or up to three months in prison for a third or subsequent offence within a three-month period. The 2016 provision meant that the owner would face a more severe penalty than the unaccompanied learner. Following legal advice on what would be proportionate, in light of the penalty for the learner and the wider scale of penalties for road traffic offences, I have decided that a class D fine, which is a fine of up to a maximum of €1,000, would be the most appropriate penalty in this case.

Finally, I also propose to amend section 41 of the Road Traffic Act 1994, which empowers gardaí to detain a vehicle in a range of circumstances in order that they can detain a vehicle where the driver is an unaccompanied learner. The vehicle will be taken to a pound and the owner can then retrieve it on payment of a charge for the cost of transporting and storing the vehicle.

Some critics have talked about the difficulties which might be caused if we took firm ac-

tion against learners driving unaccompanied. I make no apology for taking firm action to deter behaviour which is illegal, and which is illegal because it is dangerous. I would much prefer if people obeyed the law and acted safely and responsibly. If they will not do so, we must deter them.

I am also taking the opportunity to make a few small technical corrections to existing legislation. There are cross-references to section 11(5) of the Road Traffic Act 2010 in sections 13A and 13B of that Act. Due to previous changes to section 11, these references should be to subsection (6) and I am correcting them in this Bill. Section 78A of the Road Traffic Act 1961 lists information to be provided by motor insurers to gardaí and to me as Minister. One piece of information concerned is referred to as the “licence number”. This should be the driver number and the Bill will correct that. The distinction here is that a licence number changes each time a licence is renewed, whereas a driver number remains the same over a person’s driving career.

What we need, ultimately, is a culture change on drink-driving and unaccompanied learner driving. It would be better if we did not need to deter these behaviours and if we could rely on people to behave responsibly. In time, I hope more and more people will do so. However, we can help to bring about that culture change by ensuring that seriously dangerous behaviour, such as getting behind the wheel while over the limit or while unaccompanied and on a learner permit, leads to serious consequences.

I thank the House once again for the opportunity to present this Bill. In particular, I thank Senators for taking the Bill so soon after it came through the Dáil. The behaviours it addresses - drink-driving and learners driving unaccompanied - are dangerous and already illegal. We need to take measures to clamp down on these activities and we will save lives in doing so. I therefore urge the House to support the Bill and ensure its speedy passage in order that we can move to enact its provisions as soon as possible.

Acting Chairman (Senator Paudie Coffey): We will now take spokespersons. First I call Senator Ned O’Sullivan. He has eight minutes.

Senator Ned O’Sullivan: I will not take up anything like that amount of time. I welcome the Minister to the House. Clearly, this Bill has been thrashed out at excruciating levels in the Lower House, and I do not propose or anticipate that there would be a similar filibustering in this House. At least, it will not come from the Fianna Fáil side because we support the Bill. In fact, it was Fianna Fáil in government that initially brought in strict regulations that addressed the question of drink-driving. We are cognisant that drinking and driving are incompatible and on that we are at one with the Minister. It is regrettable that the Clancy amendment, which was agreed, I think, in December 2016, concerning unaccompanied learner drivers, has taken so long to come before us in the shape of a Bill. In the intervening period, as the Minister will know, I understand 11 deaths related to unlicensed drivers have occurred. I do not know why there was a delay but it was very regrettable.

I have been podcasting my local radio station, Radio Kerry, all morning. The big issue there seems to be not so much the new regulations on alcohol consumption but the question of learner drivers and how the Bill will affect family life. I will not go down the old road of “rural Ireland” and so on, but there is a big difference between a young person who has an L plate in Dublin and a fella who has an L plate in Kerry and who may have to travel 25 to 30 miles and back again for work every day. There is a big difference between a young person driving with an L plate in Dublin and a young person driving with an L plate in Kerry. The latter may have to travel

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between 25 and 30 miles every day to and back from work. With this Bill, that individual will have to be accompanied by a parent, a sibling or a good friend who is a qualified driver to work and home again in the evening. That is not a proper basis for normal living. The Minister will agree the crux is the delay and backlog in driver testing opportunities for young people. This has to be addressed as a matter of urgency. People want to qualify and be licensed to drive. We expect there will be some waiting period but if we are going to give credibility to the Bill, we will have to work on the supply side and ensure young people have the chance to qualify fully at the earliest opportunity. I hope getting all and every additional revenues required to bring this about will be a priority for the Minister.

Much controversy has arisen over the debate on this Bill in the Lower House. My two Kerry colleagues, Deputies Danny and Michael Healy-Rae, were to the fore in those debates. Whereas we do not agree on everything, I must say the media did not treat them fairly on this issue. It was unfortunate that the Minister found himself at loggerheads with both of them over an ongoing period which personalised the debate to a certain extent. They are solidly rooted in their constituency and represent the views of their constituents remarkably well. While I may not necessarily agree with everything they say, they are putting up a strong rearguard action for the rights of rural dwellers. The positive element for the Minister to take out of this is that he is getting support and we must put an end to drink-driving. However, we have to give fair play to the young learner driver in a rural area. He must have every access to allow him to qualify to drive to ensure he is compliant with regulations and can go to his place of work and back without inflicting a significant burden on his parents or friends.

Fianna Fáil will support the Bill.

Senator Rónán Mullen: Cuirim fáilte roimh an Aire go dtí an Teach. I welcome the Minister, Deputy Ross.

I support and welcome this legislation. The Minister has presented the rationale for it well. This is a human life and human dignity issue. It is one of those issues where we see the law must sometimes act in a way to deter behaviours, even behaviours which can be understandable in certain circumstances, which create dangers. This legislation flows from a respect for life agenda. I regret that in other areas the Government has not shown a similar respect for life in recent times. I do not intend to dwell on that but I will support this legislation in a full-hearted way.

It is welcome and sensible to reduce the permitted legal alcohol limit from 80 mg of alcohol per 100 ml of blood to 50 mg per 100 ml. The Minister is correct that it was anomalous, although he did not use that word, to reduce that limit but, at the same time, to distinguish between providing penalty points for convictions where the alcohol limit was over 50 mg but under 80 mg and only to provide for disqualification after that.

Drinking, whether socially or to excess, is an issue we all have to think about. We have a national alcohol problem. There are other areas of policy which need to be looked at seriously. The association between alcohol sales and marketing, as well as significant cultural and sporting events continues to the detriment of the common good. There is much doublethink in public commentary which continues. On the one hand, lipservice is paid to the fact that there is a national drink problem while, at the same time, there is a constant social referencing to drink in a way that tends to encourage, unintentionally but very definitely, drinking to excess. It is still a source of humour that people drink to excess sometimes. This must be reflected upon. There

is much change needed in the way that alcohol is sold in our shops and off-licences.

This is welcome legislation which addresses that in some ways. However, everybody has found themselves in the situation that once they take a drink at all, they wonder if they are at the point where it is no longer safe to drive. That is a dicey situation in which to find oneself. Even though it will require a change of behaviour among many people, we all would accept that were it to be completely illegal to take any drink and drive, that would be no bad thing, particularly as there is no easy way of taking a drink and then finding out whether it is still safe to drive. The law is as it is and provides for certain limits. Due to this fluidity, however, between having had some and having had too much, as well as the way in which people can progress from drinking a little to drinking a lot, there has to be a clear and consistent law. That requires disqualification if one is over the permitted legal limit. Accordingly, I 100% welcome that provision.

I disagree with the way the Minister has characterised the opposition from some quarters in recent days. I know sometimes parliamentary opposition to his Department's proposals or proposals from other Departments but pursued by the Minister with vigour can seem vexatious and annoying. Where people believe themselves to be representing important social goods, such as issues relating to loneliness in rural Ireland, they are entitled to the benefit of the doubt. That is not to say the Minister must cave into what they say but they are entitled to the benefit of the doubt. The Minister said they have a heavy cross to bear because of their opposition to the legislation. I personally think that is a little bit harsh. The Minister said that they bear some kind of responsibility should there not be an eventual reduction in road deaths as a result of this legislation and it having been delayed because of their opposition. The Minister placed too much of a burden on parliamentarians when he tried to close down their ability to debate legislation in that way. That is a matter of personal opinion. People are entitled to take whatever view they want of the motivation for people's parliamentary utterances. I certainly do think there was a debate to be had.

I come down on the side of the need to provide for automatic disqualification if one is above the legal alcohol limit. I believe the measure concerning unaccompanied learner drivers is also sensible. However, the Minister has made a change whereby this offence on the part of the owner of the vehicle is extended to cover cases where a driver is unlicensed. Will this apply to situations where a person let their licence lapse for whatever reason? Perhaps it is clear in the Bill and I have not read closely enough. I say that because I have to admit that once upon a time I let my driving licence lapse for a period of years without even knowing I had done so. If I was capable of not knowing my driving licence was not up to date, I would feel sorry for the owner-----

Senator David Norris: They used to send a reminder but they do not any longer.

Senator Rónán Mullen: The penalty I paid was that certain penalty points I had on my licence continued. The expiration of the three-year period was frozen for the period I did not have a licence, naturally and logically enough. I was looking forward to penalty points going off my licence at a certain date, only to realise that date was delayed by a considerable period because, without knowing it, I did not have an up-to-date driver's licence. I would like to know the answer to that question because it would be unfair to prosecute the owner of a car who allowed in good faith a person to drive, believing him or her to be licensed on the basis he or she had been in the past, where that licence had expired, perhaps without the person even knowing it. I would be interested in hearing a bit more about what possible defences exist around that provision of the Bill.

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Senator John O'Mahony: I want to speak briefly on this Bill, which I support. I am a member of the Joint Committee on Transport and I listened to all this debate at pre-legislative stage as well. I listened to some of the circus that took place in the Lower House in the past few weeks. I very much support the Bill. I would have started out by asking if there is need to change the law in this area but have listened to the debate and informed myself. Having listened to the families affected and their campaign, I congratulate them on the way they made themselves heard. When one looks in from outside, one can only imagine what the trauma is like. They articulated it very well on the airwaves and elsewhere, and certainly convinced me and any reasonable people along the way that there is need for change.

The Minister clarified that what is changing are the penalties, not the legal limits. A three month suspension is proportionate here as well. That should definitely be supported. Many red herrings were brought in about the dangers. During the pre-legislative scrutiny in committee, it was suggested that if one had a big meal, one could fall asleep at the wheel. That is an issue too, but it is not dealing with the issue of penalties for being over the legal limit for alcohol.

I concur with Senator Ned O'Sullivan's comments on unaccompanied drivers. The driving test waiting times are an issue. I know the Road Safety Authority, RSA, is making extra efforts to shorten those waiting times. Many people book driving tests but do not turn up for them. I know the RSA has people working to try to pre-empt that and speed up the process. It is really important that this happens. On the one hand, this law will be implemented where one will need an accompanying driver but if one has to wait months and months for a driving test, and then has to redo it if one does not pass, it causes all kinds of problems logistically for families.

There was a legitimate point on drink-driving penalties and suspensions rather than penalty points. Whatever resources are needed for the Garda to implement the laws as much as possible are important. In general terms, I would be very supportive of this Bill.

Senator Máire Devine: I welcome an tAire to the Seanad. I am delighted to be here and hope that this Road Traffic Bill passes. I welcome the members of the Irish Road Victims Association, IRVA, Ms Margaret Kavanagh and her colleagues, who have all experienced first hand the heartbreak, trauma and pain of the tragic loss of their loved ones.

I welcome the opportunity to speak on this amendment Bill, which I will support. It is designed to change the penalty for those found to be driving with blood alcohol levels above 50 mg and below 80 mg. This is already an offence for which the penalty is a fine along with three penalty points. The Bill does not propose to change the legal limits for drink-driving. Only the penalty would change, which will include disqualification. It should be a zero-alcohol level. I support the Bill because it sends a message that drink-driving is wrong, dangerous and unacceptable, which we have been educated about by the IRVA and the RSA. We have become aware of the danger that driving on our roads after drinking poses. We have a poor record in this State for deaths on our roads. We have come a long way in the past decade. However, there has been a worrying trend in the past few years with the number of annual deaths rising due to road traffic. The numbers are creeping up. Sadly, over the past several years, the number of people dying on our roads is increasing. There are many reasons for this, including poor roads, careless drivers, phone technology, drink-driving and drug-driving, and the slashing of the Garda traffic corps.

In recent years, drink-driving has become less acceptable. We need to work towards a society where drink-driving is universally condemned but we are not there yet. This was clear in

recent months with the attitude of some public representatives whose statements were unbelievable and dangerous, to say the least. Some Members have been jumping up and down over this Bill claiming they are concerned about protecting rural Ireland. A Bill which seeks to impose harsher punishments on those caught drinking and driving is not an attack on rural life. Indeed, those most at risk of being killed in collisions where alcohol is a factor are those living in rural areas. I am sympathetic to those living in rural and isolated regions who do not have adequate access to transport links. It is a disgrace that 93,000 households do not have access to public transport, and I have raised it on several occasions.

The Bill underwent pre-legislative scrutiny at the transport committee. That process was hijacked by some committee members, as well as non-committee members who oppose the legislation. Those on both sides of the argument appeared before the committee. The only interest group to give evidence against the legislation was, surprise surprise, the vintners' group. Its reason for having an interest in this is obvious. To my colleagues who claim they oppose these matters because of rural decline, I say that if the best method they can come up with to address the issue is to argue that rural people should receive a softer punishment for drink-driving, I despair. It is quite disturbing that elected representatives care more about the votes in their constituencies than their constituents' lives and safety. Politicians need to show leadership and do the right thing. There are many other measures we can introduce to help people in the rural areas including transport links and expansion of the transport network. People are entitled to be able to travel safely and efficiently. This Bill's measures will not solve any of the problems faced by those who do not have access to adequate services, but it will help to reduce the incidence of drink-driving.

In 2007, there were 1,200 members of the traffic corps. Will the Minister indicate how many there are now? Many people drive from home and from pub to pub, in rural areas in particular, knowing they will never come across a checkpoint. This is a deterrent and we need to act to increase those numbers. I call on the Minister to roll out measures, not just for the three weeks of Christmas, but which are sustained throughout the year. I will support Bill and I hope the Minister will take my comments on board. The Bill is a further step towards road safety and the saving of lives and I wish it well on its passage through the Oireachtas.

Senator David Norris: I had intended to share time with Senator Kevin Humphreys but I think he will be taken next anyway.

Acting Chairman (Senator Paudie Coffey): That can be accommodated.

Senator David Norris: I will leave it like that. I welcome the Bill as I would welcome any measure that reduces road fatalities. There is some misunderstanding about the legislation, however. It has been suggested that it represents a reduction of the alcohol limit when, in fact, it does not. It is simply the case that it changes the penalties. A privilege has been extended to particular drivers who are first-time drink driving offenders over the 50 mg limit but below the level of 80 mg per 100 ml of blood in that they were allowed to receive penalty points as an alternative to disqualification under section 29 of the Road Traffic Act 2010. This mitigation is being removed by the Act, which is reasonable. However, I ask the Minister what evidence there is of people between 50 mg and 80 mg of alcohol per 100 ml of blood being involved in fatal road crashes. There may very well be such evidence, but I have not heard it and would like to know what is there.

We are getting very close to a situation in which one glass of wine puts one over the limit

and I do not know why, in a sense, we do not go the whole hog and provide that one cannot take a drink and drive at all. That appears to me to be the logical step if there is evidence. The Bill proposes to replace the penalty points with a three-month disqualification where the person pays a fixed-penalty notice, which is appropriate in view of the situation. I queried with someone how many accidents were caused between the 50 mg and 80 mg level and I was told that, in fact, accidents did not so much involve the people who had one glass of wine, but rather people who had hangovers. If one goes out on a real booze up, one will still have a residue of alcohol in one's system the next day. I wonder if there is any way to differentiate between people who are suffering from a hangover as opposed to people who have taken a couple of glasses of wine and are over the limit.

Another matter addressed by the Bill is the question of learner drivers driving without an accompanying qualified driver. Although they have been required to have an accompanying person since 2007, the practice of driving unaccompanied continues apace. I refer to the Clancy amendment. It is the most horrifying thing for a poor unfortunate man to lose both a wife and a child to what I believe was an unaccompanied driver. It is a shocking thing to happen and I cannot comprehend the grief which that gentleman must have experienced. I note that the provisions of section 41, which allow An Garda Síochána to detain a vehicle in certain circumstances such as where it is untaxed or uninsured or the driver is disqualified from driving, will be extended to permit the seizure and detention of a vehicle driven by an unaccompanied learner. In that context, I raise with the Minister the question of Lucia O'Farrell who has raised with me over a number of years the tragic death of her son, Shane. He was killed when he was flung onto the road and the driver continued on and concealed the car. That driver was a drug addict who had more than 40 convictions. Not only that, this person had only one hour before been stopped by gardaí while driving a vehicle which was untaxed and uninsured. Nevertheless, they let him go on his way. I would like to be reassured that these matters will be addressed by An Garda Síochána and not just by legislators. Gardaí must take this on board in circumstances in which a young man who had a brilliant legal mind and who was an athlete of considerable talent should be flattened on the roadway in this manner. I would like the Minister to take up actively a full independent inquiry, as sought by Mrs. O'Farrell, into the circumstances of that death.

Another thing that occurred to me during the discussion today was the situation mentioned by Senator Rónán Mullen whereby a person might accidentally forget to renew his or her licence. In the old days, one used to get a reminder that one's licence was expiring. I would like the Minister to ensure that people get a reminder, which is not much to ask given that we have to pay a hefty fee for a driving licence. I do not think I am allowed to get one anymore because I have got so terribly old, but I used to get a ten-year licence. At the end of ten years, one does not realise one's licence is gone. I ask the Minister, therefore, to provide for a situation whereby one gets a reminder automatically that one's licence is expired. It is not too much to expect.

The Minister referred to recasting the provisions in law to reflect more appropriate legal language. He said we all know legal language is not the same as everyday language and that sometimes a provision which seems clear in lay terms needs to be refined to ensure the intended effect in law is created. That is fair enough and it is a good point. However, I ask the Minister to ensure that the law is understandable by ordinary people. Last night, we had a situation with the Judicial Appointments Commission Bill 2017 which contained a disastrously drafted section. The language of the provision was opaque and stylistically it was horrible. Grammatically, it was completely and utterly wrong and no one in the House seemed to know what it meant. We need to be able to know what legislation means. It should not be beyond the wit of

man to construct something that is both legally accurate and appropriate and understandable by the ordinary citizens of Ireland.

Senator Kevin Humphreys: I welcome the Minister to the House and thank the families who have supported him through their campaign for this legislation. The fact that they shared publicly their stories and losses helped the Minister to get this Bill as far as it has come. I thank the Minister for his diligence, bravery and efforts to ensure the legislation got to this House on Second Stage. I thank his staff for their work on the legislation also. I welcome the Bill and I give the Minister an undertaking that my colleagues and I will do everything we can to ensure the Bill passes on Second Stage today, which it will, Committee Stage and, hopefully, Report and Final Stages before we rise for the summer vacation to allow the President to sign it into law. I believe firmly that it will save lives. It is a good day for the Minister to have brought the legislation this far and I look forward to it passing next week. If there is anything I can do to assist it going through the House as speedily as possible, I will do it.

Acting Chairman (Senator Paudie Coffey): As no further Senators are offering, I ask the Minister to conclude the debate.

Minister for Transport, Tourism and Sport (Deputy Shane Ross): I thank the Acting Chairman. I respond firstly by thanking all the Members for what has been quite a new experience for me, namely, a mature, sensible, reflective, understanding and sympathetic hearing for the Bill. It has happened in a calm atmosphere. I understand fully those who have asked questions and expressed reservations on the Bill, but the fact that it will pass with, possibly, unanimity, albeit I do not want to anticipate anything, is a tribute to the fact alluded to by Senator John O'Mahony that this is a very interesting Bill. Normally when Bills go to the Dáil or the Seanad, there is a fair idea where they will go, where the opposition will come from and what the result will be. This Bill has had an interesting journey. Senator O'Mahony will not mind if I refer to him, and I am open to contradiction, but he is reflective of a number of people who have also had an interesting journey on this issue. That journey is that it probably started with a majority of Deputies in a reflex action - I do not know about the number of Senators - and under a huge amount of pressure from the Vintners Association of Ireland being instinctively against it because they felt that in some way it was an attack on rural Ireland, which it is not, and deprived people of the right to drink a certain amount without severe penalties. What has happened, and I do not claim any credit for it, is that gradually over the length of time the Bill has taken to get through the earlier Stages there has been a process of public persuasion and of persuasion of Deputies and Senators, and many of them have changed their minds. That is something I very much welcome. The change of mind by at least one political party on this Bill during these debates is quite unusual and I welcome it.

A lot of this has been due to the fact that the pressure for the passage of this Bill came from outside the political arena, not inside it. I pay tribute, as everybody else has, to the fact that the reason this Bill has changed in atmosphere and moved opinion is because the victims groups, who are in the Public Gallery today, took such an active part. To see those in civil society, during the passage of a Bill such as this, putting their point of view, exerting public pressure and enlightening people who were not aware of all sorts of circumstances and changing that view is something that is very welcome. That is quite apparent here today in the general welcome that this Bill has been given. We should say "yes". Those who have been tragically affected by the consequences of drink-driving have been the most persuasive force in ensuring that this Bill eventually comes through. People stopped, sat back, thought about it, met them and said that this is the right thing to do. It took a lot of courage because I know that large numbers of

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people came under pressure from vintners. Every Deputy, including even myself, got a letter from vintners asking them to vote against this Bill. There was a systematic lobby which was gradually resisted and in the end very few people decided to take the route of the lobbyists and eventually took the route of their party or the route which their individual conscience persuaded them to take. That is a welcome exercise in democracy.

I will address some of the issues which were raised. I take Senator Ned O'Sullivan's point when he says that the L plate is different in Dublin than in Kerry. It is obviously the same but what he is saying is that it has different effects in Kerry than in Dublin. That is a point that was well made. It has been made in the Lower House *ad nauseam*. I realise, as does anybody who is involved in promoting this Bill, that the effect of some of the measures we are taking is different and that there is the appearance that this Bill will have more dramatic effects in the country than in urban Ireland. I say two things to that. I am sure that the Senator is aware of the fact that there are far more deaths in rural Ireland as a result of alcohol and driving than there are in the urban part of Ireland. If the Senator wants to apportion it, he would say that it is hoped that this would have a disproportionate effect on the number of lives lost in rural Ireland as opposed to urban Ireland. If that is the case, I will have to ask people in rural Ireland to pay a price and maybe it will mean that there are people who are more reluctant to go out to the pub and drink too much. That is a good thing if it does have that effect.

