



DÍOSPÓIREACHTAÍ PARLAIMINTE
PARLIAMENTARY DEBATES

SEANAD ÉIREANN

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

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SEANAD ÉIREANN

Dé Céadaoin, 03 Deireadh Fómhair 2018

Wednesday, 03 October 2018

Chuaigh an i gceannas ar 10.30 a.m.

*Machnamh agus Paidir.
Reflection and Prayer.*

Business of Seanad

An Leas-Chathaoirleach: I have received notice from Senator John O'Mahony that, on the motion for the Commencement of the House today, he proposes to raise the following matter:

The need for the Minister for Education and Skills to outline the teacher allocation for Shraheen national school, Knockmore, County Mayo.

I have also received notice from Senator Aodhán Ó Ríordáin of the following matter:

The need for the Minister for Education and Skills to make a statement on a discussion document, *Shining a Light on Seclusion and Restraint in Schools in Ireland*, which was published by Inclusion Ireland on 26 September 2018.

I have also received notice from Senator Lynn Ruane of the following matter:

The need for the Minister for Justice and Equality to provide an update on the second Sexual Abuse and Violence in Ireland report.

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

The need for the Minister for Justice and Equality to establish a new system for unidentified human remains which will centralise information and streamline the identification process.

I have also received notice from Senator Maura Hopkins of the following matter:

The need for the Minister for Transport, Tourism and Sport to provide an update on plans to develop a greenway between Athlone, County Westmeath, and Ballinasloe, County Galway.

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

The need for the Minister for Health to outline the reason for the delay in the publication of the review of the Jigsaw youth mental health service.

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

The need for the Minister for Employment Affairs and Social Protection to further extend the paid maternity leave entitlement for mothers of premature babies.

I have also received notice from Senator Lorraine Clifford-Lee of the following matter:

The need for the Minister for Transport, Tourism and Sport to ring-fence funding as part of the greenway strategy for the development of the Broadmeadow Way greenway.

The matters raised by the Senators are suitable for discussion. I have selected the matters raised by Senators O'Mahony, Ó Ríordáin, Ruane and Burke and they will be taken now. The other Senators may give notice on another day of the matters they wish to raise.

Commencement Matters

School Staff

An Leas-Chathaoirleach: I welcome the Minister of State, Deputy Catherine Byrne.

Senator John O'Mahony: I thank the Chair for selecting this Commencement matter. I have been contacted by the parents of the children who attend Shraheen national school in Knockmore, County Mayo, and by Councillor Neil Cruise about the school's pupil numbers and teacher allocations. The school has two teachers at present. Just 14 pupils were enrolled in the school at the start of the school year in September. In accordance with Department of Education and Skills criteria, an extra pupil needed to be enrolled in the school by the 30 September deadline so that it could retain its second teacher. My understanding is that a 15th pupil was in attendance at the school last Friday, 28 September. I understand that up to 11 children from families that are already in the parish and the catchment area will be enrolling in the school in the next couple of years. This does not take account of any extra pupils who might come to the school from outside the area in that time.

I will explain the dilemma that is being faced by everybody in the area. If the school can stay open for this year, it is projected that its numbers will increase thereafter. As the number of pupils in fifth and sixth class is small, just two pupils will leave in the next two or three years. It is projected that something like 11 pupils will come into the school during that time. I understand that the deadline which was given was not relayed to the parents until after the school opened for the new term in September. This meant that the timeframe for getting an extra pupil enrolled was very tight. I presume the returns from Shraheen national school are not in yet. I am raising this matter because schools in local parishes and local areas are obviously very important for the people of those communities. It is important for the high standard of teaching in this school to continue. I thank the Minister of State for being here to deal with this matter and I accept that the Minister for Education and Skills is not available.

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Minister of State at the Department of Health (Deputy Catherine Byrne): I apologise on behalf of Minister who cannot be here and thank the Senator for raising this matter, as it gives me the opportunity to outline the position regarding staffing in primary schools generally and in Shraheen national school, Foxford, County Mayo, in particular.