If it has a detrimental effect on social life in rural Ireland, we are moving to address that and we have done so. I was in Kerry last month launching the Local Link buses which have been set up deliberately to address the problems the Senator has rightly identified. Rural Ireland does have a problem with social isolation and with people old and young not being able to mingle and meet at night in the same way as people do in the cities. I know the Senator will be aware of this but what we have done is to say that we recognise this and we have started a pilot project in every county in Ireland, supported by the National Transport Authority, NTA, and I launched it in Kerry a couple of weeks ago. We will see how that goes. We do not know how it will work but I am told by the NTA that it is meeting a huge, pent-up demand in rural Ireland for more social activity. By the way, I am not only talking about people going to pubs. I am talking about people going to bingo, meeting or going to games and all other sorts of activities. If the routes we have designated which were requested by the Local Link groups are not suitable or need tailoring, we will tailor them, change them, increase or decrease them. Many of them are demand response routes which stop anywhere where people want to go. We are serious about this and we recognise that this needs to be addressed. We cannot immediately resolve it by saying we will put a bus here and there but let us see how it works. It is a complicated problem but we know there is a problem there. For some of us it may be something that we were late to recognise because we do not live there ourselves but we do recognise it and we will continue to address it.

Senator Ned O'Sullivan is also right on the issues of tests. The issue of driving test waiting lists being too long is serious and it is unacceptably high. All I can say is that the average now regularly quoted to me in the Lower House is 23 weeks because people tend to quote the most extreme one, but it is down from 14 weeks to 11.9 weeks and it will continue to be addressed by the Road Safety Authority, RSA. It has taken a range of measures to bring down driving test waiting times in acknowledgement of the difficulties that it presents to people, particularly if they fail their tests and they have to go again and wait for 11 weeks each time.

Senator Mullen addressed the human life issue and I agree with him about that and he also addressed the issue of loneliness. He addressed the case where a person allows a vehicle to be

driven by an unlicensed driver, especially where it happens if the licence has lapsed. It was a good point. It is not specifically mentioned in the Act, but without anticipating what view a judge would take in such a case, I would presume that an owner can always offer a defence that reasonable steps were taken to see that the person was licensed. On top of that, I presume the owner can also offer a defence in such a case that he assumed that the person, having had a licence, always had a licence, as the person in question probably assumes themselves. I am not sure that will cause as much difficulty as is suggested.

We did not close down the ability of Deputies Michael and Danny Healy-Rae and others to debate the Bill. They had an awfully long time to debate and they took advantage of a parliamentary loophole which prevented us from closing the debate and they kept it going for about six months.

I do not think it is fair to say we did that.

I thank Senator O'Mahony for his support and for telling us what happened to him. The Senator is typical of a large number of people whose instincts might have been elsewhere but who took a reasonable approach to this. I thank him for supporting the Bill.

Senator Devine talked about the fact there are many reasons for these accidents, which there certainly are. She mentioned drug driving, and speeding is another factor. It is not as though we in the Department of Transport, Tourism and Sport are completely hung up on drink driving as the sole reason. We addressed drug driving in the 2016 Act, which I was happy to introduce in the other House. Speeding is an issue which causes a huge number of deaths and which we will, hopefully, also address before the end of the year. The Senator rightly referred to the vintners and vested interests. They were the most powerful opposition to this Bill and I am thankful to all those who stood up against them in that situation.

Senator Devine asked about Garda traffic corps numbers. I agree they have been depleted and have been far too low, and enforcement has been a problem. As she knows, the Garda traffic numbers came down a lot after the financial crisis of 2007-08. I have a table with me, with which I am sure the Senator is familiar, which shows that at the end of 2016 the numbers stood at 674 and at the end of 2017 this figure was 623. A target was set to increase Garda traffic numbers by 10% in 2017 and a further 10% in 2018. Primarily due to the large number of applications, the competition for the 2017 cohort ran into 2018, which is regrettable. The result of this is that both the 2017 and 2018 vacancies will be filled in 2018 with the appointment of a total of 150 members. To date in 2018, 87 new members have been recruited, with a further 63 due in October. This will bring the strength of the unit above 700 by the end of 2018. Further increases are expected to bring the total Garda road policing strength to 1,032 by 2021.

We have a regular meeting, probably every three months, with the Garda, the Attorney General, the Department of Justice and Equality and other Departments on road safety, and we had such a meeting yesterday. I asked the gardaí exactly the question the Senator is asking and they confirmed the figures which I have just given to the House.

Senator Norris is right that there is no lowering of the limit. There is a bit of a misapprehension out there and I have heard this on many reputable programmes, where it is said the limit is coming down to zero, which it is not. I can understand his point when he says that it might be better to bring it to zero so people do not suffer, as Senator Mullen said, by asking themselves,

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“How much can I drink?” or “Can I drink this amount, that amount or the other?” The advice is that while we do not know the complete answer to that question, I would not ask it; I would just not do it. The advice is: do not do it. The law is that a driver can go up to 50 mg, or to just 20 mg for a professional driver, but the very strong advice is not to do it. We decided we would plug this obvious loophole, which was given for political reasons to get through the lowering of the limits in 2010, and we thought we would do this with a great deal of support. We were a bit surprised by the opposition we got to it from many people initially and also in this final period.

I understand the point Senator Norris is making. The point has often been made that there is a residue of alcohol in people’s system on the day after. However, that residue of alcohol quite clearly indicates something - it indicates they are still impaired. The idea they may not feel impaired does not mean they are not impaired.

Senator Norris also looked for some evidence that people in the 50 mg to 80 mg range were the cause of accidents or involved in collisions. The most recent data on alcohol as a contributory factor in road fatalities comes from the national drug-related deaths index, the coroners’ data collected on behalf of the RSA by the Health Research Board. This covers the period 2013-14, when eight of the fatalities were in the 21 mg to 50 mg range, six in the 51 mg to 80 mg range and four in the 81 mg to 100 mg range. The fact of the matter is that any alcohol does impair, and that is incontrovertible evidence from the World Health Organization. We can say what we like about statistics and argue about the 0 mg to 50 mg range or the 50 mg to 80 mg range, but it is absolutely beyond dispute that any alcohol causes people to react slower, and that means they are in far greater danger of causing an accident than if they had drunk nothing. That is the World Health Organization - not me or anybody in Ireland, but an international body.

I want to very much thank Senator Humphreys for his support. I consider it very valuable that he rounded off this debate, which has shown what appears to be all-party support for this measure. Whereas the debate in the Lower House was at times offensive, irresponsible and reckless in its treatment of what is a very serious Bill on a very serious issue, I would like to thank everybody here today for taking it seriously and for having carefully considered it, in particular those who perhaps found it difficult in the beginning but who came round to supporting the Bill.

Question put and agreed to.

Acting Chairman (Senator Catherine Noone): When is it proposed to take Committee Stage?

Senator John O’Mahony: Next Tuesday.

Acting Chairman (Senator Catherine Noone): Is that agreed? Agreed.

Committee Stage ordered for Tuesday, 17 July 2018.

Sitting suspended at 2.10 p.m. and resumed at 3 p.m.

Seanad Éireann
Visit of US Delegation

An Cathaoirleach: I welcome the members of the leadership group under the aegis of the State Legislative Leaders Foundation visiting from the United States of America. The delegation comprises speakers, Senate Presidents and majority and minority leaders from almost 20 states of the USA along with distinguished officials and corporate leaders. As Cathaoirleach and Speaker of Seanad Éireann, I extend on behalf of my colleagues, the Members of the House, a very warm welcome the delegates and good wishes for a very successful visit to Ireland. Tá fáilte roimh go léir.

3 o'clock

Judicial Appointments Commission Bill 2017: Committee Stage (Resumed)

Debate resumed on amendment No. 29:

In page 12, to delete lines 8 to 28.

- (Senator Michael McDowell)

Senator Michael McDowell: This amendment proposes to delete section 11(7) to (10), inclusive, from the Bill. When the House rose last night and I reported progress, I was in the middle of asking the Minister a number of things. First, I asked him what was meant by the dual function of advising and assisting the commission in the consideration of applicants at a preliminary stage in the course of the selection procedures. Second, I asked him what was meant by the provision of an evaluation or assessment of an applicant's suitability for appointment that would assist the commission in making any decision in the course of carrying out those procedures. Third, I asked the Minister to provide a clear explanation as to what the qualification in the last paragraph of section 11(8) actually meant in the circumstances. It is very important that we understand how the commission will operate. I had, therefore, also asked the Minister to say if anyone will have a clear picture of what has happened to his or her application if he or she is unsuccessful in seeking to be considered by the commission for appointment by the President as a judge on the advice of the Government. Will an unsuccessful candidate have any insight into why he or she failed? Will he or she be given feedback on his or her application and the interview that took place? That is relevant, for instance, for people who are concerned, as Senator Lynn Ruane is, about diversity. Did it feature and, if so, how, or how did it not? I have expressed the view to the Minister on different amendments that people talk about transparency in this process, but I cannot see how it will work in a truly transparent way.

I apologise for the phone interruption.

Senator David Norris: It is the judicial appointments commission trying to get in touch.

Senator Michael McDowell: Obviously, it is.

Minister for Justice and Equality (Deputy Charles Flanagan): To ask the Senator to apply to become a judge.

Senator David Norris: He is barred.

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(Interruptions).

Senator David Norris: The Minister is in good form this morning.

Senator Michael McDowell: It is now the afternoon.

Senator David Norris: It may be to the Deputy, but it is still the morning to me.

Deputy Charles Flanagan: By the looks of it, it will be morning by the time the Minister gets out.

Senator David Norris: I will not be the one delaying the Minister as I am going to Glencairn House to meet Prince Harry.

Deputy Charles Flanagan: The Senator can pass on my apologies as I will not be able to go.

Senator David Norris: I will certainly tell him that the Minister was asking for him.

An Leas-Chathaoirleach: The Chair cannot operate while the Senator is butting in. Will he, please, butt out for one moment? Senator Lorraine Clifford Lee, as she is entitled to do so, has called for a quorum.

Senator David Norris: Has she? How refreshing.

Deputy Charles Flanagan: The tedium of it.

Notice taken that 12 Members were not present; House counted and 12 Members being present,

An Cathaoirleach: I ask Senator David Norris to, please, resume his seat.

Senator David Norris: I am doing so.

An Cathaoirleach: Senator Michael McDowell was in possession.

Senator Michael McDowell: At this stage I would like the Minister to provide some of the information I have sought to enable the House to understand how he envisages the section operating.

Senator David Norris: Has the Minister had any further thought on the anomaly that I believe I correctly pointed out to him? Subsection (7) states, “enter into contracts or arrangements with any person, and”, while subsection (8) states, “Any contract or arrangement with a person, or appointment of a consultant or adviser”. They appear to establish three distinct identities, namely, the person, the consultant and the adviser. Subsection (8) also states, “but shall not enable the person, consultant or adviser, for the purpose of performance”, while subsection (9) states, “The Commission may, out of the resources at its disposal, pay to a person, consultant or adviser referred to in subsection (7) “. They clearly seem to establish the fact that there are distinct entities. Subsection (7) states, “The Commission may as it considers necessary to assist it in the performance of its functions ... (a) enter into contracts or arrangements with any person”. It also states, “...and (b) with the consent of the Minister, appoint consultants or advisers”. The provision whereby the “Commission may ... enter into contracts or arrangements with any person” can also be defined legally as encompassing a limited liability company. That is quite

separate from the provision in subsection (7) which states, “with the consent of the Minister, appoint consultants or advisers”. Has the Minister had time to reflect on this issue? It could lead to an evaluation in court if it is not resolved in Parliament.

Deputy Charles Flanagan: My apologies for being a little late at the start. I was in the Lower House for Leaders’ Questions. I look forward to a very engaging evening in the Seanad building on the eight-hour debate last night.

Senator Jerry Buttimer: Hear, hear.

Deputy Charles Flanagan: I hope we will be able to make some progress on the 111 amendments tabled. Since we met last night I have had the opportunity to attend the Cabinet. I had the privilege of proposing to my Cabinet colleagues for consideration a number of nominees for judicial office.

Senator David Norris: *Bravo.*

Deputy Charles Flanagan: I refer, in particular, to the three new members of the High Court-----

Senator Gerard P. Craughwell: Well done.

Deputy Charles Flanagan: -----one new judge at the level of the Circuit Court and one appointment to the District Court. Lest there be any doubt - I have heard some doubts being expressed - I intend to bring forward further appointments to the courts, as required. I also intend to continue my engagement, on a formal basis, with the Association of Judges of Ireland and the Presidents of the courts.

Senator Michael McDowell: Hear, hear.

Deputy Charles Flanagan: I am also very keen to ensure the capital building plan will proceed at speed and with vigour. I look forward, in particular, to reporting progress on the very exciting Hammond Lane project which will see a separate division of family law courts within the courts structure. This is an issue I look forward to discussing with the Chief Justice at the earliest opportunity, either this week or next.

Senator Jerry Buttimer: Hear, hear.

Deputy Charles Flanagan: I hope we can all move forward in the spirit of progress, which is not something that I have gleaned over the past few hours here in the Seanad. I note an anxiety on the part of Senators, not to have progress made on this Bill, but I am in the hands of the Seanad and the Leader.

Senator Jerry Buttimer: Only some, the majority want to have progress.

Deputy Charles Flanagan: Lest people think that because it is the last week of term, they can have some time off, I am available to sit here all night tonight, all day tomorrow and all night tomorrow night in order to ensure that progress is made.

Senator Gerard P. Craughwell: Excellent commitment. Great news.

Deputy Charles Flanagan: I do detect, on the part of Senators, a keenness to frustrate this Bill-----

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Senator Jerry Buttimer: Hear, hear.

Deputy Charles Flanagan: -----in order to ensure that it does not become law.

Senator David Norris: Hear, hear.

Deputy Charles Flanagan: I am a mere servant of the Upper House and I commit myself to staying here for as long as it takes. I know that Senator Norris and others have made arrangements for this evening.

Senator David Norris: The Minister must excuse me but I am a royalist, by conviction, so I have to meet Prince Harry. It would spoil his visit if I was not there.

Deputy Charles Flanagan: I hope the Senator brings the sun cream and the straw hat. I will be here with Senator Craughwell and others. I note the absence of Senator Boyhan but I am sure the Senators are doing a relief operation-----

Senator Gerard P. Craughwell: He is away-----

Senator David Norris: A Chathaoirligh, the Minister should know that it is inappropriate to refer to the absence of a Member of this House and Senator Boyhan is in Berlin on official business.

Senator Jerry Buttimer: It has not stopped the Senator for the past three or four weeks-----

An Cathaoirleach: Can we resume discussion of this important Bill?

Deputy Charles Flanagan: I am sure he will be back before the end of the proceedings, in fact there may be a keenness on behalf of his group members to make sure that he has an opportunity to make a contribution before the end of the week.

Senator David Norris: Absolutely, definitely-----

Deputy Charles Flanagan: I will be here-----

Senator David Norris: Good.

Deputy Charles Flanagan: Amendment-----

Senator Gerard P. Craughwell: Frankly, I find it terrible that the Minister is wasting so much valuable time.

Senator David Norris: The Minister is filibustering, will the Senator leave him alone? He is doing a wonderful job, we can relax and let him at it.

An Cathaoirleach: Can we get back to section 29?

Senator Jerry Buttimer: Senator Craughwell should look back on his own contributions. He might make “Reeling in the Years” in time to come but sure if he is in the Áras----

An Cathaoirleach: I ask the Leader not to encourage interruptions. The Minister is anxious to resume and proceed with the matter.

Senator Michael McDowell: It is 3.20 p.m. and the Minister does appear to be filibuster-

ing at the moment.

Senator David Norris: Exactly, that is what I said.

Deputy Charles Flanagan: Irrespective of the status of this Bill at the end of this week or next, I wish to assure Senators that Government will proceed with the appointment of judges-----

Senator David Norris: Bravo.

Deputy Charles Flanagan: -----as is our duty and obligation under the law.

Senator David Norris: We compliment the Minister on that. Good man.

Senator Gerard P. Craughwell: On a point of order, I want to be clear-----

An Cathaoirleach: I anticipate it is not a point of order but we will-----

Senator Gerard P. Craughwell: Has the Minister such little regard for the Bill that he is filibustering himself now?

An Cathaoirleach: That is not a point of order-----

Senator David Norris: I made it already anyway; he is a plagiarist, ignore him-----

An Cathaoirleach: In fairness now to the Minister, on the Order of Business today a number of Members raised the issue about an absence or loss of certain judges and work not being done in the courts. The Minister is responding to that-----

Senator David Norris: He is doing so very well.

An Cathaoirleach: -----and clarifying the position which should be of benefit to the Senators and be some positive news.

Senator Gerard P. Craughwell: A Chathaoirligh, it is quite a problem when the Minister refers to my colleague, Senator Boyhan, who is representing this country in Berlin as part of his membership of a committee----

An Cathaoirleach: Senator, many Members have referred to another Minister of the Cabinet, who is not directly involved in this Bill. I will ask the Minister to resume with no more interruptions, otherwise we will be here all night.

Senator David Norris: The Minister is very happy to be here all night.

Deputy Charles Flanagan: I believe we will be here all night in any event. Subsection (8) circumscribes the purposes for which such contracts or arrangements, or appointment of consultants or advisers may be made by the commission, namely, to advise or assist in the preliminary stages of a selection procedure or provide assessments of individual applicant suitability to assist the commission in making decisions in selection procedures. This is far from the type of scenario that was painted here before the House last evening. It very specifically states that the power cannot be used for consultants to do any other issue or matter or thing or to stray beyond what is the clearly and narrowly defined role and function that they will have.

The other subsections provide for the payment of fees to consultants and the setting of periods of engagement in terms and conditions. We have an extraordinary situation here over the

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last number of evenings where on the one hand the Bill is being criticised for costing too much money, and on the other there is not sufficient funding available to allow the import of the Bill to have effect. We cannot have it both ways. We either want a piece of working legislation that is adequately funded or we do not. We will ultimately have a piece of legislation here that is constitutionally sound, that is legally robust, - which is what we are doing now - that will be workable and will do its job in an efficient and effective way.

We have heard much talk - indeed we heard it again last night - about quangos. Suggestions are being made that the new commission is being set up as some sort of engorged bureaucracy in a way that is disproportionate to the task which the commission is to carry out. This is extraordinary and an exaggeration in many respects. It was precisely for the reason of avoiding the commission having to take on a lot of employees who might be HR, recruitment, and selection procedure experts, that we put these provisions in the Bill. The idea behind these provisions as to the consultants, the advisers or the contracts with persons is where the new commission needs expert assistance, at a key stage in the process, it can hire on a short-term contract basis, committing it only to the variable costs from time to time where expenditure is necessary, rather than having the fixed term costs of long-term employees. This is perfectly normal in the public service and I will outline a few examples.

It would be normal enough, for example, in the case of the District Court, as referred to by Senator McDowell. It could well be that one may have applications in excess of 100 for one position. The commission will be a small, professional but lean organisation, with a director and a small secretariat that would be geared around the running of the competitions and providing support for the commission and its procedures committee. It is the procedures committee that will ultimately draw up the technical arrangements for the interview process, for instance, in the context of best practice. When it comes to the matter of shortlisting and the screening for eligibility for competitions such as for the District Court where there are large numbers, I believe it is not only inevitable, but also very advisable that there will be expert help at hand. I do not see anything untoward or illegal about that or anything that warrants Senators becoming exercised in the manner in which they have. That is the potential that we are providing for here.

If we look at the alternative, the commission will have expert employees who are being paid all of the time, and only need to switch in where there is a large volume of applications. That will not happen too often. In the region of between 50 and 60 appointments are made each year across the courts. I do not believe it makes sense, economically or otherwise, to have a range of expert employees on a full-time basis. I ask Members to recall that one of the main purposes of the Bill is to professionalise the selection process that is used to determine who to recommend for appointment to judicial office. That means access will be needed to people with expertise to advise and assist the commission in designing and operating the selection processes. This is best done by way of expert assistance. That is acknowledged not only in this Bill but in other similar legislation. We are looking at the design of competency models, profiles for jobs, interviews or test processes where applicable. I am not sure of the extent to which psychiatric help will be employed, but this is one of the examples I have heard tossed around. To my mind, that is an exaggeration, to say the least.

Senator David Norris: They might need psychiatric help at the end of the day.

Deputy Charles Flanagan: The Senator talked about employed psychiatrists.

Senator Michael McDowell: Yes, to conduct psychometric tests.

Deputy Charles Flanagan: I do not believe it will be necessary to have any psychiatrists.

Senator Gerard P. Craughwell: Is there any software available for testing employees?

Deputy Charles Flanagan: The only way to do this in an efficient and cost effective way is to provide for the placing of these type of contracts for the expert assistance that is available in the private sector. Why not have the public sector engage in the best practice that is available in our land?

Senator Gerard P. Craughwell: We do not appoint judges in the private sector.

Deputy Charles Flanagan: The important point is that the commission will be running the processes and making the decisions. The commission will be recommending people. Should Senators McDowell and Boyhan's amendment be accepted, we would be left with a commission which does not do the job we are setting it up to do. If it is to do the job, it will be appropriate from time to time to seek the assistance of persons with a range of skills on a short-term basis. For these reasons I will not accept the amendments.

This is about assistance and advice to the commission. The commission remains central. The consultant or the adviser will always be secondary. Any act undertaken on the part of the adviser will be to assist or to advise but it is the commission that ultimately makes the decision. It is the commission which will make that decision, having regard to the advice or assistance. Senator Norris and others have made particular play on the wording in section 11(8), "to do any other thing". This language, as Senators will be aware, having regard to the line-by-line scrutiny in which they engage daily, is inserted here to ensure that the functions of the consultant or the role of the adviser are properly circumscribed for the purpose of the Bill.

On the matter of the published selection procedures, all of the procedures and processes for a particular selection process for judicial office will have been carefully designed by the procedures committee, and we have not managed to debate in detail or scrutinise in detail the role, function and status of the procedures committee. When we do, much of the false smoke, as it were, that has been generated around this Bill will pass because the procedures committee is crucial to the process. The procedures committee will set the regulations that will be approved by the commission and published, and it will be perfectly transparent to anybody who wishes to engage in the process, whether as an applicant or a spectator. Any role for advice and assistance will be fully transparent within that procedure.

On the issue of the person versus the consultant or adviser, the idea is that the commission might and can engage the services of a person with appropriate experience as a temporary employee or under what might be a casual contract. Subsection (9) requires that any payment to such a person is subject to "the consent of the Minister and the Minister for Public Expenditure and Reform", which is a wise and sensible decision and oversight. The matter of consent is something that can be forthcoming or not, depending on the individual circumstances. The reason that the Minister must consent to the appointment of a consultant or adviser under subsection section 11(7)(b) is to ensure that there is a level of oversight of the cost of such arrangement, and I am sure that would be a matter of grave concern to Senators if it was otherwise.

I will give an example. The Legal Services Regulatory Authority is a statutory body, independent from Government, which was established under the Legal Services Regulation Act 2015. This important Act is accepted by everybody and passed through the Seanad. The independence of the Legal Services Regulatory Authority is very important. The equivalent provi-

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sion in section 17 of that Act is not dissimilar to this and is subject to the approval of the Minister for Public Expenditure and Reform.

Senator Craughwell makes the point about giving information to applicants. I remind him and others of section 53(5)(h) later in this Bill which provides that procedures will have regard to “the need for good standards of communication with applicants for judicial office, and the provision otherwise of a good standard of service to them in respect of applications made by them under this Act”. That is important in the context of Senator Craughwell’s assertions or concerns.

I refer to section 62L in Part 2A inserted by the Garda Síochána (Policing Authority and Miscellaneous Provisions) Act 2015, important legislation which passed through this House not so long ago. Again the Policing Authority in certain circumstances is in a position to seek the consent of the Minister to appoint persons or consultants or advisers to assist in the performance of its functions in exactly the same way as is envisaged here. I did not have time to look back over the Seanad debate during which that Bill was being enacted but I dare say that if I were to, I do not think that I would find the level of concern that has been aired here both last night and this afternoon. I merely make the point that there is nothing new here and that it is something that has been regarded by Government as an important feature in ensuring efficiency and effectiveness, that of the expertise being available by way of a short-term contract of advice or otherwise. That is something the Government and the public service are engaging in for all the right reasons but, ultimately, I remind Senators that it will remain a matter for the commission itself, through its procedures committee, to develop best practice in dealing with applicants, including the information and the feedback that will be provided for them. This is contained in a later section of the Bill. We have given this due and careful consideration.

I am not really sure what Senator Norris means by there being three distinct persons involved in the process. It seems to me that it is quite clear that we are talking about persons as either consultants or advisers on a short-term basis. Those consultants may be persons or the advisers may be persons. Those involved will be either advisers or consultants in the same way as they are available, should they be required and should the Minister consent, in so far as the Legal Services Regulatory Authority is concerned or in the Policing Authority.

An Cathaoirleach: Before I call Senator Norris, I welcome Des and Margaret Quinn and Nora Byrne to the Gallery. They are special guests of our Leader, Senator Jerry Buttimer. I hope they enjoy their visit.

Senator David Norris: The Minister did address my question very marginally towards the end of his contribution. First, I congratulate him. He is fighting a sterling battle and he does it with a certain level of grace. I was delighted by his formulation - an “engorged bureaucracy”. I will certainly remember that one and bring it out on occasion when required. However, he has not resolved the situation for me. I was not talking about persons, I was talking about three distinct entities. There is quite a separation between section 11(7)(a) and section 11(7)(b). I have taken legal advice on this and I am confirmed in my view that it means that the person with whom the commission enters into contracts is exempt from the consent of the Minister and could then go on to advise and assist the commission or provide an evaluation or an assessment.

I will not go on at any great length. The Minister says they are only providing an evaluation and they are confined to this, that they are not expected to do anything else, but nobody would expect them to do anything else. Could the Minister envisage circumstances, which I think

would be rare indeed, where these consultants, advisers or professional people, have advised, evaluated or assessed that an applicant is unsuitable for the job, and the commission would go against that advice? It would be quite extraordinary. If a professional body said this person is unsuitable, I think it highly unlikely that anybody would go against that, so it does seem to me that they are playing a major role here.

Senator Michael McDowell: I do not want to be in any way crabbed, but this is a very important section, and these subsections are of crucial importance as to how this commission is supposed to work. At last we have wheedled out of the Minister the suggestion that there will be a director and a small secretariat and that that is what the commission and the commissioner's office is to be. This goes back to the point I made earlier as to the kind of workload the commissioners are going to undertake and for what kind of remuneration they are going to be expected to carry out their evaluative functions.

It is all being done on a shoestring, which I have to say is deeply disappointing, because if this was to be something dramatically and radically different from the Judicial Appointments Advisory Board, JAAB, which was done on a shoestring within the Courts Service, then I could understand why we were told that this is a bright new age with a totally new approach, that this is something dramatic which the Minister for Transport, Tourism and Sport was prepared to die in the ditch for in the Government negotiations. We know now, however, that the JAAB, which as far as I know has one or maybe two officers servicing it in the Courts Service, is going to be replaced by a small secretariat. The person who now runs the JAAB is being dignified with the title "director" and he or she will be given a small secretariat and that is called a statutory office and then the Minister says that this amounts to the underpinnings of a commission. Now we are beginning to get a vague idea of how fraudulent the facade that is being created by this legislation actually is. It is nothing dramatically different in terms of resources. It is probably just a slightly elaborated version of the Judicial Appointments Advisory Board.

That said, the Minister has failed signally here to deal with the questions that were put to him at great length last night. We will have to stay here until we get answers. That is the whole point of a Committee Stage. We will not proceed to say yea or nay to this amendment or the section if it is amended until we get straight and upfront answers as to what is meant by all of this.

The Minister said that the provisions of these subsections are similar to section 17 of the Legal Services Regulatory Authority Act 2015. They are not. A couple of paragraphs are similar but what is provided here certainly is not mirrored in that legislation. The contents of subsection (8) are not mirrored in any respect in section 17 of the Act of 2015. The contents of subsection (8) are twofold. We really have to concentrate now on the wording of the subsections. Senator Norris is totally correct in saying that two categories exist under subsection (7), first, the capacity to enter into contracts and arrangements with any person and, second, the capacity, with the consent of the Minister, to appoint consultants or advisers.

Senator David Norris: I thank Senator McDowell for confirming my view.

Senator Michael McDowell: They are separate functions and one of the distinguishing features between them is that a consultant or adviser would be appointed, which has a degree of permanency if one looks at subsection (10). It is for a defined period of time. That is one thing. The other is a contract which could be intermittent and come into existence or come out of existence and be for a week, a day, a year or whatever, as the commission may consider right.

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There is a distinction between an appointment which carries the subsection (10) implication and simply entering into a contract. The strange thing is, however, that either a contractual person, if I may use that phrase for somebody appointed under subsection (7)(a) or a person appointed as a consultant or adviser, whichever they come to be, can carry out exactly the same functions under subsection (8).

Senator David Norris: Exactly.

Senator Michael McDowell: So one class of person can be there under a casual contract, and the other can be there as a consultant or adviser, with a subsection (10) appointment, but both of them can carry out the exact same functions under subsection (8), and both of them are deemed eligible and capable of carrying out either of those functions. Let us be clear about this. Senator Norris's point was 100% correct. It is not some piece of legal or interpretive pettifogery. We are dealing here with the fact that under subsection (8), things can be done by people who are not members or employees of this commission and that this can be allocated either by contract to persons, which includes-----

Senator David Norris: They are not subject to the consent of the Minister.

Senator Michael McDowell: -----limited liability companies, on the one hand, and appointed consultants or advisers. This is of huge significance because one then goes to the three things that are permissible under subsection 8. The first is in paragraph (a), which differs from paragraph (b). By the way, these functions have no parallel whatsoever in the provision for the Legal Services Regulatory Authority. If Members have their mobile phones with them, I invite them to take a look at those two provisions.

Senator David Norris: Perhaps Senator McDowell could invite the Minister to read into the record the relevant section.

Senator Michael McDowell: It would be very interesting to do so. In any event, these two functions are without parallel in the Legal Services Regulatory Authority and they go to the heart of the function of the commission. The first is to advise and assist the commission in its consideration of applicants at a preliminary stage in the course of the selection procedures. In this provision, it is to do two things, namely, to advise the commission and to assist it in its consideration of applicants at a preliminary stage in the course of the selection procedure. The commission will carry out its consideration of applicants at a preliminary stage but it will be advised or assisted by these contractual persons, consultants or advisers. How will this work out in practice? Presumably, based on the wording of subsection (8)(a), there will be a preliminary stage, which will be some kind of winnowing-out process that involves asking applicants whether they have practised for ten or 12 years, whether they are members of the Law Society of Ireland, whether their names are on the register of practising barristers held by the Legal Services Regulatory Authority or whether they are an Irish citizen. I do not know whether citizenship is needed to be a judge but I presume it is. In any event, basic screening for eligibility-----

Senator David Norris: Would it have diversity if they were not Irish citizens?

Senator Michael McDowell: I think it is diversity among the citizenry. There is to be a preliminary stage and there would have to be such a stage where people go through the applications to see whether applicants are starters or non-starters. I do not see why staff in the commission cannot do that. I do not see why one would want to bring in temporary staff or a company on contract or appoint an accountancy or HR firm to go through all the forms to carry

out fairly basic searches as to whether applicants are eligible to be appointed. Why should this preliminary stage vetting process not be done by somebody under the direct control of the commission as a civil servant? What is wrong with this being done by a civil servant? I believe there is a good reason it should be done by a civil servant and there is every good reason a limited liability company, large partnership or large recruiting agency should not be contracted to do that kind of work.

That is the first stage in the process. In respect of the second stage, it is very important to differentiate paragraph (a) from paragraph (b) because they are clearly different things and in any legal interpretation of this section, they will be interpreted as distinct functions. Paragraph (b) allows such a contractual person, appointed consultant or appointed adviser to provide an evaluation or an assessment of an applicant's suitability for appointment that would assist the commission in making any decision in the course of carrying out those procedures. Those are the selection procedures referred to in the previous paragraph (a). Let us be very clear about what we are authorising by this wording. It is the appointment of a limited liability company, law firm, accountancy firm such as KPMG or recruitment agency, acting as a consultant to the commission, to provide an evaluation or an assessment of an applicant's suitability for appointment that would assist the commission in making any decision in the course of carrying out its selection procedure. That the commission should be able to delegate the function to a third party, be it a body corporate or an appointed consultant or adviser, the process of carrying out an evaluation or assessment of the applicant's suitability for appointment as a judge is unparalleled in other legislative procedures I have seen. It has not been heralded by anything that has happened to date, has not been spoken about publicly to date and has not been defended here in principle by the Minister because leaping on the lifeline I threw him, he immediately said that perhaps with the flood of District Court judge appointments, it would be worthwhile narrowing them down because they will not come every time. In case any Members of this House are under any illusion, this wording came in the original form of the Bill, as initiated by the Minister. This is not something that was put together in the heat of the furnace of the Dáil committee. This is genuine Department of Justice and Equality initiative and Office of the Parliamentary Counsel material that proposes to delegate the function of providing evaluations or assessments of applicants' suitability that would assist the commission in making any decision in the carrying out of the selection.

Deputy Charles Flanagan: The word used is "assist".

Senator Michael McDowell: Exactly.

Deputy Charles Flanagan: It is not "overrule".

Senator Michael McDowell: It clearly would not overrule the commission. Nobody is suggesting that but we are saying that if we adopt this measure, people who are seeking appointment to the High Court are implicitly agreeing to the proposition that not merely will the independent commissioners evaluate them, but that other parties under contract or appointment will carry out an evaluation of their merits or demerits as potential appointees. That is inexcusable and disgraceful. This is not just rhetoric. It is something the Irish public does not know anything about. Having come in here, as the Minister has done, and defended the integrity and independence of this institution in a very spirited and capable way, the Minister's Bill permits the evaluation function to be guided by the opinions of third parties in this way.

Senator David Norris: We should investigate the qualifications of the consultants and

advisers.

Senator Michael McDowell: While the evaluation function will not be overridden, it does not get the Minister off the hook to say that it is purely assistance. If there is such an evaluation process, it goes utterly to the heart of this legislation that decent men and women seeking appointment to the Bench will be asked to be evaluated by third parties as to their suitability.

The third parties are the persons, appointed consultants or advisers who are to provide evaluations of candidates' suitability. That is what is envisaged. I note that the Leader has some difficulty with it, but that is what this is intended to do. It is intended that there will be a class of contractors, advisers or consultants who will carry out evaluations of would-be appointees to the Bench. To look at the other side, if one is interested in becoming a judge, not only is one being asked to submit to the processes to which we will eventually come and the procedures in the procedure committee's statement of policy or whatever else, one is also being asked to submit to the potential evaluation of one's suitability by a person who is not even a member of the commission. That is wrong and shameful. It really is lazy-minded stuff which should not be countenanced. It marries with the matter I was raising with the Minister, on which I have not yet received any straight answer. I will reiterate the question and I am entitled to an answer.

4 o'clock

Senator David Norris: Hear, hear.

Senator Michael McDowell: The Minister cannot just keep hiding in the bushes of obscurity on this issue. What kind of money will be given to the people appointed to the commission? If they are to be paid €30,000 or €40,000, it will attract one kind of person and if they are to be paid €9,000, like the members of some semi-State boards, it will attract another kind. There is no doubt, however, that they will end up being rubber stamps, especially if they are confronted by so-called experts giving them assessments of people in writing to "assist" them in the process of selecting candidates. It goes to the heart of the effectiveness of the commission that we should understand the level of engagement that will be required of a commissioner, the remuneration to be given to a commissioner, and the amount of a person's time that will be spent as a commissioner. It is not going to be like some idle local authority committee which may meet once a month or less and which looks at a few reports and files. It should not just state KPMG personnel think Senator David Norris is a good candidate but that they have come to the view that Senator Lynn Ruane is an even better candidate-----

Senator David Norris: Oh no, it could not. That would be an outrage.

Senator Martin Conway: They would both be outstanding.

Senator Michael McDowell: -----and that Senator Michael McDowell is-----

Senator David Norris: Unsuitable.

Senator Michael McDowell: -----unsuitable.

Senator David Norris: Absolutely. It got that right.

Senator Niall Ó Donnghaile: I am not even worth mentioning.

Senator David Norris: Not at all; the Senator is a Shinner.

Senator Michael McDowell: The Minister has to understand the nature of the animal we are creating, the commission, will very much depend on the kind of person appointed to it. The nature of the kind of person who will look for appointment to it and who will be suitable for appointment very much depends on the commitment that will be expected from him or her. We know that the role is to be part-time, but “part-time” can have very different implications. A role can be part-time in the sense that it does not attract a full-time salary. As we all know, membership of the Seanad is a part-time function, but some of us know better than others.

An Leas-Chathaoirleach: I am glad the Senator mentioned people who are profitably employed elsewhere.

Senator Michael McDowell: Unfortunately, I cannot compete with some Members in their extensive commercial interests elsewhere, but I do manage-----

Senator David Norris: I am only a poor pensioner.

Senator Michael McDowell: I am making the point that we have to understand the function and very nature of the commission will be determined by the extent to which consultants do its work for it. Are they to “assist” and produce reports for it or will the actual commissioners be expected to do the work of evaluation themselves *de novo*? I am now thinking of real circumstances such as the appointment of somebody to be a member of the High Court. I was glad to hear what the Minister said about the three appointments made today. I was told about one of them at lunchtime. The man in question is an excellent appointee----

An Leas-Chathaoirleach: I am delighted.

Senator Martin Conway: Good news.

Senator Michael McDowell: ----even if the appointment creates a problem for me personally in that he and I share offices. He is, however, an excellent appointee. I shall not name him to avoid embarrassing him.

An Leas-Chathaoirleach: I am sure the Senator’s problem will be solved.

Senator Michael McDowell: He, probably-----

Senator David Norris: I express shock at the idea of a friend and colleague of the Senator being appointed. That is cronyism.

Senator Michael McDowell: I am confident that my close association with the man in question had nothing to do with his appointment, although I have to say I do consider him to be a friend.

Senator David Norris: I am sure. I do not know who he is.

Senator Michael McDowell: I warmly congratulate him on his appointment and the Minister and his colleagues on making the appointment.

Senator David Norris: Hear, hear. We agree on that much.

Senator Michael McDowell: We agree on it, but the point I want to make is that someone in the position of practising barrister or solicitor who henceforth contemplates applying to the commission for appointment will be entitled to know who will be evaluating and scrutinising

him or her before the process starts or will not be so entitled. As legislators, we are entitled to know what kind of person will be given this role in the evaluation of appointees or will be someone operating under an intermittent contract? What kind of person will be given this right under section 11(8)(b)? I am very clear in my mind that, until we receive straight answers on the involvement of commissioners, we should not pass the Bill and that delaying its passage is an act of friendship not merely to the Constitution but also to the people.

We need a straight answer to the question of what the people concerned are to be paid. I have no doubt that the Accounting Officer for the Department of Justice and Equality is making plans for the financing of the commission. If it is not included in the budget for next year, it will be included in the budget for the year after that. The Accounting Officer must have a clear idea of what the 17 members, other than those not entitled to receive any remuneration, are to be paid. She must have an idea of their terms and conditions on which they will be employed. She must have an idea of the extent of the personal commitment that will be required of them. If we imagine a graph, there is a trade-off between personal commitment and remuneration, on the one hand, and, on the other, the use of consultants to do all of the work for the commission in carrying out evaluations in order to “assist” its members in making appointments. That trade-off is crucial in determining whether the commission is worth anything at all. Are the commissioners to end up in a position where they will be given pre-heated and pre-cooked evaluations of persons applying to be High Court judges drawn up by individuals acting under contract or as appointed consultants or advisers to the commission? They will be responsible to no one for the way in which they will carry out their functions, except, perhaps, to the commission and - this is an important point - their prejudices, interests, attitudes and ideologies which could be all-important in determining or colouring their advice on the applicants’ suitability for appointment. If we are not to know the answers to these questions, we should not be establishing a commission which will operate on this basis. As I said, there is a trade-off between the commitment that will be required of commissioners and the extent to which the consultants, contractors or advisers will be used because at one extreme of the spectrum the commission could become a complete rubber stamp and at the other it could be doing all of the work and relying very little on the consultants.

One thing is very simple - the less the commissioners are to be paid, the more dependent they will bound to be on the paid evaluators. If that is where we are going, we are entitled, here and now in this House, to straight answers about the balance to be struck and not to be told, “It is for the commissioners. They are independent.” They are not. They will not be independent when it comes to their own income. They will not be independent in the flow of work they will have to do. The only thing by which they will be driven in terms of their independence and finance is turning on and off of the tap of financial resources in considering whether to use consultants, with the consent of the Minister. I am deeply worried by this provision.

I said there were three aspects to subsection (8). There is the activity contemplated in paragraph (a) and the activity contemplated in paragraph (b). However, when Bletchley Park works out what the last paragraph actually means-----

Senator David Norris: I am sorry, but Bletchley Park has ceased operations and is now a museum.

Senator Michael McDowell: Someone will have to decode the meaning of the following paragraph which seems to limit what can happen under subsection (8). It states, it “shall not enable the person [that is, a contractor], consultant or adviser, for the purpose of performance

by the Commission of that function, to do any other thing”.

Senator David Norris: Perhaps the Minister might decode it. His mother was employed in Bletchley Park.

An Leas-Chathaoirleach: We cannot have such references.

Senator David Norris: He is not at all embarrassed by it. He can be very proud of it. She was a remarkable woman and a great gardener.

Senator Michael McDowell: That is all news to me.

An Leas-Chathaoirleach: We cannot have personal references, as Senator David Norris knows, being father of the House.

Senator Michael McDowell: The Bill states, “but shall not enable the person, consultant or adviser, for the purpose of performance by the Commission of that function, to do any other thing”. It would be fine if it stopped there. The only thing it can do is set out in paragraphs (a) and (b) and it is very simple. However, after the words, “to do any other thing”, the Bill adds, “(other than a thing which facilitates such performance)”. If anyone asks what is the performance, it is that which facilitates the performance of the commission’s functions in carrying out its selection procedures. The proviso, with the exception in brackets attached, needs to be analysed very carefully, but it seems that, if one reads the words in brackets, anything which facilitates the performance by the commission of its functions - the first line of subsection (7) - can be carried out by a contractor, a consultant or an adviser. If we arrive at that conclusion, we wonder what the text, “but shall not enable the person, consultant or adviser, for the purpose of performance by the Commission of that function, to do any other thing”, actually means. It means that the contractor, consultant or adviser cannot do any other thing in addition to what is included in paragraphs (a) and (b) if it does not assist the commission to carry out its functions, which, removing the double negative, means that the contractor, consultant or adviser can do any other thing which assists the commission in the carrying out of its functions. That means that there are functions under paragraphs (a) and (b) and the last paragraph which I call the Bletchley Park paragraph, when one examines it, that enable and clearly authorise the contractor, consultant or adviser to do anything else that will assist the commission in the carrying out of its functions.

Senator David Norris: Buy them tea and sandwiches.

Senator Michael McDowell: It is much more important than that. It would, for instance, enable the construction by the procedures committee of its policy documents. These tasks can be delegated to assist in the preparation of these things. Therefore, this wholly independent commission now becomes a brokerage for the services of third parties and nothing more. It will, of course, have to take ultimate responsibility for the recommendations it will make, but, under this section and these subsections, it is effectively being authorised to delegate huge swathes of its work to contractors, consultants and advisers, as may be required by it. That is where the camouflage of the commission has fallen away and we see it for what it is. It is a cut-price vehicle that is being used to carry out a function. The question of resources is doubly central to what the actual result will be, namely, the resources that will be paid directly to the commissioners for the work they are expected to do, at one end of the graph, and, at the other, the resources that will be available to them to delegate the evaluatory functions to others, subject to their taking of final responsibility in making their recommendations.

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Notice taken that 12 Members were not present; House counted and 12 Members being present,

An Leas-Chathaoirleach: Order, Senator McDowell is in possession.

Senator Michael McDowell: As I was saying before the quorum was called, it seems to me that this House is entitled to a clear picture of what the sponsoring Minister, the Department of Justice and Equality and the Government, on whose behalf this Bill is being moved, envisage will be involved in being a member of the commission, what remuneration will be offered to members and what kind of expenditure is envisaged for the appointment of contractors, advisers and consultants to assist the commission in carrying out its functions. I imagine there must be somewhere in the Department of Justice and Equality some sketch at least for the Department of Public Expenditure and Reform of what is needed in terms of cash to make this body function.

Senator David Norris: Absolutely.

Senator Michael McDowell: We are entitled, as I will continue to repeat until we get a satisfactory answer, to know what kind of remuneration the Department proposes to give to people who are commissioners. The role of commissioner is a highly responsible job. It is not the same as sitting at a board meeting of Aer Lingus or some such company and making decisions once a month. It is taking responsibility for the quality of our Judiciary and applying one's mind to making sure that the name of one person rather than another person is put on a shortlist of three names for Cabinet approval. That is not something which will be done lightly, easily or without serious consideration being given to the merits of all the applicants.

If the remuneration is €9,000 a year, which is €4,500 after tax for somebody who has reached the dizzy heights of the higher rate of income tax, one can bet one's bottom dollar that the consultants will do all the hard work and evaluations and the poor bedraggled commissioners will come to a meeting once a month where the lay chairperson will put before them a summary document, with the names of those whom the consultants have thought worthwhile. These will be the people who have gone past the first stage. The same consultants will no doubt have decided who has fallen at the first fence and who should be coming towards the finishing line. It will then be up to the commissioners to select as between candidates one, two and three. That is the dismal, pathetic role envisaged for these commissioners as a fig leaf to one Minister's desire that there should be a radical change.

If the remuneration is to be €9,000 or €4,500 after tax - if that is really what is involved - the commissioners will get €400 an outing if the commission meets once a month and approximately €130 an outing if it meets once a fortnight. If we are talking about that kind of money for important work of this kind and also authorising the evaluation process to be carried out by consultants, then this is an elaborate sham and should be condemned as such. I have no doubt members of the Judiciary, who will not be remunerated, and the practitioner appointees will be far more attentive than the lay people if that is to be the remuneration package for doing this important work. Will they end up earning less than the so-called consultants who will advise them on this matter? Is that what will happen? It will be very poor consultants who will turn up for a meeting of one or two hours' duration to be asked questions about their evaluations if the remuneration is €400. We are entitled to know what the Department of Justice and Equality intends awarding these people. Until the Minister can answer that question, he should not insult our intelligence by assuring us that it will all work out on the night and everything will be fine.