The criteria used for the allocation of teaching posts are published annually on the Department of Education and Skills website. The key factors for determining the staffing resources provided at individual school level is the staffing schedule for the relevant school year and pupil enrolments on the previous 30 September. The staffing arrangements for the 2018-19 school year are set out in circular 0010/2018 which is available on the Department's website. The staffing schedule operates in a clear and transparent manner and treats all similar types of schools equally irrespective of location.

Budget 2018 provided for a one point improvement to the primary staffing schedule, which reduced the general average pupil-teacher ratio, PTR, to 26:1. The improved staffing schedule has been implemented for the 2018-19 school year. This measure brings the teacher allocation ratio in all primary schools to the most favourable ever seen at primary level. While budget 2012 increased the appointment and retention ratios for small schools, that is, schools with up to four-classroom teachers, improvements to the staffing of these schools have been made in the past number of years. Improved retention thresholds for the second, third and fourth classroom teacher and also the improved appointment and retention thresholds for two teacher schools situated 8 km or more from the nearest school of the same type of patronage and, or language of instruction were introduced for the 2015-16 school year.

Budget 2016 announced a one point improvement to the primary staffing schedule with this improvement implemented in the 2016-17 school year. Budget 2017 announced two adjustments for one teacher schools. Where the school is the sole primary school on an island the school will be able to appoint a second teacher. Regarding single teacher schools generally, those with an enrolment of 15 or more pupils the school can apply to the staffing appeal board for a second post where the single teacher has children across six or more class groups. The staffing arrangements also include an appeals mechanism for schools to submit an appeal under certain criteria to an independent appeals board.

Shraheen national school is currently a two-teacher school. The enrolment required to retain a second teacher is 17 pupils. On 30 September 2017, the school had an enrolment of 15 pupils and was due to have its teaching staff reduced to one in this current September. The school submitted an appeal to the March meeting of the primary staffing appeals board. In its appeal, the school projected an enrolment of 16 pupils across six class groupings and the school was successful in its appeal. The school was advised that the retention of the second teacher was dependent on the school achieving an enrolment of at least 15 pupils across six class groupings on 30 September 2018. The primary staffing appeals board operates independently of the Minister and the Department and its decision is final.

The current enrolment in the school for the 2018-19 school year has been confirmed as 14. As the school has not achieved the required enrolment, the second teaching post will be suppressed with effect from Friday, 26 October and the most junior teacher in the school will be redeployed. I thank the Senator again for the opportunity to outline this process to the House. I have taken some notes on what he said regarding the fact that since last Friday, 15 pupils have been enrolled in the school. I will bring that to the attention of the Minister. However, as outlined in the reply, the situation may well be out of his hands. That said, I will bring it to his

attention.

Senator John O'Mahony: I thank the Minister for State for the reply. I accept the criteria as outlined but my information is slightly different from that outlined. The information will be confirmed one way or the other. The parents who contacted me were disappointed that they had not been made aware of the position earlier because there would have been no problem getting up to 15 enrolments. Efforts were made and there were 15 pupils in attendance last Friday. I am not sure of the exact details but the numbers will have to be confirmed one way or the other.

If the school's staffing allocation is reduced to one teacher, does that mean that the school will have to close? Given that enrolments are projected to increase, with 11 children from families with pupils in the school due to start in the next two years, the issue is bridging the gap between enrolments at the start of this September and future enrolments in the coming years. A public meeting on this issue is being held on Friday next. I hope the matter can be resolved because Shraheen national school is the heartbeat of the community.

Deputy Catherine Byrne: I assure the Senator that I will bring his questions back to the Minister. In the context of the aforementioned public meeting, I understand his need for an urgent reply. I will ask the Minister to reply to him directly.

Special Educational Needs

Senator Aodhán Ó Ríordáin: I welcome the Minister of State to the House. I want to raise the inaction of the Department of Education and Skills *vis-à-vis* unregulated seclusion and restraint of children with disabilities. With the greatest respect to her, I am disappointed that none of the Minister for Education and Skills, the Minister of State at the Department of Health with responsibility for disability or the Minister for Children and Youth Affairs considers this issue important enough to merit their attendance in person to discuss it.