If it ends up that the net benefit to the commissioner for sitting and listening to this stuff is less than that received by the consultant who has pored over the documents and come up with an evaluation, we will know exactly where the real effort will be made and who will operate the real levers of power in this whole process. It will be the consultants. Remember that the people who will do most of the evaluation work will be the consultants, who will be appointed with ministerial consent only. Where is the independence in that case? It will have gone out the window.

I strongly urge the Minister to avail of the opportunity and shorten this debate by telling us what he envisages will be the remuneration of the proposed commissioners. Will they get €9,000, €20,000, €30,000 or €40,000 per annum or something in that order in order that the House can determine whether it should give them the functions it is proposed to give them or whether we are, in effect, giving third party contractors, consultants and advisers the steering wheel in this whole process and the function of making the important evaluation decisions in the first place?

I would like to hear an answer to the points I have just made. I also need clarity as to how this process will work. Will the Government learn the names of the applicants who were rejected?

Senator David Norris: That is very important.

Senator Michael McDowell: That is a very simple question. The Bill, as currently devised, does not make that clear and seems to suggest the Government would not be told that. It is an alarming proposition that the Government would be given three names, graded one, two and three, and its members would sit down at the Cabinet table unaware that the most intelligent woman solicitor or the most brilliant senior counsel or legal academic in Ireland was on the list and was anxious to get the job but was rejected. The Government is entitled to know these things. Asking the Government to operate on the basis that it is a submarine without a periscope and that it only gets a limited message of three names graded one, two and three by the commission, without telling it that 25 other people were rejected and without disclosing those names, is deeply offensive to reason. At least the Judicial Appointments Advisory Board, JAAB, process, with all of its infirmities, tells the Government who was on the list. That is what I find worrying about this. I ask for answers to those questions.

Senator David Norris: Can I point out to the Minister that I have now had my view about the separation of the three entities and the implications that has for the Bill confirmed by my eminent colleague, Senator McDowell, who is a former Minister for Justice, Equality and Law Reform-----

Deputy Charles Flanagan: That is the Senator's legal advice.

Senator David Norris: It is one of them-----

Deputy Charles Flanagan: That is fine.

Senator David Norris: Does the Minister not think it is good? Is he challenging it?

Deputy Charles Flanagan: I am glad the Senator declared it.

Senator David Norris: I did not.

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Deputy Charles Flanagan: The Senator did.

Senator David Norris: How could I possibly have prophesied what Senator McDowell would say after I had spoken and mentioned that I had taken legal advice?

Deputy Charles Flanagan: Because the Senator is in cahoots with him since the debate started.

Senator David Norris: Of course I am, we are both Members of the Senate.

Deputy Charles Flanagan: Absolutely.

Senator Marie-Louise O'Donnell: And the Independent group.

Senator David Norris: I am a member of the Technical Group now, but forget that. I would hate to be accused of filibustering so I must remain absolutely focused on the Bill.

Senator McDowell, former Attorney General, former Minister for Justice, Equality and Law Reform, highly respected senior counsel and practising barrister, has said that I am 100% right and yet the Minister has not even said, as he has said to other Senators on other occasions, that he would look at the situation and review it. He is shaking his head now so it looks like he will not review or consider it. That is extremely regrettable.

On these advisers and consultants, it seems to me as the debate goes on that we will need a committee to investigate them, to make sure they are gender balanced, that they represent diversity-----

Senator Martin Conway: How does the Senator know?

Senator David Norris: Because that is in the spirit of the Bill. We cannot have these people like KPMG. I thought it was the manufacturer of pet food but perhaps it was engaged in the preparation of the dog's dinner. What does it do?

Senator Martin Conway: KPMG is a very reputable organisation.

Senator David Norris: Doing what?

Senator Martin Conway: Lots of things.

Senator Kevin Humphreys: Bankrupting the country-----

Senator David Norris: I also pointed out that one of the Sinn Féin representatives in the Dáil indicated that this would be a method of screening out people who are antagonistic to the IRA. That is clear political interference, it could not be clearer. I have to say that I am not a persistent critic of Sinn Féin as some people are in this House. To quote the Bible, there is more joy in heaven over one Shinner that repenteth than about all the other white sheep that are around.

On these professional advisers I will give an anecdote from my own experience of being on selection panels because of all of this agonising about whether people are qualified to be on a selection committee. I was on an interviewing panel for somebody to supervise a FÁS scheme we had in the James Joyce Centre in North Great George's Street. It must be 30 years ago. There were 47 applicants and one of them was the lady who is now my secretary and an excep-

tionally fine one. She was shortlisted to number three and we had all of these people who knew everything and were terribly qualified in assessing people and they chose this ghastly baggage who had a PhD and she was absolutely, totally useless. They ignored Miriam even though she was shortlisted. I eventually got Miriam-----

An Leas-Chathaoirleach: I hope the Senator will not identify the person.

Senator David Norris: I just said she was a baggage.

An Leas-Chathaoirleach: I know but I was afraid the Senator might identify somebody.

Senator David Norris: No she was just a baggage. She was rather self important and like me rather-----

Senator Anthony Lawlor: I thought he did identify her.

(Interruptions).

Senator David Norris: A faggot.

Senator Anthony Lawlor: A baggot.

An Leas-Chathaoirleach: The Senator should not be so descriptive as to possibly lead, in the minds of those present or others who might be tuned in or would pick it up, that this person might be identifiable.

Senator David Norris: Yes, they are not identifiable.

An Leas-Chathaoirleach: Be careful please.

Senator David Norris: Yes. I will leave it at that for the time being but I would like to know whether the Minister will give any consideration to the distinction I have made of three distinct entities, not three persons - the trinity is the three persons in one God which as we know is quite a difficult theological concept to swallow. Is he prepared to give it any consideration or will he leave it to chance as to whether this is challenged in the courts on that basis?

Senator Michael McDowell: The House should be aware of section 53(4). It reads that in the preparation of the statements referred to in subsection (1), which is a statement setting out the selection procedures and a statement of requisite skills and attributes - this is pretty central to the functions - the procedures committee, which is to be established, shall avail, not "may avail", itself of the advice and expertise of any consultants or advisers appointed under section 11(7) by the commission to assist it in the performance of its functions.

This is serious stuff and it should be considered. The procedures commission is under a statutory duty to avail of the advice and expertise of any consultants or advisers appointed by it under section 11(7) by the commission and those are people who can only be appointed with ministerial consent. That is what is in the Bill. It does not say "may avail", it says "shall avail". That means that it is to be guided by these commissioners in setting out a statement, which we have been told is central to the operation of this commission, setting out the selection procedures and most alarming of all, setting out a statement of requisite skills and attributes. Who are these consultants who will decide and which of them is qualified to decide what the statement of requisite skills and attributes is? Are they to be guided as a matter of statutory duty by external consultants in setting out a statement of the selection procedures? That is what is in the

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Bill and it really is a dog's dinner of a Bill. We are now coming to the point that I speculated on earlier, that these consultants and advisers were going to have a central role in determining what happens with this commission. We now know for a certainty that the commission is duty bound by statute to be guided by them in setting up its procedures and in determining what requisite skills and attributes are among judges and in preparing a statement of same. This is really important stuff. I have not studied the debates from the Dáil committee, and I do not know whether or not this was considered at length, but it must be considered here. I reiterate that we must, therefore-----

Senator David Norris: A straight answer.

Senator Michael McDowell: -----have a clear set of straight answers on this issue. It comes down to what kind of remuneration will be offered to the lay members of the commission. I want to hear this. If it is to be €9,000 then it is a joke. If it is €40,000 it is getting serious. I want to hear from the Minister, on behalf of the Government, what kind of remuneration will be offered to these people. As I have already said, €9,000 gross turns out at €4,500 net. Divide this into 20 or 30 meetings per year and it is money for which no consultant would assist the committee for an hour. I want to know how serious is the commission proposal and the absolute litmus test for this must certainly be how much money the Minister is willing to give to these appointees to the commission, before the Minister allows the Public Appointments Service to place advertisements in the newspapers asking for interested parties to come forward. I put it to the Minister that if he pays peanuts he will get a certain species of animal. If the lay members of the commission are paid less than consultants per hour for sitting around a table, then the consultants would be making the decisions. That is what would happen.

Senator David Norris: I was a little derailed during my last contribution-----

Senator Michael McDowell: Distracted.

Senator David Norris: -----and I forgot to mention a particular concern I have, again, on section 11, subsection (9), of the Bill. It states, "The Commission may, out of the resources at its disposal, pay to a person, consultant or adviser referred to in subsection (7) such fees (if any) or allowances for expenses (if any) as the Commission may, with the consent of the Minister and the Minister for Public Expenditure and Reform, determine." There are quite a lot of qualifications there. Senator McDowell has said that if the lay members are paid €9,000 it is a joke. I have an even better joke; the Bill states "if any". That is a better joke than €9,000 because one is paying them sweet damn all. The Bill proposes that the commission may pay "such fees (if any) or allowances for expenses (if any)". It is envisaged, therefore, that the commission may pay them absolutely nothing.

Senator Martin Conway: That would be good.

Senator David Norris: It would be wonderful. On the other hand the Bill proposes that the commission may pay these fees, "out of the resources at its disposal". What are the resources at its disposal? They can only pay what they have in the kitty. If they do not have enough in the kitty to pay proper consultants then we are banjaxed from day 1.

There are a lot of problems with this question of payment. I do not suggest that the Minister is engaged in any deliberate bafflement or obscurantism. With all of this stuff and the consultants, advisers other persons, doodahs, whatnots and all the rest of it, it sounds to me as though we are giving a pretty good example of what, in the Minister's delightful phrase, could be char-

acterised as an “engorged bureaucracy”. I am greatly concerned at the question of payment. On the face of it it looks like we might toss them a few bones here and there or we might give them absolutely nothing whatsoever. I have had some contact with the world of consultants. I have yet to come across one who is prepared to do it for the love of the country. They do it for good, hard cash.

Senator Catherine Noone: Why should they?

Senator David Norris: Exactly. Why should they? Why does the Bill propose “if any”? Why do we not know how much they are going to get? I believe this is a fair and reasonable request to make of the Minister.

Deputy Charles Flanagan: Half of the Seanad is saying that this engorged bureaucratic quango is going to cost a fortune that we cannot afford-----

Senator David Norris: The Minister weakened the phrase by expanding it. It was beautiful as “engorged bureaucracy”.

Deputy Charles Flanagan: Then we have Senator McDowell and others intimating that it is going to be run on a shoestring. The fact is that there will be sufficient resources made available by the Minister for Justice and Equality and by the Minister for Public Expenditure and Reform, to ensure that the commission does the work required of it. I remind Senators that it is only the lay members of the commission and the members of the legal profession who will receive a stipend or expenses in any-----

Senator David Norris: What about the persons? Do they not get something?

Deputy Charles Flanagan: It is members of the commission.

Senator David Norris: Do the persons also get paid?

Deputy Charles Flanagan: We are referring to the non-judicial members of the commission. On Second Stage in the Dáil I said that the indication was that the commission would cost in the region of €1 million-----

Senator David Norris: What?

Deputy Charles Flanagan: -----to be-----

Senator David Norris: One could fill Stepside Garda station for that.

Deputy Charles Flanagan: I was criticised on the basis that this was an extraordinary amount of money for a body that would do very little. I was reminded of that by a senior counsel of some repute, in the Dáil I might add. Having regard to amendments made in the Dáil, and the fact that there would be less of a committee structure than we now have, I felt that it was reasonable to revise the figure downwards. This is the figure that I imparted to Senator Humphreys on the last occasion.

Senator David Norris: It is nothing to do with the intrinsic merits of the argument, it was that the Minister was criticised in the Dáil.

Deputy Charles Flanagan: Like every other piece of legislation that comes before this House, and the Leas-Chathaoirleach has been here a long time, as has Senator McDowell, albeit

it not-----

Senator David Norris: Not as long as me.

Deputy Charles Flanagan: Albeit not as long as Senator Norris-----

An Leas-Chathaoirleach: Senator Norris is the father of the House.

Deputy Charles Flanagan: As with every other piece of legislation it will be a matter for the Minister for Public Expenditure and Reform and the Minister for Justice and Equality to determine the level of remuneration for those commission members. This provision is standard but the amount will not be hugely different to that which obtains throughout the public sector for attendance at commissions or board meetings.

Senator Michael McDowell: What does that mean?

Deputy Charles Flanagan: I am not in a position now to give precise details of the sum that will be made available to the lay members of the commission, which will allow them to attend meetings to facilitate the nomination of some 50 persons per year for appointment.

Senator Michael McDowell: It is to evaluate.

Deputy Charles Flanagan: I put it to Senators McDowell and Norris that in the context of the procedures committee managing a selection or recruitment process, it would appear to be logical and advisable the committee would have access to expertise in the form of an adviser or consultant who may be required to provide a certain level of advice on best practice in the circumstances. I do not see anything alarming or terribly unusual in that. I have cited other bodies for which an amount of expert advice can be made available from time to time, with the consent of the Minister.

The “person” versus consultant argument seems to have exercised Senator Norris. The main purpose is to allow the commission to engage expert advice in the matters of recruitment and selection. A “person” could be a person hired to provide advice on the basis of that person being a temporary employee, on a short-term contract or as an engagement for the time being - depending on the information sought-----

Senator David Norris: I understand that.

Deputy Charles Flanagan: -----and depending on the type of advice that might be given. On the issue of consultants or advisers, their appointment is subject to ministerial consent, as has been quoted. They will provide that advice in such a way that the Minister will exercise oversight by giving sanction or otherwise. That is not unusual across the public service system.

Senator David Norris: Is the Minister accepting that the person will not need ministerial consent?

Deputy Charles Flanagan: Whether they are persons, consultants or advisers, no arrangement can be made to pay them, unless there is ministerial consent, not only from the Minister for Justice and Equality but also from the Minister for Public Expenditure and Reform. That is not an unusual practice or procedure.

I hear Senator Michael McDowell talk about a brokerage and delegation. Nothing is to be delegated. No function is to be delegated. The assessment of the person, consultant or adviser

will be subject to examination by the commission and, obviously, to submission by it. It will be tested, probed, scrutinised and then either accepted or rejected by the commission. There is no question of any decision-making being delegated to any outside body, merely the provision of advice and expertise.

The point about the Legal Services Regulatory Authority and the Policing Authority is that both bodies - Senator Michael McDowell quoted selectively from the Act - are empowered to appoint consultants and advisers. I do not recall any great objection to these provisions in that legislation, yet it seems that grave offence is being taken by Senators at the inclusion of this power that may or may not be exercised but which can be exercised by the commission if it so decides. The purpose of the section is to enable the commission to seek advice or the engagement of a consultant to ensure expertise is available. I see nothing unusual in it. However, having listened to the debate for eight hours yesterday and almost two hours today, having regard to the debate being sparked and interpretations which have been construed liberally by Senators - interpretations that were never intended - I will look at it again. If there is an absence of clarity, I will be happy to provide for it on a later Stage.

I say to Senator David Norris that the engagement of a consultant or an adviser may only occur after the consent of the Minister to obtain such advice is sought.

Senator David Norris: It is not clear that the person is covered. That was my point.

Deputy Charles Flanagan: I will be happy to look at it again.

Senator David Norris: I thank the Minister.

Deputy Charles Flanagan: To respond to the question asked by Senator Michael McDowell about transparency and the information that may be forthcoming to the Government, bearing in mind that this is an independent commission, we heard a lot of exercised commentary of a highly charged nature yesterday evening about GRECO, which has not been mentioned this afternoon.

Senator David Norris: If the Minister likes, we will not mention it.

Deputy Charles Flanagan: The most important aspect of the engagement of GRECO is ensuring any commission, committee or structure will be independent of the Government and cannot be open in any way to a charge of what might be described as political taint or involvement.

Senator David Norris: It is said it is open to that possibility. That is what the report states.

Deputy Charles Flanagan: This is an independent commission and the parameters surrounding the information that will be received by the Minister are clear. The Minister will receive the names of three persons, as provided for in the Bill. The Minister will receive the particulars of the recommended persons: information on their education, qualifications, professional expertise and experience and character, as provided for in section 43. Where applicable, the Minister will receive the particulars of the result of an interview or test that might be undertaken and a statement of recommendation setting out the reasons the commission is of the opinion that the person is suitable. I do not see circumstances in which the Government will be interrogating or probing the independent commission on a particular candidate who may, as Senator Michael McDowell said, be the most intelligent legal practitioner in the country. I do

not see circumstances in which any Minister or the Government will go behind the legislation in terms of the names of the three persons received by the Minister which will facilitate the Minister in putting the name or names before the Government for approval or otherwise to go to the President in accordance with the Constitution. As I said on a number of occasions, nothing in the Bill will empower the commission to adversely interfere in any way with the constitutional prerogative of the Government in the nomination of persons for appointment by the President as members of the Judiciary.

Senator Michael McDowell: That is what I have been worried about from the get-go. It means that the Government will receive three names in the order of the commission's recommendation and never learn who else was interested. It, therefore, cannot exercise its prerogative in separately advising the President that it thinks Mary or Joe Bloggs is the kind of person it wants and is head and shoulders above the three people named. It will never know that he or she applied to the commission and was unsuccessful. That is what is totally wrong. At least under the JAAB, the Government knew who the would-be candidates were and could take a look and ask, "What is wrong with so-and-so? They would be our choice."

Returning to the analogy of the submarine without a periscope, the Government will receive three names and will not know there are people who, in its view, would be far more suitable for appointment than the three in question. For instance, let us suppose that, from among the judges of the Court of Appeal and the High Court, there is to be a recommendation for appointment to the Supreme Court and the Government receives three names under this scheme. It may never know that Mr. Justice or Ms Justice Bloggs actually applied and wanted to be appointed but was turned down by the commission, with or without the skills of evaluators or whatever they call themselves, consultants-----

Senator David Norris: Advisers.

Senator Michael McDowell: It may never know, but the Minister is arguing that the Government's prerogative remains unaffected.

Any sensible Government confronted with a list of three people would send its attorney out to tap somebody else on the shoulder and say, "By the way were you not in the running, or if you are not in the running, would you consider being appointed by us because we are disappointed not to see your name among the names coming from the commission?" That is what will happen in all of this and it will not be unlawful. Good judges have been appointed without the involvement of Judicial Appointments Advisory Board, JAAB. It is no secret that the current Chief Justice was never involved in the JAAB process but he was invited by the Government directly to accept judicial office. Let us be clear about this. Those are the facts. Let us not delude ourselves that this system will work any differently. I deeply regret that, after a number of hours, the Minister is not prepared to give any indication of the terms of remuneration of the commissioners he will be appointing.

5 o'clock

Deputy Charles Flanagan: I gave an indication.

Senator Michael McDowell: The Minister did not. He said it would be on the lines of any semi-State board.

Deputy Charles Flanagan: That is an indication.

Senator Michael McDowell: It means nothing.

Deputy Charles Flanagan: Of course it does.

Senator Michael McDowell: State boards cover a huge range, as the Minister knows. The chairman of one company and the ordinary members of some other companies can range in multiples of each other's remuneration. I deeply regret the Minister will not tell us that each commissioner will get remunerated at the senior end of State part-time appointments. If he is not willing to give them €30,000 or €40,000 a year to carry out these functions, he will get people who are there for the wrong reasons.

Deputy Charles Flanagan: The Senator has asked this question on a number of occasions. Having been a former Minister, he knows well the level of remuneration that is available to persons across the State sector, many of whom do this work on a *pro bono* basis, giving of their expertise and experience to the State, and they will continue to do so. The parameters we are speaking about, or the frame within which this is in, is something in the region of €8,000 going up to a ceiling of about €30,000. That is about as much as I can say at this stage about the level of remuneration.

Senator Michael McDowell: Why can the Minister not give us an indication of which end of that spectrum it will be on? It would be simple for the Minister to say which end of that scale he would be asking for the remuneration of his commissioners. It makes a hell of a difference if it is €8,000 because, after tax, that will be €4,000. If there are 15 or 20 meetings a year, that becomes a negligible sum of money compared with the consultant's remuneration for attending those meetings. That is at one end of the spectrum. I do not understand the reason the Minister cannot say that he would favour the €30,000 end of the spectrum. I fear, in reality, this is an elaborate edifice but that it will, in fact, be run in a financial shoebox.

Deputy Charles Flanagan: I do not believe the people who will serve on this body, either as persons with legal experience representing both arms of the legal profession which will be represented on the commission, as the lay majority, or as the lay chair will say they will take the job but first they want to see what the payment is and how much they will get out of it. I do not agree with the Senator that the first thing people will say when they want to serve on this reforming body, with very important functions in the appointment of members of the Judiciary, is how much they are going to get out of it, how much they are going to pay in tax and how much money will be left that they can put in their back pocket. I reject any assertion that people will be motivated by money in terms of their service.

Senator Lynn Ruane: On a point of order, we have been talking for a long time but it has not been on what is proposed in amendment No. 29. I have sat outside the Chamber and tried to ignore that, but many of us have tabled amendments and want to be constructive regarding the Bill. I support the amendment proposed by Senator McDowell, but I have nearly been talked into not supporting it at this stage as the deliberations on it have gone on that long. Can we stick to the amendment?

An Leas-Chathaoirleach: With respect, I am advised the discussion has been on the amendment.

Senator Lynn Ruane: It has not been on it. This amendment relates to hiring people to come in as consultants.

Senator Diarmuid Wilson: That is the point.

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Senator Lynn Ruane: It is not about the remuneration of people who will serve on the commission.

An Leas-Chathaoirleach: With respect, the discussion has been largely about that and how much they will be paid.

Deputy Charles Flanagan: I only hope Senators are on senior counsel time in terms of their per hour rate.

Senator David Norris: I wish.

Deputy Charles Flanagan: We have to be mindful of the cost to the Exchequer.

Senator Michael McDowell: I do not want to lose Senator Ruane's support.

Senator David Norris: I would not give a flying fig if the Senator lost her support.

Senator Michael McDowell: I have to attend a Seanad reform implementation group meeting now. If the House wants to put this amendment to a vote, I am quite happy to do so.

Senator David Norris: The question has to be put first.

Amendment put:

The Committee divided: Tá, 18; Níl, 25.	
Tá	Níl
Ardagh, Catherine.	Burke, Colm.
Bacik, Ivana.	Burke, Paddy.
Daly, Mark.	Butler, Ray.
Davitt, Aidan.	Buttimer, Jerry.
Gallagher, Robbie.	Byrne, Maria.
Higgins, Alice-Mary.	Coffey, Paudie.
Horkan, Gerry.	Coghlan, Paul.
Kelleher, Colette.	Conway-Walsh, Rose.
Marshall, Ian.	Conway, Martin.
McDowell, Michael.	Devine, Máire.
Mullen, Rónán.	Feighan, Frank.
Nash, Gerald.	Gavan, Paul.
Norris, David.	Hopkins, Maura.
O'Donnell, Marie-Louise.	Lawlor, Anthony.
O'Sullivan, Grace.	Lombard, Tim.
O'Sullivan, Ned.	Mac Lochlainn, Pádraig.
Ruane, Lynn.	McFadden, Gabrielle.
Wilson, Diarmuid.	Mulherin, Michelle.
	Noone, Catherine.
	O'Donnell, Kieran.
	O'Mahony, John.
	O'Reilly, Joe.

Seanad Éireann

	Ó Donnghaile, Niall.
	Reilly, James.
	Warfield, Fintan.

Tellers: Tá, Senators Michael McDowell and Marie-Louise O'Donnell; Níl, Senators Gabrielle McFadden and John O'Mahony.

Amendment declared lost.

Question put: "That section 11, as amended, be agreed to."

The Committee divided by electronic means.

Senator Diarmuid Wilson: Under Standing Order 62(3)(b) I request that the division be taken again other than by electronic means.

Question again put: "That section 11, as amended, be agreed to."

The Committee divided: Tá, 26; Níl, 9.	
Tá	Níl
Burke, Colm.	Bacik, Ivana.
Burke, Paddy.	Daly, Mark.
Butler, Ray.	Davitt, Aidan.
Buttimer, Jerry.	Gallagher, Robbie.
Byrne, Maria.	Horkan, Gerry.
Coffey, Paudie.	Nash, Gerald.
Coghlan, Paul.	Norris, David.
Conway-Walsh, Rose.	O'Donnell, Marie-Louise.
Conway, Martin.	Wilson, Diarmuid.
Devine, Máire.	
Feighan, Frank.	
Gavan, Paul.	
Hopkins, Maura.	
Lawlor, Anthony.	
Lombard, Tim.	
Mac Lochlainn, Pádraig.	
McFadden, Gabrielle.	
Mulherin, Michelle.	
Noone, Catherine.	
O'Donnell, Kieran.	
O'Mahony, John.	
O'Reilly, Joe.	
Ó Donnghaile, Niall.	
Reilly, James.	
Ruane, Lynn.	
Warfield, Fintan.	

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Tellers: Tá, Senators Gabrielle McFadden and John O'Mahony; Níl, Senators Gerry Horkan and Diarmuid Wilson.

Question declared carried.

NEW SECTIONS

An Cathaoirleach: Amendment No. 30 cannot be moved, as amendment No. 13, on which it is consequential, was withdrawn. Amendment No. 31 is out of order.

Amendments Nos. 30 and 31 not moved.

SECTION 12

Senator Lynn Ruane: Although I will be moving amendment No. 32 on behalf of Senator Higgins, I will not speak to it now. She will be back from the Committee on Seanad Reform in a few minutes.

An Cathaoirleach: That is okay.

Senator Lynn Ruane: I can speak to my amendment No. 37 in this group.

An Cathaoirleach: We will go through them.

Senator David Norris: We cannot wait for Senator Higgins, though.

(Interruptions).

An Cathaoirleach: Please, can we have quietness in the Chamber? Amendments Nos. 32 to 45, inclusive, are related. Amendment No. 38 is consequential on amendments Nos. 33 and 36. Amendment No. 43 is a logical alternative to amendment No. 39. Amendments Nos. 30 and 32 to 45, inclusive, may be discussed together by agreement. Is that agreed?

Senator Lynn Ruane: Agreed.

Senator Diarmuid Wilson: Not agreed.

An Cathaoirleach: What is the Senator's problem with the grouping?

(Interruptions).

An Cathaoirleach: Please, there are people in the Gallery and at the back using phones. If they want, I will adjourn for half an hour so that they can make their phone calls outside. There is not silence in the room. Senator Wilson has made a proposal, the Minister has not heard him and I can hardly hear him.

Senator David Norris: I did not hear him at all.

An Cathaoirleach: He said he was not happy with the grouping.

Senator David Norris: Let us discuss them separately, then. Is that agreed?

Senator Lynn Ruane: No. I am sorry, but can we hear a reason as to why?

An Cathaoirleach: Senator Wilson was going to give me an explanation as to why he was

not happy with the grouping.

Senator Diarmuid Wilson: It is confusing. There are quite a number of-----

An Cathaoirleach: While the Senator is confused, I will formally welcome the former Leader of the Seanad, Mr. Maurice Cummins, to the Chamber. Our honourable and distinguished guest will note that not much has changed around here.

Does Senator Wilson want the amendments to be discussed individually?

Senator Diarmuid Wilson: Yes.

Senator Lynn Ruane: No.

An Cathaoirleach: We have to figure out why the Senator does not want them grouped. Is there a specific reason? He said he was confused. They are all related and consequential.

Senator David Norris: I wonder why he has to give a specific reason.

An Cathaoirleach: That is my call. If his objection is reasonable, I will allow him to proceed with it.

Senator Diarmuid Wilson: Could the Cathaoirleach read them out again, please? I do not have the list with me.

An Cathaoirleach: They are confusing and there are different notes in front of me. Amendments Nos. 32 to 45, inclusive, are related. That is a bunch of them.

Senator David Norris: That is too many.

An Cathaoirleach: Amendment No. 38 is consequential on amendments Nos. 33 and 36. Amendment No. 43 is a logical alternative to amendment No. 39. My notes are confusing, as they also refer to amendment No. 30. Amendments Nos. 32 to 45, inclusive, may be discussed together by agreement. When I put that question, Senator Wilson said he was not happy.

Senator Diarmuid Wilson: I am still not happy.

Senator David Norris: It is far too many for a start.

Senator Lynn Ruane: It is not.

Senator David Norris: Even the Cathaoirleach is confused. It is 14 amendments.

An Cathaoirleach: Hold on a second, please. I am asking Senator Wilson for a reasonable explanation for why he is not content for these to be discussed as a group.

Senator Diarmuid Wilson: As the Cathaoirleach admitted, this is confusing, and he has the written notes in front of him. Quite a few amendments are being discussed together.

Senator David Norris: Fourteen.

Senator Diarmuid Wilson: That it is confusing is my personal opinion.

Senator David Norris: Mine, too.

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Senator Diarmuid Wilson: I am not happy to have them grouped.

An Cathaoirleach: Senator Ruane has a different view.

Senator Lynn Ruane: It is not confusing. If the Senators read the amendments, they will see that these are related. If we separated them, it would take us much longer to discuss them. We would only be repeating ourselves on each amendment for the rest of the night. They are related. If I am correct, some would actually fall if a Sinn Féin amendment passed. I do not see why they should be separated just because someone is confused.

An Cathaoirleach: Does Senator Norris wish to speak?

Senator David Norris: It is an enormous number.

Senator Lynn Ruane: I am sorry, but-----

Senator David Norris: Even the Cathaoirleach, who has the grouping written in front of him, is confused. We will have to go from one to the other.

Senator Lynn Ruane: Excuse me, but they did not have an issue with the fourth grouping of amendments.

Senator David Norris: I am sorry, but I think I have the floor.

An Cathaoirleach: Senator Norris, please.

Senator Lynn Ruane: They did not have an issue with the fourth grouping.

An Cathaoirleach: No, please. I have allowed Senator Ruane to give her explanation. She should let Senator Norris give his explanation.

Senator Anthony Lawlor: If Senators are opposed to an amendment, they should say so now.

Senator David Norris: First, there are a large number of amendments.

An Cathaoirleach: It is a total of 14.

Senator David Norris: Second, Senator Wilson said he was confused. I often find that, where there is a large group of amendments, it is very confusing, we go from one to the other and we do not know where we are at all, only to then be told that, because an amendment has already been discussed with this or that, a Senator has missed his or her slot.

An Cathaoirleach: I call Senator Conway. I would like to get agreement on this. Otherwise, I will have to make a ruling.

Senator Martin Conway: I have been in the House for seven years and have seen many more amendments than just 14 being grouped.

Senator David Norris: Name the Bills.

Senator Lynn Ruane: Just two groupings ago, David.

An Cathaoirleach: Through the Chair, please.

Senator Martin Conway: To be fair, Senator Ruane raised a good point. There is no point in repeating ourselves *ad nauseam* on every amendment, given that there has already been such repetitiveness today. The officials who have grouped the amendments have done a fine job and performed a good public service, and we should respect them.

Senator David Norris: Can I make a point?

An Cathaoirleach: No, hold on a second. There is a good reason it must be put to the floor if the groupings are accepted. My understanding, traditionally, was if somebody objected, then they were dealt with individually but I do not want to split the House. I call Senator Ruane.

Senator Lynn Ruane: Only two groupings ago, which would have been last week, there were as many if not more amendments and no one raised any concern then.

An Cathaoirleach: The difference is that an objection has been made to the amendments being dealt with together.

Senator Lynn Ruane: I understand. In terms of anything being confused, or not understanding what is being taken with what, we did not only get these groupings this morning; we have them over a week. We have debated this Bill for nearly a week. If Senators want to be prepared, in terms of the groupings, then they should have done this a week ago before entering the Chamber, instead of looking at the groupings now and saying they do not understand what is on the page, unlike the rest of us who have spent weeks studying the amendments. This is just about doing one's job.

Senator Gerry Horkan: The Cathaoirleach is in the Chair. This is a very complicated Bill with 111 amendments to it. There are very few Bills that I have seen since I became a Senator that have 111 amendments to them.

Senator Niall Ó Donnghaile: Then the Senator has not attended a meeting of the Joint Committee on Justice and Equality.

Senator Gerry Horkan: The legislation is quite confusing. The convention is that one asks whether Senators agree to do something. If Senators agree, then it is agreed, and it usually is, but if it is not, then one says it is fine and one lets them vote. I do not think that there is a need for repetition but people want the opportunity to maybe come back in. It is very restrictive, in terms of a large group of amendments, if one is unable to come back in and ask a question and one is then told the amendment had already been discussed and one happened to miss one's slot, as Senators Norris and Wilson have outlined. Typically, if Senators do not agree, then people say they are unhappy and the amendment goes through.

An Cathaoirleach: But it will delay us all day. I call Senator Craughwell. Briefly, on the issue of the grouping.

Senator Gerard P. Craughwell: As my colleague Senator Horkan said, this is a complex Bill. We are wasting time talking about this matter when we should make a simple decision. Let us deal with each amendment individually. I am not going to take up any more time and urge Senators to do so.

Senator David Norris: I wish to point out that a grouping of amendments does not rule out repetition. One can be as competitive as one likes whether amendments are grouped or not. That is not going to stop it.

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An Cathaoirleach: I have to make a call on this. Heretofore, a division has been normally nine times out of ten-----

Senator Diarmuid Wilson: Can I comment?

An Cathaoirleach: Yes.

Senator Diarmuid Wilson: Before the Cathaoirleach continues, I would like to clarify a matter. I accept what my colleague, Senator Ruane, has said that Senators have had time to study the amendments. I stepped in here at short notice on behalf of my colleague, Senator Lorraine Clifford-Lee, who has had to go to another appointment. We have spoken about diversity. Surely diversity also includes confusion. If somebody is only after getting a brief and is faced with 13 amendments being grouped together then I think we are entitled to ask for amendments to be taken individually. However, I will accept the Cathaoirleach's ruling.

An Cathaoirleach: I am going to make a ruling on this matter. I am going to go with the normal circumstances. I overrule Senator Wilson's objections and the amendments will be dealt with together. Anyone who wants to speak on the amendments No. 32 to No. 45, inclusive, can do so in the one breath. The grouping stands.

Senator Diarmuid Wilson: Did the Cathaoirleach say amendment No. 42 or No. 32?

An Cathaoirleach: Amendments Nos. 32 to 45, inclusive.

Senator Diarmuid Wilson: More confusion.

An Cathaoirleach: Amendments Nos. 32 to 45, inclusive. I call Senator Ruane on the amendments, which are all being dealt together.

Senator Lynn Ruane: I move amendment No. 32:

In page 12, to delete lines 35 to 37 and substitute the following:

“(i) from time to time when requested to do so by the Minister, a selection process referred to in *subsection (3)* for the purpose specified in that subsection, and”.

I thank the Cathaoirleach and appreciate his assistance.

I will first speak to my amendment No. 37. My amendment seeks to strengthen the knowledge and expertise requirement set out in section 12(6) as it would require the Public Appointments Service to ensure that the people that it recommends, as lay people, have to have, among them as a cohort, knowledge and experience of each of the matters outlined in section rather than as many as possible, as currently drafted. This would mean that each of the criterion listed would have to be represented in the collective knowledge of the lay people. It would also mean that the PAS would be unable to rely on certain criteria to the detriment of others ensuring a healthy balance of knowledge and competencies.

As the lay people are the mechanism, in this process, through which more diverse opinions and perspectives on judicial appointments are injected into the process, I would like to see each of the criterion in section 12(6) be represented as there is a good range of knowledge and experience there. I hope that the Minister will appreciate where we are coming from and accept the amendment.

I will briefly speak to amendments Nos. 44 and 45 in terms of the GRECO report that we all have had a chance to read. It seems that the main objections to the Bill in the report are as follows: first, the Judiciary was not consulted enough when the Bill was being drafted; second, the chair is a lay member; third, judges are in a minority on the commission; and fourth, the chair and members of the commission are accountable to the Oireachtas with all the concerns about the separation of power that this involves.

We cannot go back and change the consultation process for the Bill now. Let us be honest that the lay chair and lay majority are the subject of commitments given in the programme of Government and so are not going to change at this stage. What we are left with is the role of Parliament in the commission's work, and I share some of the concerns expressed in the report. I do not necessarily see why the law people must be approved by the Oireachtas, as outlined in section 14(1). These people will be the majority members on the commission and will recommend who becomes a judge. They will get there by going through a process in the independent Public Appointments Service. Why should Parliament play an additional role in deciding who the lay members are? In practice, Senators approve the names of people for appointment to State bodies, and without any objections since I have been elected. However, we are concerned with the principle and I am unconvinced about its merits. The provision seems to inject parliamentary politics into a process that claims to depoliticise the judicial appointments process and, potentially, has negative implications for the separation of powers.

The issue of parliamentary oversight of the commission also arises in section 22, in terms of the chair, and I also have concerns in this regard. I would like to hear the Minister's rationale for drafting section 14 as is and I want him to explain why amendments Nos. 44 and 45 are unnecessary, if he is not accepting them.

An Cathaoirleach: Is there any other contributor?

Senator David Norris: Yes. Can I take it that we can continue to speak? For example, I want to speak about an amendment tabled by Senator Alice-Mary Higgins. I would like to have the opportunity to come back in and talk about other amendments later on. In other words, do I have the freedom to take the amendments myself? I can take them separately.

An Cathaoirleach: This is Committee Stage so I cannot stop the Senator from coming back in to talk about the same amendments.

Senator David Norris: Yes. Can I comment on different amendments and confine my remarks now?

An Cathaoirleach: The amendments are grouped but the Senator can come in on a different angle.

Senator David Norris: Right. I thank the Cathaoirleach.

An Cathaoirleach: I am sure that the Senator can circumvent.

Senator David Norris: Yes. In a general way, I have tabled some amendments about deleting various things and so on, and it is to get rid of the lay majority and the law chairperson of the board.

Senator Alice-Mary Higgins has tabled amendment No. 32 that states:

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In page 12, to delete lines 35 to 37 and substitute the following:

“(i) from time to time when requested to do so by the Minister, a selection process referred to in *subsection (3)* for the purpose specified in that subsection, and”.

Her amendment replaces section 12(1)(b)(i) that reads: “from time to time when requested to do so by the Minister, a selection process referred to in either *subsection (2)* or *(3)*, or both, for the purposes specified in either or both of those subsections, and...”

Her amendment restricts the selection process to “*subsection (3)*” because she apparently agrees with section 12(2) that states that the Public Appointments Service shall recommend a lay person for appointment by the Minister as chairperson following a selection process held by the service for that purpose. I fundamentally and strongly disagree with that notion. This is one of the key aspects of the Bill, in addition to the section that we have just dealt with where Senator McDowell sought to delete between ten and 15 lines. This, to my mind, is one of the key things.

In my opinion, by taking the line that I am taking in this matter, we are following the recommendations of the GRECO report that clearly suggested that the chairperson of the commission should be the Chief Justice. I tabled an amendment to that effect, so I can hardly be expected to accept an apparently innocuous amendment which at the same time - unlike what Senator McDowell said about a submarine without a periscope - has two barrels with torpedoes in them. If we were to accept this it would strengthen the situation whereby a lay person is chairperson, which is a situation with which I simply do not agree. I expect some of my colleagues also do not agree with it.

Senator Gerard P. Craughwell: We might have a quorum in the room. There is not a sinner here.

Senator David Norris: That would be a good idea.

Notice taken that 12 Members were not present; House counted and 12 Members being present,

Deputy Charles Flanagan: Amendment No. 30, proposed by Senator Wilson, appears to reintroduce one of the experience and knowledge areas lost in the Dáil amendment process which relate to the processes and procedures for making appointments to public office.

An Cathaoirleach: Amendment No. 30 cannot be moved. The amendment is not in the grouping. We are discussing amendments Nos. 32 to 45, inclusive.

Deputy Charles Flanagan: Amendment No. 30 is not in the grouping.

An Cathaoirleach: Neither amendment No. 30 nor amendment No. 31 are in it. One cannot be moved and the other has been ruled out of order. The Minister can start with amendment No. 32, which is in the name of Senator Alice-Mary Higgins.

Deputy Charles Flanagan: Senator Higgins is not here. She has not made any submission. On amendment No. 33-----

Senator Niall Ó Donnghaile: On a point of order, I know amendment No. 31 was ruled out of order but does that prohibit us from speaking on it?

Senator David Norris: The Senator can speak on the section.

An Cathaoirleach: Senator Ó Donnghaile can speak on the section but not on the amendment. Senator Ruane had written permission from Senator Higgins to move her amendment, so that is in order.

Senator David Norris: I also spoke on amendment No. 32.

An Cathaoirleach: The grouping comprises amendments Nos. 32 to 45, inclusive. I am somewhat confused myself.

Senator David Norris: The Cathaoirleach is confused-----

An Cathaoirleach: The ruling has been made. Will the Senator allow the Minister to proceed?

Senator David Norris: Can I point out that there is precedent? In my experience, when there is a challenge the amendments are ungrouped.

An Cathaoirleach: I have used my discretion. We will go ahead with the grouping of amendments Nos. 32 to 45, inclusive. Some of them are Government amendments.

Deputy Charles Flanagan: I am opposed to amendment No. 32 on the basis that the Government believes that the optimum method to independently select the lay person with the best mix and spread of skills, experience and expertise necessary to succeed in the job is through the specific selection process for the chairperson as conducted by the Public Appointments Service. We have discussed the Public Appointments Service in some detail. I am not prepared to accept the amendment.

Amendment No. 33 in my own name, which I will be moving, is identical to Dáil Report Stage amendment No. 27. Senators will be familiar with the amendments in the Dáil. There was a series of amendments which were not moved in the House. Amendment No. 33 is merely a technical drafting amendment. It is related to an amendment made on Report Stage to provide a new section 12(8) which provides a basis for the nomination of a member by the Irish Human Rights and Equality Commission, IHREC. Amendment No. 33 makes clear that references in section 12 to a lay person or lay members are references to the ordinary lay members or lay chairperson, except in section 12(8) which deals specifically with the member of the commission who will be exclusively and solely nominated by the IHREC.

Senator Craughwell's amendment No. 34 seeks to amend section 12 by removing the requirement of the Public Appointments Service to recommend a lay person for appointment by the Minister as chairperson following the selection process. We have already discussed the merits or otherwise of this set of amendments. I have made my opposition to them clear. In fact, this amendment is set against my own amendment No. 36, which addresses the reinstatement of a new section 12(4) which relates to precisely this process of selecting the lay chairperson.

I want to recognise what amendment No. 35 in the name of Senator Alice-Mary Higgins seeks to do, which is to preserve the lay chair policy. As I have already stated, the Government believes the optimum method to independently select the lay chair is through the Public Appointments Service. I am not minded to change that in any way. In any event, it seems the amendment does not fully achieve the purpose intended by the Senator since it removes and replaces the provision in section 12(2) regarding the conduct of a selection process and a rec-

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ommendation by PAS but it does not seek to remove the requirement for PAS to organise the selection process for the lay chairperson as per section 12(1)(a). This would seem to suggest that PAS would have a role in the process whereby the commission selects its own lay chairperson. I am not sure if that is what is intended by the Senator's amendment. I am sure Senator Ruane can clarify that point for me. In any event, I am not willing to accept it.

An Cathaoirleach: We have now reached 6 p.m. and the business of the day was ordered such that we would suspend at that time. We will resume at 6.30 p.m. with the Minister, who was on his feet.

Sitting suspended at 6 p.m. and resumed at 6.30 p.m.

An Leas-Chathaoirleach: We resume on amendment No. 32 in the name of Senator Alice-Mary Higgins. Senator Lynn Ruane has permission to move the amendment and speak on it, if necessary.

Senator Lynn Ruane: The Minister was replying to the group of amendments before the sitting suspended.

An Leas-Chathaoirleach: Forgive me, I was not in the Chair before the sos.

Deputy Charles Flanagan: I was replying to amendments Nos. 32 to 45, inclusive, and had commented on amendments Nos. 32 to 35. Government amendment No. 36 is desirable. Paragraph (b) of the subsection the amendment proposes to insert is important. It fills a gap in the Bill in terms of suitability requirements for the appointment as chairperson. Certainty and clarity are required on this point because this is an important position. We cannot leave the matter up in the air.

In regard to the position of chairperson, more particularly the manner of selection of the chairperson, the strong preference of the Government is that apart from his or her independence, specific requirements that are desirable are to be stipulated in the section that underscore the special position of the chairperson. I ask for the support of the House to ensure we have a fit and proper criterion and special suitability requirements that we anticipate the chairperson would have.

I will make a brief reference to Senator Ruane's amendment No. 37. The objective of the Senator's amendment is to ensure that, in selecting lay members, we do not miss out on any one of the six areas specified. I am sympathetic to that objective. However, while the intention is to ensure at the time of any given selection that all matters in subsection (6) have coverage, overall I am keen to leave the matter to the Public Appointments Service, PAS. I do not want to be overly prescriptive. I acknowledge the importance of the Public Appointments Service and the determination of the profiles of members *vis-à-vis* those matters. Rather than move the process in a direction that creates a sense that each individual will perhaps come uniquely from one particular standpoint, it will be a matter for the Minister and the Oireachtas, which will have resolutions in the matter, to be satisfied with the person brought forward from the Public Appointments Service process.

Government Amendment No. 38 is a drafting amendment to correct a reference which was in some way contradictory in the Bill as passed by the Dáil. It is consequential on earlier amendments Nos. 33 and 36.

I will make a brief reference to Government amendments Nos. 41 and 42, which are minor drafting amendments that are nonetheless necessary in the context of the Bill.

Senator Craughwell spoke on amendments Nos. 44 and No. 45, which is in the name of Senator Clifford-Lee. Members will see that the intention of the amendment dealing with the lay chairperson is that the chairperson of the commission will be the Chief Justice. We have discussed this matter in detail and I will not accept the amendment. Amendment No. 45 would delete the role the Minister has under section 14 in appointing a lay person as chairperson. That would reflect the provision Senator Craughwell has incorporated and Senator Wilson proposes, on behalf of Senator Clifford-Lee, providing for the commission to elect its chairperson. This also deletes reference to the appointment of the ordinary lay members, as recommended by PAS under section 12, in favour of a reference to its nomination under section 10. The purpose of this is such that I am not in a position to accept it.

An Leas-Chathaoirleach: I thank the Minister. I call Senator Alice-Mary Higgins.

Senator Alice-Mary Higgins: I thank the Minister. I will touch briefly on a couple of the amendments I tabled. Amendment No. 32 is a technical amendment on the role of the Minister in triggering the selection of a lay person by the Public Appointments Service. Amendment No. 35 is more substantive and it may not have been entirely clear what my intention was. I suggested in this amendment that the members of the commission shall select a chairperson from among their membership who should be a lay person and, in making their selection, the members should endeavour to ensure that such a chairperson selected has both a strong legal understanding and a proven capacity to communicate in a clear and accessible manner. What I am attempting to do is build bridges between what has become a rarefied, separate and divisive discussion on the question of the chairperson and whether a person from the Judiciary should automatically be appointed to that role or whether a person should be appointed separately, with or without a ministerial role in that regard. I have attempted to ensure that the lay and judicial members of the commission have the independence to select a chairperson they believe suitable. The Public Appointments Service would have a role in that regard because it puts forward the members of the commission and it is to be hoped that one or more of its appointees may be suitable for the role of chair. Many commissions and boards select their own chair.

Amendment No. 35 proposes two criteria in regard to the selection of a chair. I am conscious that the criteria originally in place in that regard were removed by the Dáil. Even if the Minister is not happy with the process, I hope he will consider how he might incorporate the criteria I propose, which are that a chairperson - a lay chairperson in this context - would have "a strong legal understanding and a proven capacity to communicate in a clear and accessible manner". I am trying to ensure that the chairperson will be an effective bridge between committee members, able to understand the concerns and legal matters pertaining to the decisions made and issues raised by members of the committee who may be members of the legal profession or Judiciary, and able to communicate those issues and ensure they are understood and engaged with by the lay members and that the lay members are supported in expressing their views. This amendment could be a healing compromise in what has become a very divided discussion.

I am open to some variation on the proposal. For example, the Minister may think it preferable for the Public Appointments Service to suggest to the commission three persons from whom a chair would be chosen. For the Public Appointments Service to put forward one candidate is very limited and gives it extraordinary power. I would rather that it would put forward several candidates, one of whom would be selected by the commission. Alternatively, the chair

could simply be chosen from among those selected as lay members of the commission by the Public Appointments Service. Another alternative would be to remove the requirement that the chair be a lay person. In such case, the members of the commission would select a chair from among their number. I am sympathetic to the idea of the chair being a lay person. An appropriate lay person would have the necessary skills for the role. If those skills were outlined as proposed by the amendment, it may allay the concerns of other Senators regarding the exclusion of judges from the role of chair. I have tabled the amendment and have indicated two alternative approaches to the issue. I am seeking a compromise amenable to the House which would allow us to move forward. The seeds of such compromise may lie in this amendment.

On amendments Nos. 39 and 40, I am concerned by the reference to “public administration” in terms of the skills required of a chairperson. The preceding reference to “administration” in the subsection should suffice. Administrative skills are important but I am concerned that the specific reference to public administration may result in public servants in the employ of a Minister or Department becoming lay members of the committee. I would rather that the reference to “public administration” be removed. However, if it is to be retained, it should stipulate that such persons must no longer be engaged in public administration. Senator Bacik also tried to address the issue of who should or should not be excluded from the role of chair and amendments Nos. 39 and 40 touch on that matter.

Section 12(6)(f) lists academia as a desirable area of expertise. Academia has a very wide meaning and could be construed as referring to university administration or work in any department of a university. Academic experience may be more desirable than having worked in academia in terms of the qualities sought in members of the commission. Amendments Nos. 39 and 43 propose that, instead of referencing academia, the Bill would reference “relevant areas of academic research including the law, or social policy”. Legal academics should be represented on the commission. The law is framed by and frames our social policy in Ireland and, thus, a person with a background in social policy may have a very good sense of the impact of case and other law. The replacement of “academia” with “relevant areas of academic research including the law, or social policy” would be of benefit as it would allow a legal academic, sociologist or social policy expert who may have a very good understanding of the law and contemporary best practice in regard to the law, its administration, judicial practices and so forth to be considered for appointment to this important role.

Amendment No. 39 combines amendments Nos. 40 and 43. I would appreciate if the Minister were to indicate if he is willing to accept any part of the amendments.

Senator Lynn Ruane: On amendment No. 37, the Minister stated he does not wish to be prescriptive. However, how can we avoid a prevalence of lay members who qualify for appointment under subsections 6(e) or 6(f) or having several members from the world of commerce who may have a primary or master’s degree in human rights or equality but no experience in terms of the implementation, practice or everyday understanding in society of human rights, equality, diversity, offending behaviour or rehabilitation? It is of great importance to have members with experience of those issues on the commission. What would be the Minister’s view of a commission the lay members of which are appointed only under subsections 6(e) or 6(f)?

Deputy Charles Flanagan: I do not accept the amendments for reasons I have already stated. I was earlier accused of engaging in a form of filibustering, so I will not repeat the points raised. The required skills mix of expertise and experience will be best acquired through

a specific Public Appointments Service process which will garner all appropriate qualities. The optimum method to independently select the lay chair is through a specific process under the Public Appointments Service. I again reject any criticism of the Public Appointments Service. It has done a particularly good job in recent times and I have not heard any valid criticism of it. It is the ideal mechanism through which to achieve the Government commitment to acquire an independent lay chair of the commission.

The amendments tabled by Senator Higgins may be well-intentioned. She wishes to bring some structure to the existing provisions. In amendment No. 39, Senator Higgins seeks to remove the reference to “academia” in the first subclause and to insert a new subclause which seeks to nail down the academia reference to a requirement for experience in “relevant areas of academic research including the law, or social policy”.

Amendment No. 43 seems to express the same intention regarding the same subsection by proposing the insertion of a reference to “relevant areas of academic research including the law, or social policy”. There may well be some merit in what is sought to be achieved here and I would be happy to have a look at that in regard to amendment No. 43.

In amendment No. 40, however, the Senator seeks to remove the reference to “administration” as including public administration. The reference to “public administration” is included so that there can be no doubt that the Public Appointments Service can regard the experience of a lay candidate, a non-judicial candidate, in public administration as experience in that area. References were made in the other House to a suggestion that there may be attempts to have an overconcentration in the lay membership of retired public servants, which I rejected. I do not believe that to be the case. There is no desire to do any such thing. This is clearly evidenced by the wide range of areas of experience in business and other skills we are seeking with respect to the lay membership. There is no doubt in my mind, however, that there are many exceptional people with extensive public administration experience of varying kinds who may fall to be considered in any selection process but that selection process should be conducted by the Public Appointments Service for lay members of the new commission. They should not be excluded from the process simply because of their experience in administration. If that experience of administration is solely in public administration, an opportunity may be lost to facilitate the commission to draw on that experience. I am not in favour of accepting amendment No. 40 which seeks to remove the reference to “public administration”.

Senator Alice-Mary Higgins: I do not believe any critical reference was made either by Senator Ruane or myself to the Public Appointments Service at any point in our contributions lest there be any misconstruction on that. I outlined a few roles I thought it might play regarding the proposal I made. The Public Appointments Service plays a role in nominating the potential members of commission and that is reflected in my proposal. I have also put forward the idea that the Public Appointments Service could suggest a number of potential candidates for the chair, from whom the commission members would choose. Both my proposals relate to the Public Appointments Service and recognise there is an active role for it.

I appreciate the Minister will give some consideration to the question of areas of academic experience. I remain concerned about the issue of public administration. The inclusion of the word “administration” in my amendment allows for administrative experience of whatever form to be reflected, but the fact that “public administration” is explicitly mentioned in the section while other areas of administration are not seems to point to it being one of the specific areas of preferred skills that need to be incorporated. If the reference to “public administration”

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is to remain in the section, the Minister might indicate if he is open to being clear on the point that while persons may have had experience in public administration, they should no longer be in a position where they are answerable to a Minister or other political leader in that context. There may be scope for ensuring it relates to persons who have previous experience in public administration, if that reference must remain in the section. All of us are endeavouring to ensure that independence is both delivered and seen to be delivered in every aspect of this Bill.

Senator Lynn Ruane: I am not going to speak to the amendment but I want to put on the record that Senator Higgins and I have sat through all the sessions of this debate and we did not level a comment about filibustering at the Minister. He said he was not going to repeat what had already been said but that was not what we were asking of him. If anything, he has spent hours upon hours replying to filibustering while Senator Higgins and I have sat patiently for days waiting to speak on our amendments. We were only seeking to engage constructively on our amendments now that the filibustering king and his pals are out of the Chamber for a little while.

Senator Martin Conway: Hear, hear.

Senator Lynn Ruane: We definitely did not level that comment at the Minister. We have been here waiting to engage constructively on our amendments and not merely to keep talking, as has been demonstrated by the two of us.

Senator Martin Conway: I acknowledge Senators Ruane and Higgins have sat through the debate and they certainly have not filibustered. It is quite unusual not to have filibustering on the debate on this Bill.

Senator Diarmuid Wilson: I reject the accusation from colleagues on the opposite side of the House of filibustering by either colleagues from my party-----

Senator Martin Conway: I was not including the Senator. He need not worry.

Senator Diarmuid Wilson: -----or other colleagues on the corresponding side. Everybody is entitled to make their contribution once it is in regard to the amendment or the section that is before the House at the time. I reject-----

Senator Martin Conway: The Senator was not named.

An Leas-Chathaoirleach: Order, please.

Senator Martin Conway: I do not know why the Senator is being so defensive.

Senator Diarmuid Wilson: -----that there was filibustering from the Opposition in the House.

An Leas-Chathaoirleach: Does Senator Conway want to add a further comment?

Senator Martin Conway: I certainly did not name Senator Wilson. I know he knows who the filibusterers are.

Senator Lynn Ruane: The present company may be excluded from having engaged in filibustering.

Senator Martin Conway: It is important to acknowledge those who do not engage in it.

An Leas-Chathaoirleach: Did Senator Higgins make some comments on which she wishes the Minister to comment further?

Senator Alice-Mary Higgins: I have made my points.

An Leas-Chathaoirleach: How stands the Senator's amendment?

Senator Alice-Mary Higgins: I will withdraw it and reserve the right to resubmit it on Report Stage.

Amendment, by leave, withdrawn.

Government amendment No. 33:

In page 13, between lines 3 and 4, to insert the following:

“(2) Save in *subsection (8)*, a reference in this section to a lay person or lay member is a reference to a person referred to in *section 10(1)(j)* or *(k)*.”.

Amendment put:

The Committee divided: Tá, 21; Níl, 8.	
Tá	Níl
Burke, Colm.	Bacik, Ivana.
Burke, Paddy.	Craughwell, Gerard P.
Butler, Ray.	Daly, Mark.
Buttimer, Jerry.	Gallagher, Robbie.
Byrne, Maria.	Horkan, Gerry.
Coffey, Paudie.	Humphreys, Kevin.
Conway-Walsh, Rose.	O'Donnell, Marie-Louise.
Conway, Martin.	Wilson, Diarmuid.
Devine, Máire.	
Gavan, Paul.	
Hopkins, Maura.	
Lawlor, Anthony.	
Lombard, Tim.	
Mac Lochlainn, Pádraig.	
McFadden, Gabrielle.	
O'Donnell, Kieran.	
O'Mahony, John.	
O'Reilly, Joe.	
Ó Donnghaile, Niall.	
Reilly, James.	
Warfield, Fintan.	

Tellers: Tá, Senators Gabrielle McFadden and John O'Mahony; Níl, Senators Gerry Horkan and Diarmuid Wilson.

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Amendment declared carried.

7 o'clock

Senator Gerard P. Craughwell: I move amendment No. 34:

In page 13, to delete lines 4 to 6.

Amendment put:

The Committee divided: Tá, 7; Níl, 24.	
Tá	Níl
Bacik, Ivana.	Burke, Colm.
Craughwell, Gerard P.	Burke, Paddy.
Daly, Mark.	Butler, Ray.
Gallagher, Robbie.	Buttimer, Jerry.
Horkan, Gerry.	Byrne, Maria.
Humphreys, Kevin.	Coffey, Paudie.
Wilson, Diarmuid.	Conway-Walsh, Rose.
	Conway, Martin.
	Devine, Máire.
	Gavan, Paul.
	Higgins, Alice-Mary.
	Hopkins, Maura.
	Lawlor, Anthony.
	Lombard, Tim.
	Mac Lochlainn, Pádraig.
	McFadden, Gabrielle.
	Mulherin, Michelle.
	O'Donnell, Kieran.
	O'Mahony, John.
	O'Reilly, Joe.
	Ó Donnghaile, Niall.
	Reilly, James.
	Ruane, Lynn.
	Warfield, Fintan.

Tellers: Tá, Senators Gerard P Craughwell and Gerry Horkan; Níl, Senators Gabrielle McFadden and John O'Mahony.

Amendment declared lost.

Senator Alice-Mary Higgins: I move amendment No. 35:

In page 13, to delete lines 4 to 6 and substitute the following:

“(2) The members of the Commission shall select a chairperson from among its membership who shall be a lay person. In making their selection the Commission shall endeavour to ensure that any such chairperson selected has both a strong legal understanding and a proven capacity to communicate in a clear and accessible manner.”.

I appeal to all Senators to look at this amendment.

An Leas-Chathaoirleach: We cannot discuss the amendment. It has already been debated and I cannot allow the Senator to speak on it further.

Senator Alice-Mary Higgins: I am not referring to the Minister but I would ask other Senators to look at this amendment because I believe my proposal may provide a compromise.

An Leas-Chathaoirleach: The Senator is either moving or withdrawing the amendment.

Amendment, by leave, withdrawn.

Government amendment No. 36:

In page 13, between lines 9 and 10, to insert the following:

“(4) The Public Appointments Service shall ensure that a lay person is recommended under *subsection (2)* for appointment as chairperson only if it is satisfied that the person-

(a) is a fit and proper person to be so appointed, and

(b) is suitable for appointment having due regard to-

(i) his or her having such experience, qualifications, training or expertise as is appropriate having regard to the functions of the Commission, and

(ii) the desirability that he or she has knowledge of, and experience in, the matters specified in *paragraphs (a) to (f) of subsection (6)*.”.

Amendment put:

The Committee divided: Tá, 24; Níl, 8.	
Tá	Níl
Burke, Colm.	Bacik, Ivana.
Burke, Paddy.	Craughwell, Gerard P.
Butler, Ray.	Daly, Mark.
Buttimer, Jerry.	Gallagher, Robbie.
Byrne, Maria.	Horkan, Gerry.
Coffey, Paudie.	Humphreys, Kevin.
Conway-Walsh, Rose.	O'Donnell, Marie-Louise.
Conway, Martin.	Wilson, Diarmuid.
Devine, Máire.	
Gavan, Paul.	
Higgins, Alice-Mary.	
Hopkins, Maura.	

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Lawlor, Anthony.	
Lombard, Tim.	
Mac Lochlainn, Pádraig.	
McFadden, Gabrielle.	
Mulherin, Michelle.	
O'Donnell, Kieran.	
O'Mahony, John.	
O'Reilly, Joe.	
Ó Donnghaile, Niall.	
Reilly, James.	
Ruane, Lynn.	
Warfield, Fintan.	

Tellers: Tá, Senators Gabrielle McFadden and John O'Mahony; Níl, Senators Mark Daly and Diarmuid Wilson.

Amendment declared carried.

Senator Lynn Ruane: I move amendment No. 37:

In page 13, line 14, to delete “as many as possible” and substitute “each”.

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

Amendment, by leave, withdrawn.

Government amendment No. 38:

In page 13, line 27, to delete “*subsections and (4)*” and substitute “*subsections (4) and (6)*”.

Amendment put:

The Committee divided: Tá, 23; Níl, 8.	
Tá	Níl
Burke, Colm.	Bacik, Ivana.
Burke, Paddy.	Craughwell, Gerard P.
Butler, Ray.	Daly, Mark.
Buttimer, Jerry.	Gallagher, Robbie.
Byrne, Maria.	Horkan, Gerry.
Coffey, Paudie.	Nash, Gerald.
Conway-Walsh, Rose.	O'Donnell, Marie-Louise.
Conway, Martin.	Wilson, Diarmuid.
Devine, Máire.	
Gavan, Paul.	
Hopkins, Maura.	
Lawlor, Anthony.	

Lombard, Tim.	
Mac Lochlainn, Pádraig.	
McFadden, Gabrielle.	
Mulherin, Michelle.	
O'Donnell, Kieran.	
O'Mahony, John.	
O'Reilly, Joe.	
Ó Donnghaile, Niall.	
Reilly, James.	
Ruane, Lynn.	
Warfield, Fintan.	

Tellers: Tá, Senators Gabrielle McFadden and John O'Mahony; Níl, Senators Gerry Horkan and Diarmuid Wilson.

Amendment declared carried.

Senator Alice-Mary Higgins: I move amendment No. 39:

In page 13, to delete lines 34 and 35 and substitute the following:

“(e) commerce, finance, administration, civil society, and trade union activity;

(f) relevant areas of academic research including the law, or social policy;”.

I will withdraw the amendment and reserve the right to reintroduce it.

Amendment, by leave, withdrawn.

Senator Alice-Mary Higgins: I move amendment No. 40:

In page 13, to delete lines 34 and 35 and substitute the following:

“(e) commerce, finance, administration, civil society, trade union activity and academia;”.

I will withdraw the amendment and reserve the right to reintroduce it.

Amendment, by leave, withdrawn.

Government amendment No. 41:

In page 13, line 34, to delete “or administration, including public administration” and substitute “administration (including public administration)”.

Amendment put:

The Committee divided: Tá, 24; Níl, 7.	
Tá	Níl
Burke, Colm.	Bacik, Ivana.
Burke, Paddy.	Daly, Mark.

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Butler, Ray.	Gallagher, Robbie.
Buttimer, Jerry.	Horkan, Gerry.
Byrne, Maria.	Nash, Gerald.
Coffey, Paudie.	O'Donnell, Marie-Louise.
Conway-Walsh, Rose.	Wilson, Diarmuid.
Conway, Martin.	
Devine, Máire.	
Gavan, Paul.	
Higgins, Alice-Mary.	
Hopkins, Maura.	
Lawlor, Anthony.	
Lombard, Tim.	
Mac Lochlainn, Pádraig.	
McFadden, Gabrielle.	
Mulherin, Michelle.	
O'Donnell, Kieran.	
O'Mahony, John.	
O'Reilly, Joe.	
Ó Donnghaile, Niall.	
Reilly, James.	
Ruane, Lynn.	
Warfield, Fintan.	

Tellers: Tá, Senators Gabrielle McFadden and John O'Mahony; Níl, Senators Gerry Horkan and Diarmuid Wilson.

Amendment declared carried.

Government amendment No. 42:

In page 13, line 35, to delete “and” and substitute “or”.

Amendment agreed to.

Senator Alice-Mary Higgins: I move amendment No. 43:

In page 13, between lines 35 and 36, to insert the following:

“(f) relevant areas of academic research including the law, or social policy;”.

I will withdraw the amendment but reserve the right to reintroduce it.

Amendment, by leave, withdrawn.

Question put: “That section 12, as amended, be agreed to.”

The Committee divided: Tá, 22; Níl, 7.	
Tá	Níl

Burke, Colm.	Bacik, Ivana.
Burke, Paddy.	Daly, Mark.
Butler, Ray.	Gallagher, Robbie.
Buttimer, Jerry.	Horkan, Gerry.
Byrne, Maria.	McDowell, Michael.
Coffey, Paudie.	O'Donnell, Marie-Louise.
Conway-Walsh, Rose.	Wilson, Diarmuid.
Conway, Martin.	
Devine, Máire.	
Gavan, Paul.	
Hopkins, Maura.	
Lawlor, Anthony.	
Lombard, Tim.	
Mac Lochlainn, Pádraig.	
McFadden, Gabrielle.	
Mulherin, Michelle.	
O'Donnell, Kieran.	
O'Mahony, John.	
O'Reilly, Joe.	
Ó Donnghaile, Niall.	
Reilly, James.	
Warfield, Fintan.	

Tellers: Tá, Senators Gabrielle McFadden and John O'Mahony; Níl, Senators Gerry Horkan and Diarmuid Wilson.

Question declared carried.

SECTION 13

Question proposed: "That section 13 stand part of the Bill."

Senator Ivana Bacik: We, in the Labour Party, have stated our opposition to section 13 of the Bill on the basis that we believe it is an unnecessary section.

An Leas-Chathaoirleach: Order please for Senator Bacik. I ask the Senator to wait a second for the Minister.

Senator Ivana Bacik: I will.

An Leas-Chathaoirleach: Please continue, Senator Bacik.

Senator Ivana Bacik: I welcome the Minister back. I do not think I have had the opportunity in this session.

(Interruptions).

An Leas-Chathaoirleach: Ciúnas, más é do thoil é.

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Senator Ivana Bacik: We, in the Labour Party, oppose section 13 on the basis that we think it is unnecessary or superfluous because it refers to the appointment of a practising barrister and practising solicitor as members.

(Interruptions).

An Leas-Chathaoirleach: Ciúnas.

Senator Ivana Bacik: We debated amendment No. 14 but I withdrew it with a view to resubmitting it on Report Stage. Amendment No. 14 provides for a clearer and more succinct manner of appointment of the individual members of the commission. We stipulated that one of the non-judicial members of the commission would be nominated for appointment by the Council of the Bar of Ireland and one would be nominated for appointment by the Law Society of Ireland. We believe that is a clearer way of providing for members who will represent the practising arms of the legal profession. We do not believe it is necessary to have an entirely separate section to deal with this matter.

Amendment No. 14 puts forward a clear outline of the appropriate structures for the commission. It also consolidates the principle of gender balance on the commission. Amendment No. 14(3) states: “In appointing members of the Commission, the Government shall have regard to the objective that no fewer than 5 members should be women and no fewer than 5 members should be men.”

I know the Government has provision referring to gender balance. Again, we believe that our amendment provides a cleaner way to provide for all the issues associated with the appointment of members to the commission in one section. We have tabled amendments Nos. 86, 87, 92 and 92 that we will reach later. They refer to gender balance requirements in the nomination of the candidates for the Judiciary. In our view, it is very important to have further provisions on gender balance and there is a need to ensure gender balance in the Judiciary at that point as well. We see this as part of a package and that is why we oppose section 13.

Acting Chairman (Senator Diarmuid Wilson): I call Senator McDowell and remind him that we are debating section 13.

Senator Michael McDowell: I would be loath to cross swords with Senator Bacik. I know that what she is attempting to do is in the interests of gender balance. What she is effectively suggesting is that the Bar Council should not nominate one person but two persons.

Deputy Charles Flanagan: What is Senator McDowell referring to in terms of what Senator Bacik is suggesting? Is it a suggestion in her amendment? I presume that the amendment has already been taken-----

Senator Ivana Bacik: It was amendment No. 14.

Deputy Charles Flanagan: -----because there is no suggestion in the section and there is no amendment to the section that we have not already discussed. It is important Standing Orders are applied in this debate, if the Acting Chairman does not mind me saying.

Senator Michael McDowell: Are we speaking about section 13 or 14?

Acting Chairman (Senator Diarmuid Wilson): Sorry, in reference to what the Minister said, Standing Orders have always applied to-----

Senator Michael McDowell: Sorry, Acting Chairman, I thought we were talking about section 13-----

Senator Ivana Bacik: We are.

Acting Chairman (Senator Diarmuid Wilson): Yes.

Senator Michael McDowell: -----in the opposition of-----

Acting Chairman (Senator Diarmuid Wilson): The appointment of practising barristers and practising solicitors.

Deputy Charles Flanagan: Instead of which Senator McDowell is talking about a suggestion that was made by Senator Bacik.

Senator Michael McDowell: Yes.

Deputy Charles Flanagan: That is what the debate was based on.

Senator Michael McDowell: Senator Bacik had a different scheme. That the nominating bodies should-----

Deputy Charles Flanagan: Where is that?

Acting Chairman (Senator Diarmuid Wilson): The Minister will have an opportunity to comment.

Senator Martin Conway: The Minister just sought clarity.

Acting Chairman (Senator Diarmuid Wilson): I ask the Minister, with respect, to address his comments through the Chair.

Senator Martin Conway: The Minister is trying to get clarity.

Senator Michael McDowell: I have no problem with the Minister seeking clarity from me. I understood that Senator Bacik was referring to her proposal that each body entitled to nominate somebody should put forward two candidates and one of each gender.

Deputy Charles Flanagan: Where is that proposal so that I can refer to it?

Senator Michael McDowell: The amendment has already been knocked on the head, I think.

Deputy Charles Flanagan: That is the point I am making.

Senator Ivana Bacik: Can I make a point of order?

Acting Chairman (Senator Diarmuid Wilson): Before doing so, I wish to say to the Minister that I appreciate that this has been a long day. Members are entitled to make contributions under this section and he will have an opportunity to respond to their comments. I would appreciate if he would address his comments through the Chair.

Senator Martin Conway: Sure the Minister just wants to speed things up.

Acting Chairman (Senator Diarmuid Wilson): Sorry, Senator Conway. I call Senator

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Bacik to make her point of order.

Senator Ivana Bacik: By way of assistance, the reference that Senator McDowell is making is to my amendment No. 14(2), which states:

each body that makes nominations -

(a) shall nominate both a man and a woman for appointment by the Government as a member of the Commission.

We have incorporated a provision on gender balance into the overall scheme and provided for it in amendment No. 14. I said the amendment had been debated and I reiterated that I withdrew it in order to resubmit it on Report Stage.

I merely make the point that the reason we oppose section 13 is that we had incorporated a fuller provision on the appointment of members from the barrister and solicitor professions to the commission, through our amendment No. 14. We contend that our amendment would have rendered this section superfluous because this section provides specifically and only for the appointment of a practising barrister and practising solicitor as members, and it does not include the gender balance reference that I think Senator McDowell was objecting to.

Senator Michael McDowell: I think I actually did know what I was talking about. I think that what Senator Bacik is saying now, very clearly, is that the reason that she is opposed to this section is that she has a scheme, which she has withdrawn on Committee Stage but proposes to reintroduce by way of a Report Stage amendment-----

Senator Ivana Bacik: Correct.

Senator Michael McDowell: -----which will have the effect of requiring every nominating body to come forward with a candidate of each gender, so that in the end the result will be gender balanced. The Minister will appreciate that if she simply rolled over on this particular section and said that it could remain part of the Bill, it would be inconsistent with that ambition, on her part, because it would allow a singular nomination from the Bar Council and a singular nomination from the president of the Law Society. That is all I was saying. I think I was bang on point in understanding exactly what was happening. I do not think that I was, in any sense, trying to reopen territory that had been decided, on the contrary. What has been suggested by Senator Bacik is entirely consistent.

I am in favour of gender balance but I believe the Bar Council and its chairperson are entitled to put forward a person they trust, in terms of this matter. Achieving gender balance in their heads is a matter for them. By the same token, achieving gender balance in the Law Society is a matter for it. We cannot really ask the Bar Council to be telephoning the Law Society to ask if it is putting a man up or if it should put up a woman. If gender balance is to be achieved, it should be achieved among the appointment of laypersons other than those directly appointed by these bodies. These bodies are going to select somebody presumably on merit. They are going to make their own decision on their own nominees to put the best person forward. They cannot really be looking over their shoulder at other bodies or querying whether those other bodies are putting forward people of different genders to make up their minds about who they put forward to represent them on this body.

I suggest that there is a problem here, even doing my best and leaning over backwards to

support Senator Bacik in her ambition to have gender balance on the commission itself. If corrective measures are necessary at the end of the day, having regard to what has been done by the human rights commission, the president of the Law Society, the Free Legal Advice Centres and the Citizens Information people, it is unfair to ask a professional body that is putting somebody forward *ex officio* to represent its interest to put forward two people and to give the Minister the discretion as to which of them goes forward onto the commission, just to achieve gender balance. It is unfair on the Bar Council to tell it to propose two people, one of whom the Minister will reject. That is not going to happen in respect of the Judiciary. Whoever happens to be the president or the Attorney General under the Bill as it stands will all have their assigned genders. It is unfair to ask the two professional bodies effectively to run two horses in the race and give the Minister the right to choose between them. I have a difference with Senator Bacik on this matter which cannot be disguised, well-intentioned as I can fully see that she is.

There is a reference at a later stage to a person appointed by the Bar Council or a person appointed by the Law Society. It seems that the text should make it clear whether the appointment is to be made by the chairman of the Bar Council or the president of the Law Society, or whether it is the nomination of the body in question. Later in the Bill an assumption seems to be made that it is not the chairperson's personal nomination but that of the body over which he or she presides, and likewise in respect of the president of the Law Society. Will the Minister consider amending the legislation at this or a different point to make it clear that it is somebody who is representing the Bar Council or nominated by its chairman or nominated by the president of the Bar Council? It should be a nomination of the council of the Law Society and the Bar Council itself, not just somebody nominated by the presiding officer of either of those institutions.

Senator Mark Daly: I want to return to the issue Senator Bacik is addressing in her amendment. I did not quite grasp which section she was talking about.

Acting Chairman (Senator Diarmuid Wilson): Section 13. It is the appointment of practising barristers.

Senator Mark Daly: I know the section we are talking about but to what amendment was she referring?

Senator Ivana Bacik: Amendment No. 14.

Acting Chairman (Senator Diarmuid Wilson): The amendment was withdrawn.

Senator Mark Daly: There is merit to what she says. I have to disagree with my learned colleague, Senator McDowell, in the issue of the Bar Council and the Law Society not having to put forward candidates of either gender and then giving the Minister discretion. No man knows it better than Senator McDowell in respect of the issue of gender quotas in political life. To have a system that leaves it mostly up to men who are already on the deciding bodies to pick somebody leads to unconscious bias and they end up picking their own.

Senator Marie-Louise O'Donnell: Please.

Senator Mark Daly: By way of example, when I was asking people in Kerry to name five public parks, buildings or roads named after women, they were unable to do so. The reason was that everybody who picked the names of the public parks were men. They were all men on the committee. Until such time as half a committee is made up of women, the men will unknowingly bring the bias of picking their favourite footballer or politician, who will also be a man.

The bias therefore continues.

There is merit in giving an opportunity to the Government to pick between two people, one of each gender. The Minister would make a decision based on that. I made this point yesterday on a different section. The bodies that make the nominations are themselves an issue because they are mostly made up of the same groups of which Irish society is always composed. In respect of the Bar Council and the Law Society, the decision-making bodies, how many of their members are men and how many are women? The Senator may correct me but I think it would be predominantly men. They would, therefore, unknowingly perpetuate the situation whereby the person put forward is most likely to be a man. I think it is a fair compromise by Senator Bacik, who is not seeking to bring forward gender quotas as such.

Senator Marie-Louise O'Donnell: That is worse.

Senator Mark Daly: She is proposing to bring forward a gender option providing that there would be a choice and that it would not be left up to the Bar Council and Law Society to pick only one nominee. That is where this section is relevant. If the amendment tabled by Senator Bacik were accepted on Report Stage, although I do not think we would agree with all of it, I would certainly see merit in the requirement to nominate two people. That is where section 13 does not contribute to the gender equality that we should be aiming to achieve in this and all legislation.

While the Bill is indeed suspect in its origins, we must nonetheless deal with it by putting forward reasonable amendments and proposals. We must try to make a silk purse out of the sow's ear we have been bequeathed. I understand the Minister's point but there is merit in what the Labour Party and Senator Bacik have proposed in respect of the requirement for better gender balance achieved in a reasonable manner. I believe Senator McDowell missed the point. It is not the case that the Law Society would be ringing the Bar Council and asking the gender of members it would be putting forward. Under the amendment put forward by the Labour Party they would both be required to put forward one member of each gender. One would assume the nominees would be of equal capacity and have equal knowledge of the law and that it would therefore be up to the Government to decide between the two. It could end up that all the appointees could be of one gender or other, but it would certainly give a better chance of there being more voices at the table representing 54% of the people in the country. That 54% of people are not represented in an equal manner on any number of State boards, private enterprises or Government agencies. I commend Senator Bacik on bringing forward her proposed amendment, which is very reasonable and in which I hope the Government will see merit.

Senator Ivana Bacik: I will very briefly respond to the comments made by Senators McDowell and Daly. In response to Senator McDowell, with respect it would be relatively easy for the Bar Council, the Law Society and indeed the other bodies included in amendment No. 14, including the Irish Human Rights and Equality Commission and so on, to nominate both a man and a woman for appointment. I do not see any difficulty with that. As Senator Daly said, we have seen the success of gender quota legislation in the political sphere. There really is no difficulty in this.

Our amendment No. 14 clearly sets out that the Government would appoint members of the commission with regard to the objective that no fewer than five members would be women and no fewer than five would be men. The Government would have the choice of a nominee of each gender put forward by the different bodies, including the Law Society and the Bar Council. As

I have said there is coherence to the proposal in amendment No. 14 which we do not believe is reflected in the Government's scheme in sections 10 and 13 and the other sections.

The final point to make is that there is also somewhat of a concern about the way in which section 13 is drafted, to which Senator McDowell referred, in that it requires the chairperson of the general council of the Bar of Ireland to nominate a barrister as a member of the commission and the president of the Law Society of Ireland to nominate a solicitor. Our formula in amendment No. 14, which again is an alternative, is better in that we suggest that the members be nominated by the council of the Bar and by the Law Society, rather than by the individual president or chairperson. That is a better and more democratic means of nomination.

Acting Chairman (Senator Gerry Horkan): I call on Senator Conway. I will bring in Senator McDowell in a minute.

Senator Martin Conway: It is Committee Stage. The Senator can come in as often as he likes.

Acting Chairman (Senator Gerry Horkan): I think the Senators have worked that out at this stage but I thank Senator Conway.

Senator Martin Conway: Well, just in case. There is merit in what Senator Bacik is proposing. I request that the Minister look at it again and perhaps come in with some of his own proposals on Report Stage. There is merit to it and I cannot see why the various agencies could not just nominate a man and a woman. That would be in keeping with the spirit of trying to achieve equality in these types of situation. In fairness to the Government, there has been a significant increase in the number of female representatives on State boards in recent years. That is because a genuine effort has been made to advance that proper appointments system. I would suggest that there is merit in developing this proposal somewhat. Perhaps the Minister would be good enough to look at that.

Senator Michael McDowell: If I make no other point in the course of this entire process that has any merit and that would attract any support from the draftsmen, could I draw the Minister's attention to sections 19(1)(f) and 19(1)(g)? Section 19(1)(f) refers to a member nominated by the Law Society of Ireland being struck off the roll of solicitors and section 19(1)(g) refers to a member nominated by the chairperson of the general council of the Bar of Ireland being disbarred by the benchers. In one case the Bill refers to somebody nominated by the Law Society itself and in the other it refers to somebody nominated by the chairperson of the Bar Council, whereas sections 13(1) and 13(2) clearly suggest that the members should be nominated by the president or chairperson of the respective bodies. I agree with Senator Bacik that it would be preferable if the Bar Council did this corporately because the chairperson is sometimes in a minority on these bodies.

Senator Ivana Bacik: Yes.

Senator Michael McDowell: It could be an exercise of simple patronage. Likewise, if the president of the Law Society is to be given the right to make a nomination without the council of the Law Society at the very least agreeing to the proposal, there would be a problem. It appears that sections 19(1)(f) and 19(1)(g) differentiate between somebody nominated by the Law Society as such and somebody nominated by the chairperson of the Bar Council. It should be a corporate nomination in both cases. The Minister should consider simply saying that the general council of the Bar of Ireland shall nominate a practising barrister to be a member of

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the commission, that the Law Society of Ireland shall nominate a practising solicitor to be a member of the commission, and that the Minister shall appoint each of the persons nominated under those subsections to be members of the commission. That would at least be much more consistent. The incongruity in sections 19(1)(f) and 19(1)(g) would be avoided.

Deputy Charles Flanagan: If Senator McDowell thinks that the chairperson of the general council of the Bar of Ireland is going to go ahead with his own agenda of his own volition and make an appointment to this commission without reference to the council, he is more naive than I ever thought he was. I feel similarly as far as the Law Society is concerned.

This provision is identical in wording to that in the Act that established the Judicial Appointments Advisory Board 20 years ago. The only difference is that there is now a reference to the chairperson where there was a reference to the chairman. I know that does not fulfil the gender requirement proposed by Senator Bacik in amendment No. 14, but any suggestion that either the chairperson of the Bar Council or the president of the Law Society is going to act in a personal capacity or without reference to the membership is ludicrous. As such, I do not intend to enter into the debate because it has no bearing on reality.

If it might satisfy Senator McDowell, on Report Stage we could say that the chairperson of the general council of the Bar of Ireland shall nominate a practising barrister as a representative of the general council of the Bar of Ireland, and do similarly in respect of the Law Society, in order to ensure that a president for the time being would not be encouraged to act in a personal capacity by the ludicrous suggestion of Senator McDowell. I certainly do not intend to enter into any further debate on this issue. It is likely that the section will be opposed. Here we are in Seanad Éireann and, hour after hour, fewer than half of Members are voting on these amendments to what is the most dramatic and important legislation that has hit this House for years according to the Senators. Less than 50% of the membership is turning up to vote.

Senator Martin Conway: Absolutely. I could not disagree with the Minister.

Acting Chairman (Senator Gerry Horkan): At least we are all here.

Senator Michael McDowell: Let us be clear about one thing. This House has sat long and hard to consider this legislation. It sat on a Monday, which is very unusual. The only reason that was proposed was the internal imperative in the Government to assure one particular member of the Government, to the greatest possible extent, that this legislation would be dealt with before the summer break. That is the only reason. The only reason for the fall-off in voting is that Members have engaged in pairing arrangements because they are sick and tired of the long hours allocated for the taking of this Bill without breaks, or half-hour breaks for meals, imposed at one remove by dictate of a member of the Government who demands that the Bill be dealt with as a matter of urgency, which it is not. It is not a matter of urgency that it be dealt with now. It is, of course, a matter which requires our attention in detail. The Minister is fraying slightly at the edges at having to deal with the detail. In that context, I ask him to refer to section 19(1)(f).

Senator Martin Conway: The Minister has stamina.

Senator Michael McDowell: How can section 19(1)(f) and (g) be appropriately drafted in the light of the express terms used in section 13? There is an anomaly. The Minister does not want to enter into debate on this matter because perhaps he is getting weary. If he is, he might at least suggest he will address the anomaly on Report Stage, whenever it takes place in

the House.

Deputy Charles Flanagan: I am far from becoming weary, but it is entirely appropriate for me to point out that we are addressing this issue with neither the benefit nor the interest of the vast majority of Members of the House.

Senator Michael McDowell: Does the Minister want a quorum call? I will call a quorum.

Deputy Charles Flanagan: The Senator suggests it is because of pairing, but it is, in fact, due to a lack of interest.

Acting Chairman (Senator Gerry Horkan): To clarify for the Minister, a majority did vote.

Senator Michael McDowell: I am calling a quorum.

Notice taken that 12 Members were not present; House counted and 12 Members being present,

Senator Michael McDowell: The Members who have come to the House should know that the Minister has suggested we should consider abandoning the debate owing to an absence of interest in the debate among Members of the House. I am sorry that I have had to call them here to show that they are interested in the debate. I asked the Minister to indicate whether he proposed to amend section 19(1)(f) in order that it would correspond with section 13.

Deputy Charles Flanagan: I do not accept that there is an anomaly. I am quite satisfied that both the chairperson of the General Council of the Bar of Ireland and the president of the Law Society of Ireland act at all times for and on behalf of their associations in the context of their role as chairpersons. I do not see how that can conflict in any way with the representative of the Law Society of Ireland being the member referred to in section 19(1)(f) and the representative of the chairperson of the General Council of the Bar of Ireland, as evidenced by section 19(1)(g), being one and the same person.

Senator Michael McDowell: That is pure obstinacy. It is strange that one person is described as a member nominated by the Law Society of Ireland whereas another person is described as a member nominated by the chairperson of the general council of the Bar of Ireland. I do not see why there is a different phraseology relating to the two different people.

Deputy Charles Flanagan: I cannot understand how there could be any doubt, but Senator McDowell has a doubt. As I indicated earlier, and I am sure the point was not lost, lest there be any doubt, section 13(1) could read, “The Chairperson of the General Council of the Bar of Ireland shall nominate a representative of the General Council of the Bar of Ireland.” Similarly section 13(2) could read, “The President of the Law Society of Ireland shall nominate a practising solicitor as a representative of the Law Society of Ireland to be a member of the commission.”

Question put:

The Committee divided: Tá, 21; Níl, 10.	
Tá	Níl
Burke, Colm.	Bacik, Ivana.

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Burke, Paddy.	Clifford-Lee, Lorraine.
Butler, Ray.	Craughwell, Gerard P.
Buttimer, Jerry.	Daly, Mark.
Byrne, Maria.	Gallagher, Robbie.
Coffey, Paudie.	Horkan, Gerry.
Conway-Walsh, Rose.	McDowell, Michael.
Conway, Martin.	Nash, Gerald.
Devine, Máire.	O'Donnell, Marie-Louise.
Gavan, Paul.	Wilson, Diarmuid.
Hopkins, Maura.	
Lawlor, Anthony.	
Lombard, Tim.	
Mac Lochlainn, Pádraig.	
McFadden, Gabrielle.	
Mulherin, Michelle.	
O'Donnell, Kieran.	
O'Mahony, John.	
O'Reilly, Joe.	
Ó Donnghaile, Niall.	
Reilly, James.	

Tellers: Tá, Senators Gabrielle McFadden and John O'Mahony; Níl, Senators Ivana Bacik and Diarmuid Wilson.

Question declared carried.

9 o'clock

SECTION 14

Senator Michael McDowell: I move amendment No. 44:

In page 14, to delete lines 11 to 15 and substitute the following:

“(2) The Minister shall appoint pay persons, the subject of recommendation under *section 12(3)*, to be members of the commissions.”.

Amendment put:

The Committee divided: Tá, 10; Níl, 22.	
Tá	Níl
Bacik, Ivana.	Burke, Colm.
Clifford-Lee, Lorraine.	Burke, Paddy.
Craughwell, Gerard P.	Butler, Ray.
Daly, Mark.	Buttimer, Jerry.

Gallagher, Robbie.	Byrne, Maria.
Horkan, Gerry.	Coffey, Paudie.
McDowell, Michael.	Conway-Walsh, Rose.
Nash, Gerald.	Conway, Martin.
O'Donnell, Marie-Louise.	Devine, Máire.
Wilson, Diarmuid.	Gavan, Paul.
	Hopkins, Maura.
	Lawlor, Anthony.
	Lombard, Tim.
	Mac Lochlainn, Pádraig.
	McFadden, Gabrielle.
	Mulherin, Michelle.
	O'Donnell, Kieran.
	O'Mahony, John.
	O'Reilly, Joe.
	Ó Donnghaile, Niall.
	Reilly, James.
	Warfield, Fintan.

Tellers: Tá, Senators Gerard P Craughwell and Michael McDowell; Níl, Senators Gabrielle McFadden and John O'Mahony.

Amendment declared lost.

An Cathaoirleach: Amendment No. 45, in the name of Senator Lorraine Clifford-Lee, cannot be moved as amendment No. 13, on which it is consequential, was withdrawn.

Amendment No. 45 not moved.

Question, "That section 14 be agreed to", put and declared carried.

SECTION 15

An Cathaoirleach: Amendments Nos. 46 to 52, inclusive, are related and will be discussed together, by agreement. Amendment No. 47 is a physical alternative to amendment No. 46; amendment No. 49 is a physical alternative to amendment No. 48, while amendment No. 51 is a physical alternative to amendment No. 50. Is it agreed that the amendments should be discussed together? Agreed.

Senator Michael McDowell: I move amendment No. 46:

In page 14, lines 27 to 29, to delete all words from and including "the" where it secondly occurs in line 27 down to and including "meeting" in line 29 and substitute "the acting Chairperson shall be a member who holds judicial office in accordance with seniority".

Section 15(3)(b) outlines that at a meeting of the commission, "if and so long as the chairperson is not present or if that office is vacant, the other members of the Commission, as the case may be, who are present shall choose another one of its lay members to be chairperson of the meeting". This is part of the process of rubbing the judicial nose in it. The Chief Justice

will be present and the chairperson is unavoidably absent. The President of the High Court will be present, as will the President of the Court of Appeal, the President of the District Court and the President of the Circuit Court. There will also be a barrister and a solicitor present. This is a statement to the effect that none of them may take the chair in the absence of the chairperson. It is part of a vindictive and insulting approach to the Judiciary instigated by one member of the Government. If it is to be a collegiate body, a member of one group is not even to be allowed to take the chair in the unavoidable absence of the lay chairperson and it is to be prohibited by law, what is the reasoning behind it? It has been designed to split the group into two bodies and, effectively, set them against each other. I strongly believe there is no excuse for it whatsoever. If there is to be a lay chairperson, that should be taken as a given. We have not yet passed the legislation, but if it ends up with this, why, in the absence of the lay chairperson due to illness or whatever other reason, should it be the case that none of the lawyers present can be allowed to act in the place of that person? It is ridiculous, vindictive and nasty in its tone. It is insulting to senior law and constitutional officers of the State that they are prohibited from acting in the absence of the chairperson of the commission, that anybody, no matter who he or she may be, an act instead of them as chairperson. What is the excuse for this? What is the rationale for it? Why is this being done to the Judiciary? It is disgraceful and slightly stomach churning to think that it is being inserted into the law. If the Minister had any respect for the Constitution, he would at least accept that the Chief Justice who is a member of the Presidential Commission in the absence of the President could act as chairperson, even casually, at a meeting of the commission. These are high constitutional offices of State. The people appointed to them take an oath to be impartial, uphold the law, be fair to all people and uphold the Constitution, yet the Bill shoves their nose and grinds their face in it and states they are unsuitable, even on a casual and intermittent basis, ever to chair the meeting of a body at which they are present. It is a statement of distrust, disqualification and semi-concealed contempt that the people concerned are told that somehow they are not trusted by these Houses to function in the absence of the lay chairperson, even as his or her stand-in.

Why is this being done? Who really wants it to be done? Is there anybody in this House who actually wants it to be done, including the Minister? Does he really want to say that at a meeting of this kind a group of senior officials appointed under the Constitution to hold high constitutional office is somehow not to be trusted or considered to be unworthy or disqualified from acting in the temporary absence of the chairperson? This vindictive, nasty streak, which, unfortunately, colours the legislation from beginning to end, which explains its motivation and is clear in its intent indicates to the people concerned by way of statutory insult that if, perchance, the chairperson misses a meeting, he or she cannot ask any of them to act in his or her place. That is so wrong and indefensible. It makes no sense whatsoever and is part of a pattern of repetition of this insult across the remaining sections of the Bill because it does not simply apply to this measure, it also applies to the procedures committee and in a number of respects.

One of the most extraordinary aspects of the legislation is section 15(5) which states: "The quorum for a meeting of the Commission shall, unless the Minister otherwise directs, be 9 members, 5 of whom shall be lay members". There are 17 people on the commission and the majority of nine members, five, must be lay members. If fewer than five lay members turn up for whatever reason - one could have five or six judges present, with the person representing the Bar Council and solicitors - the meeting cannot proceed. Who thinks up these silly, petty, little points? Only a vindictive and nasty mind could. Unfortunately, appeasing that kind of mentality is what is happening here. Why should a meeting of the commission at which, for whatever reason, only four of the seven or eight laypersons turn up be invalid and have to be abandoned?

It is only because one petty, little mind is determined to incorporate in statute form an insult directed at the Judiciary at large. Why would it be that, if the Chief Justice, the Presidents of the Court of Appeal, the High Court, the District Court and the Circuit Court, two representatives of the professional bodies and four others - that is 13 - turned up, the meeting would be invalid because only four of them were lay people? There is something very wrong with that.

There is also something illogical about it. We would not do it anywhere else. I have sometimes heard at committee meetings relating to this House a suggestion that the Opposition should provide part of the quorum. That is one thing, but to say to the majority who turn up that it is an invalid meeting because there are not, for example, four members of Fianna Fáil or three members of Sinn Féin present is an absurdity. However, that is what is being proposed in this legislation.

I find this deliberately offensive to the Judiciary. I see no reason for the Judiciary to be treated in this vindictive way. It may well be that, for some casual reason on some casual occasion, the numbers will slip to four lay people out of eight. It is entirely predictable that something like that could happen. To say that the whole meeting must be abandoned because someone has a flat tyre, bringing the total lay membership below five, is grotesque. No one could rationally defend this proposal, yet we are being asked to give it the status of law. The only rationale for it is that the other people could not be trusted to be fair or decent when acting in the absence of at least five lay people. Even though they are in a clear minority in such circumstances, the fact that they are in a minority of fewer than five means that the whole meeting becomes invalid.

Sometimes, I despair of the irrationality of this legislation. The only solace I get from it is this: I am confident that a time will come between the passing of this Bill, if it contains these obnoxious provisions, and its enactment that a decent Government, one that is not controlled in the way this one is and is not required at the instance of one member to be vindictive and nasty in its legislation, will take a second look at these provisions and pass a quick amending Bill to bring rationality and decency to the judicial appointments commission. I hope that that set of circumstances emerges. I see the sparring between the two major parties and people talking about general elections in the offing. I noted the Acting Chairman's remarks when he was out of the Chair as to why that should not happen in the short run. I accept his logic, but whenever the circumstances arise, as I am confident they will, and the vindictive source of this insulting attitude to the Judiciary no longer holds sway in the corridors of power, I hope that this Parliament will have the good sense to clear out all of the nasty debris from this legislation, make it fair and reasonable and send a message to the Chief Justice and the other Presidents of the courts that they are not second-class citizens and are to be trusted, and that the people believe that, when they took the constitutional declaration of office to uphold the laws and to be fair and impartial in the discharge of their judicial functions, they will act fairly and impartially as chair of this body if it came to be that it was appropriate and was the will of this body that one of them should chair it.

I will not push the matter any further. At this stage, I would like to hear the Minister's defence for the quorum provision. This provision is absurd and will be affected by accidents and car crashes. The Government will be waiting for a recommendation one day but will not get it because four of the eight lay members of the commission will, for some reason, not be available to make a decision and the whole commission will be inquorate. It is grotesque. Why would any sensible person do this? In some of the coverage that I saw, it was interesting that the Minister for Transport, Tourism and Sport, Deputy Ross, told the newspapers that he had a personal interest and input into this Bill. The signs are all over it; malice drips from every section of this

Bill. I believe-----

Acting Chairman (Senator Gerry Horkan): The Senator is not allowed to make charges against anyone who is not in the Chamber to defend himself or herself, as he well knows.

Senator Michael McDowell: I am sorry, but I am only going by the public record. No one in his or her right mind - I certainly include the Minister, Deputy Flanagan, in that context - could believe it was fair or proper to say that there should be nine members as a quorum, of whom five should be lay members. If ten members turn up and four of them are lay people, the meeting will dissolve. How ridiculous is that? Only someone who was overpowered by a desire to achieve a particular outcome would insist that it be part of this legislation.

Acting Chairman (Senator Gerry Horkan): I remind Members that we are dealing with amendments Nos. 46 to 52, inclusive. If they wish to speak on any of those other amendments, now is their chance.

Senator Michael McDowell: I will revert on those.

Acting Chairman (Senator Gerry Horkan): Did Senator Marie-Louise O'Donnell indicate?

Senator Marie-Louise O'Donnell: Yes. I have not spoken all day.

Acting Chairman (Senator Gerry Horkan): Go ahead.

Senator Marie-Louise O'Donnell: I will be quick.

Acting Chairman (Senator Gerry Horkan): The Senator can be as long as she likes.

Senator Marie-Louise O'Donnell: I agree with Senator McDowell. The idea of only having a layperson as chair when the chairperson is absent is ridiculous. What the Senator is saying is that legal scholarship, knowledge and rigour are to just sit there and be silent because there can only ever be a layperson in the chair. I cannot believe what I am hearing.

I suggest to the Minister that we are calling quorums every five or ten minutes because my good colleagues in Fine Gael, whom I have admired for the past seven years, are not uninterested, but embarrassed by aspects of this Bill. They cannot say that, though, as they have loyalty, which I understand. Embarrassment is the reason they are not attending. It is not out of lack of interest in this great legislation that the Minister believes will turn the tides of Ireland.

At the outset and because I did not know, I asked what clear waters this Bill was coming from, but it is actually coming from muddy waters. It is not coming from any kind of openness or any rigour of response that the public needs. Effectively, it is saying that the appointment of the Judiciary is so questionable that we must appoint advisers, consultants and commissions to get around it. Instead of correctly putting lay people forward to oversee the election of the Judiciary, which I would not be against, it has become a convoluted one-man band. Because of that, it is not sitting well with many colleagues in Fine Gael, who will not say they find it quite embarrassing and disingenuous. Nonetheless, they find it nasty and do not really want to be associated with it.

I have not heard from the Minister, Deputy Ross, where is the evidence for the Judiciary's inability to do its job and I have not found that evidence in anything I have read - I do not know

where it is. I have been sitting here for the last three days, as well as last week, listening to this. I find it extremely embarrassing. I was listening to big arguments about diversity which actually ended up being the triumph of sociology over scholarship. Scholarship, rigour and experience were rarely mentioned. It was all sociological rubbish coming out about badly paid teachers in badly paid departments in I do not know where. It is ridiculous.

I have serious frustrations about it. Senator McDowell is making complete sense. It is not right to silence rigour, knowledge and scholarship because one can only choose a lay person. The Minister should do something about it or accept the Senator's amendment. That is a general point. I will come back to more specific points later.

Senator Mark Daly: I imagine this would normally be a matter for the Minister to put in by regulation and statutory instrument. To see the procedures of the commission enshrined in legislation suggests a lot of thought has been put into this in terms of making sure, at all costs, that the lay person is the chair. The requirement for a quorum in our own rules comes under Standing Orders and is not laid down in any legislation. As is often the case with many organisations, it happens by way of regulations rather than being enshrined in the legislation governing the organisation. However, the Bill states that five of the nine members present have to be lay members in order to have a quorum.

I want to deal with the amendments in the grouping. Amendment No. 46 seeks to substitute the phrase, "the acting Chairperson shall be a member who holds judicial office in accordance with seniority". Again, this goes to the idea behind the amendment of Senators McDowell, Boyhan and Craughwell, which is that the chair would have knowledge of the law but also of the legal profession and the requirements therein. My colleague, Senator Clifford-Lee, supports amendment No. 47, which states, "In page 14, line 29, to delete "lay", which as it stands requires the member to be a lay member. Amendment No. 49 seeks the deletion of, "5 of whom shall be lay members", and addresses the assumption that the wisdom lies with the members of the public on the commission, not the members of legal profession. Amendment No. 51 in the name of Senator Norris seeks to delete all words in page 15 from and including "the" in line 6 down to and including "determines" in line 8." Senator McDowell might clarify whether he is supporting that amendment. Amendment No. 52, in the name of Senators McDowell, Boyhan and Craughwell, seeks the deletion from page 15 of all words from and including "the" in line 14 down to and including "determines" in line 16."

I believe this goes back to the heart of the issue. The detail contained in the Bill, most of which should be under schedules or ministerial powers, takes a lot of the power away from the Department to draft what would be reasonable procedures of the commission. Of course, these measures are highly prescriptive and, again, are set with the idea that the legal profession must be a minority at all times.

Section 15 states:

(1) The Commission shall hold such and so many meetings as may be necessary for the due performance of its functions.

(2) The chairperson shall fix the date, time and place of the first meeting of the Commission which shall be a date no later than 3 months from the establishment day".

Again, this type of prescription would normally come under regulations. To state, "so many meetings as may be necessary for the due performance of its functions", means there is no limit

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to the number of meetings that could be called. If a meeting is called and there is no quorum, does everyone still get paid? If there are 365 meetings, does everyone still get paid? There is no limit to the number of meetings and, at the same time, no requirement with regard to how many meetings should be called. Should there be at least one a year or three? There is no minimum or maximum requirement, which leaves the issue open to the abuse of the chair who, obviously, would be a lay person according to the legislation provided for here.

The fact the procedures of the commission are so prescriptive leads to there being very little possibility of tweaking them as it becomes apparent some of the more detailed proposals, even those contained within section 15(5), might need to be changed. Ultimately, it could be found the system is unworkable. My concern with regard to the taxpayer is that there is no limit but I also have a concern that there is no particular requirement that there should be, at the very least, an annual general meeting and the changing of the chair. Perhaps that is dealt with elsewhere in the Bill and perhaps Senator McDowell might be able to inform me in that regard. I am sure we will come across it when addressing other sections.

Acting Chairman (Senator Gerry Horkan): Would Senator McDowell like to comment further?

Senator Michael McDowell: I will listen to others and perhaps the Minister.

Acting Chairman (Senator Gerry Horkan): I do not think there are any others. It is a case of “speak now or forever hold your peace” on these amendments. I can bring the Senator in after the Minister.

Senator Michael McDowell: I thought he might have something to say but he does not.

Acting Chairman (Senator Gerry Horkan): Does the Minister want to come in?

Deputy Charles Flanagan: You were encouraging Senator McDowell to come in. Then you asked me if I would like to come in.

Acting Chairman (Senator Gerry Horkan): He had indicated already that he wanted to come back in on amendments Nos. 46 to 52, inclusive. If you want to come in first, I can bring you in and then bring him in. It is up to you.

Deputy Charles Flanagan: If it is up to me, I will answer the charge that was made against me.

Acting Chairman (Senator Gerry Horkan): Go ahead.

Deputy Charles Flanagan: I am very pleased to have the opportunity. I would say to Senator McDowell that we have, once again, from the master of hyperbole and drama, the idea that a meeting cannot be properly conducted unless it is conducted by a member of the Judiciary.

Senator Michael McDowell: I never said a word of that.

Deputy Charles Flanagan: I do not accept that at all. Neither do I accept that this judicial commission, with a non-judicial, non-legal chair and a non-legal majority, is showing contempt for the courts and contempt for and distrust of the Judiciary. I reject that entirely. We are back to the garage man analogy of last week, and the doomsday scenario that due to a flat tire or car crash, this body will not be able to function. I reject that entirely.

I point out the importance of the judicial, legal and other members of this commission. To suggest that judges do not have any role to play, are being silent, or will not have an opportunity to engage fully on this commission is simply wrong and I reject it. On the suggestion that because somebody is not in the chair, he or she cannot make a contribution, I merely point to this House. It is the function of the chair to make sure everybody has a say and his or her submissions, observations, experience and expertise are fully acknowledged. We have, following an amendment that I made in the Dáil, the full participation of every branch of the courts at commission level, including the Chief Justice and the presidents of the Court of Appeal, High Court, Circuit Court and District Court, all of whom, as Senator McDowell stated, are influential persons. To suggest that they are in some way being sidelined because they cannot immediately take the chair if the chair does not turn up is offensive to the work and status of the commission. Of course the work can proceed in such a circumstance.

This is merely a facility in the Bill to ensure we preserve a key plank of Government policy, namely, that there will be a lay and non-legal majority of persons who are not judges, with a non-judicial chair. It is important that we carry through on that principle in every aspect of the Bill and do not accede to what Senator McDowell wishes to do, namely, bring the Judiciary in through the back door in the event that somebody does not turn up. It is not envisaged that people will get flat tires or crash in dramatic circumstances on the way to a meeting of the appointments commission. In the event that, for some reason or another, a person has a double-booking, as often happens in this House, there is provision for the commission to be chaired by a very competent person, namely, one of the non-judicial members. That does not in any way equate to silencing or is in any way offensive to any member of the commission, all of whom will play an important role in this and will only be appointed and accepted to be members of the commission following a rigorous process. I will not accept the amendment.

We are merely following through on an important principle in the legislation, that is, that we continue to have the proceedings chaired by somebody other than a judge. That is by no means to say that the influence, expertise and qualifications of all of the judicial members who will sit around the table at the commission will not be fully acknowledged. Senator McDowell indicated this provision was in some way motivated by malice on the part of an unnamed person here. If that was the case, this section would be unique and unprecedented. I refer the Senator to the position in Scotland and the Judicial and Courts (Scotland) Act 2008, which specifies that during any period when the chairing member is for any reason unable to act, the functions of the chairing member “may be carried out by another lay member” which is to say another non-judicial or non-legal member. That is exactly what is envisaged under this Bill once that person is approached by either the chair, in the knowledge that the chair is for some reason indisposed, or indeed by the board itself. This provision is not motivated by some form of malice to inflict offence on members of the Judiciary. Members of the Judiciary will play a vital role on this commission.

The Senator’s amendment is in contravention of one of the fundamental principles of the Bill. I hear Senators Marie-Louise O’Donnell and McDowell suggest that because someone is not in the chair, that person will be, as a consequence, silenced. Nothing could be further from the truth-----

Senator Marie-Louise O’Donnell: I did not say that.

Deputy Charles Flanagan: -----as is evidenced by the Chair of our proceedings here. There is no question of anybody being silenced or of anybody’s voice not being heard simply

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because he or she is not in the chair.

Senator Marie-Louise O'Donnell: If one is ostracised from being the chair, it is as good as being told to be quiet.

Deputy Charles Flanagan: There is no question of anybody being ostracised. We are following international best practice-----

Senator Marie-Louise O'Donnell: By way of the National Transport Authority.

Senator Michael McDowell: It is not international best practice.

Deputy Charles Flanagan: -----with reference to England and Wales, the nearest common law jurisdiction in which-----

Senator Michael McDowell: Is this provision in English or Welsh law?

Deputy Charles Flanagan: It is in Scottish law.

Senator Michael McDowell: That is not international best practice.

Deputy Charles Flanagan: The Irish and Scottish legal systems have much in common. There is a lay chair in England and Wales-----

Senator Michael McDowell: Is there a requirement that nobody should-----

Deputy Charles Flanagan: I am not sure what happens when the lay chair in England and Wales gets a flat tire.

Senator David Norris: He or she would have to get a taxi. The taxi men would not allow a non-taxi person to chair the taxi committee.

Deputy Charles Flanagan: We had it last night with Senator Craughwell and the cardiologists. I gave the qualifications-----

Senator David Norris: The Minister introduced the surgeons.

Deputy Charles Flanagan: -----of the non-legal and non-judicial chairs in England and Wales.

Acting Chairman (Senator Gerry Horkan): Allow the Minister to continue without interruption, please.

Senator David Norris: The Minister can interrupt but I cannot do so.

Acting Chairman (Senator Gerry Horkan): He cannot interrupt either.

Deputy Charles Flanagan: We are merely following that. To suggest that, in the event of the non-legal chair being absent, the sky will fall in on the proceedings because one of their lordships will not be automatically entitled to take the chair is simply wrong. They will continue to play a vital role irrespective of whether the non-legal chair is present.

Senator Michael McDowell: The Minister resorts to a facile and ridiculous defence of this proposition. He ascribes to me and Senator Marie-Louise O'Donnell the sentiment that we are

saying that a judge must be a chair. We have never said anything of the sort. If the Minister, who is a skilled lawyer and advocate, thinks he can get away with saying that we believe the sky will fall unless these bodies are chaired by a judge, that is simply false. We have never made that argument.

Senator David Norris: The sky cannot fall-----

(Interruptions).

Acting Chairman (Senator Gerry Horkan): Allow Senator McDowell to continue without interruption.

Senator Michael McDowell: If we put into legislation that the chair must be a layperson and then go on to say that, in the absence of that lay chairperson, the group which meets in the absence of that person cannot select from among their number the person they think is best qualified to chair their meeting and must exclude anybody with any legal knowledge, whether as a judge or legal professional, that will be a wholly unnecessary, redundant, and vindictive restraint. That is what it appears to be. There is no other explanation for it.

Senator David Norris: Absolutely.

Senator Michael McDowell: I bring the Minister back to section 15(5) which states: "The quorum for a meeting of the Commission shall, unless the Minister otherwise directs, be 9 members, 5 of whom shall be lay members." Why should a meeting with 12 people in attendance cease to be capable of discharging its function because only four lay members turn up on a particular day?

Senator Marie-Louise O'Donnell: Who thought that up?

Senator Michael McDowell: Why should that happen? It is wrong that it should happen. If we were saying that lay people should be prohibited from turning up, that would be one thing but if, for whatever accidental reason or series of reasons, five people who are lay members cannot make a meeting, and that is five out of eight-----

Deputy Charles Flanagan: Five flat tyres.

Senator Michael McDowell: Excuse me. We will go back to this again.

Senator David Norris: It could be a multiple car crash.

Senator Michael McDowell: No. I ask the Minister to listen to me. There are eight lay members on this commission, as I see it-----

Deputy Charles Flanagan: Nine.

Senator Michael McDowell: There are nine lay members and if, for whatever reason, only four of them can turn up, the Minister is saying the meeting is invalid. I am saying that is utterly unreasonable because at that stage-----

Deputy Charles Flanagan: The meeting does not go ahead.

Senator David Norris: It should.

Senator Michael McDowell: In those circumstances, 13 members of the commission

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could be sitting in a room. They could have nominated one of their members to be chairperson who will have a vote and a casting vote and, even then, they are told the meeting cannot proceed because lay members are insufficiently represented.

Let us flip this coin over to its other side. Why is there not a minimum representation of legal people required to make a meeting quorate? Why should a meeting not be invalid where only the lay people turn up and for some reason the lawyers do not? What is the underlying bias and prejudice in this legislation? It is to copper-fasten and nail to the ground the idea that the legal members on this body are, in effect, second class citizens-----

Senator Marie-Louise O'Donnell: Lacking scholarship.

Senator Michael McDowell: -----who are incapable of discharging certain functions and incapable of being counted simply as members of the commission to form a quorum. That amuses me. If the House were to provide that Senators from the agricultural panel would not be capable of chairing in the absence of the Chair, would not be counted for a quorum or something like that, the injustice of it would be clear to us. It would not be a statement that only Senators from the agricultural panel should chair the Seanad. It would be simply that they were being relegated to second class status on a body which is supposed to be collegiate.

I have a funny feeling that the sum total of all of this will be that the lawyers on the commission will form an effective majority because they capture one or two of the members who are lay members. They will say that because the Minister, Deputy Ross, was so vindictive towards them, once they have one ally in this entire process, they will dominate it. That is clearly open to them as a response to being insulted collectively in this way. They might say, "We are, together, the second class citizens - the helots - in this regime and if we have one ally from the other side, we will assert our rights consistently and coherently as a group." Would that be a good outcome? It would not. Even if it was accepted as a good idea, and I do not believe it is a good idea, to have a lay chairperson by definition, surely after that we can drop the idea of reducing the legal members of the commission to second class citizen status.

When we get on to the next section we will realise that even the smallest committee has to have a lay majority and a lay chairman, for whatever purpose. It is stupid and defies belief that the majority cannot set up a committee unless they rule it with one of themselves as a majority member and insist that the composition of the committee is also a lay majority. I despair at the lack of reason in this provision.

I would have thought that if the Houses of the Oireachtas were to nominate a lay person to be chair and that person is specially mentioned in a resolution of both Houses, in the unavoidable absence of such a person to act as chairperson, the great majority of Members of this House would have no objection whatsoever to the Chief Justice or even a practising solicitor taking the place of the nominated lay person at a meeting for the afternoon. I do not believe that if we all had a free hand to decide what would happen in such circumstances, we would waste legislative time finding out which persons cannot sit in the chair on such an occasion.

Senator Mark Daly: On a point of order, while Senator Norris is gathering his thoughts, can I call for a quorum?

Acting Chairman (Senator Gerry Horkan): Yes.

Notice taken that 12 Members were not present; House counted and 12 Members being

present,

Acting Chairman (Senator Gerry Horkan): We now have a quorum.

Progress reported; Committee to sit again.

Acting Chairman (Senator Gerry Horkan): Can I ask the Leader when it is proposed to sit again? He is confusing me by not sitting in his seat.

Senator Jerry Buttimer: Do not worry, Acting Chairman. I am still the Leader. Maidin amárach ar 10.30.

The Seanad adjourned at 10 p.m. until 10.30 a.m. on Wednesday, 11 July 2018.