Inclusion Ireland published a discussion document last week, "Shining a light on seclusion and restraint in schools in Ireland", which shares stories of 14 children with a disability, some as young as five years of age. Following the publication of the document, Departments should have been reeling in an effort to react to the issues that it raises. Inclusion Ireland is concerned that despite being asked by the National Council for Special Education, NCSE, on three occasions, the Department of Education and Skills has failed to provide best practice guidelines or to introduce reporting and monitoring protocols. Mr. Paddy Connolly, chief executive officer, CEO, of Inclusion Ireland, has stated that the rights and welfare of children should be at the centre of all that happens in schools. On the issue of managing the use of seclusion and restraint, best practice includes support and training for staff, whole-of-school positive behaviour strategies, school leadership and external inputs such as child mental health or disability services.

I wish to put the Minister of State on notice that my colleague, Senator Lynn Ruane, will introduce legislation on this matter, to which the Government will have to respond. I will now read into the record some of the cases that were outlined in the discussion document. The names have been changed to protect the identity of the children involved.

One day I went to collect Brian* from his special school and he was sitting on the sofa in reception crying. His arms were very sore and staff would not tell me what happened. Later Brian calmed down and could tell me two Special Needs Assistants had held him face

down on the floor by his arms which were now black and blue.

Michael*, who was 10 years old at the time, wasn't allowed in the classroom of his Dublin school for 3 months. Instead Michael had to work in an empty room next door to the room where his class-mates were working.

My daughter Jenny* was restrained in a 'prone restraint' which is being held in a face down position by 2 or three people. On one month this took place up to 50 times and this went on for some time.

William* was restrained in his school transport by the escort with his head held down physically for the whole journey which took 20 minutes. William said he found it very hard to breathe and it was a painful experience. On other occasions William's hands were held down 'just in case'.

Seán* was restrained by a teacher when he was in senior infants. The teacher in question told me that I didn't have to worry about Seán's behaviour in school as he had found a way to restrain him.

Luke* attended a special school and he told me that his teacher had locked him into a toilet. The school denied this when I complained. We moved him to another school and a number of months later I was contacted by Tusla as two more children had alleged the teacher had locked them into a toilet. An investigation followed but found that the teacher posed no risk to children and the teacher returned to the school.

"Killian* was locked into a small storage room with a small window. We were initially told the room would only ever be used as a 'last resort'. The teacher put Killian into this locked room, unattended for up to four or five hours for trivial reasons such as not doing school work quick enough or talking in class.

These are testimonies from the parents of children with disabilities who are some of the most vulnerable children in our educational system. The Department of Education and Skills, the Minister of State with responsibility for disabilities and the Minister for Children and Youth Affairs should be all over this report as well as making statements on how they are going to react to it. The reaction from Inclusion Ireland is one of exasperation at the lack of action from the Department. I understand the stresses that teachers in this area experience but the 14 case studies in this report are appalling and I want to know what the Government is going to do about it.

Deputy Catherine Byrne: I am here on behalf of the Minister for Education and Skills. I do not know about the other Ministers in question. I thank the Senator for raising this important issue. I understand the impact it has on him as a former teacher. I wish to advise him that the well-being and safety of children should be at the centre of all policy and practices in school. The board of management of each school is responsible for the care and safety of all of the pupils in their schools. Schools should supervise and support children who are distressed or out of control until they have recovered and are able to re-engage in the classroom. This may mean the temporary removal of a child from the environment where the problems have arisen in some circumstances. Schools have a duty of care to all their students and any action taken to manage behaviour must be proportionate. Schools are not required to report such interventions to the Department.

The educational welfare service of Tusla, which is now under the aegis of the Minister for Children and Youth Affairs, has developed guidelines for schools on codes of behaviour, which all schools are required by law to have in place. The guidelines advise that specialised behaviour management strategies, such as the use of restraint, should not be used without expert advice, training and monitoring. In particular, the guidelines point to certain sanctions which are regarded as inappropriate, including leaving a student in an unsupervised situation while in the care of the school. All parents must be made aware of behaviour management strategies employed by the school. There is a range of guidance, advice and support available to schools, including from their local National Educational Psychological Service, NEPS, psychologist and the NCSE's support service. Training is also available for teachers and schools.

The Department is working on the development of guidelines for schools on responding to crisis situations and complex student behavioural needs. These guidelines will be informed by advice from the NCSE. The Department will consult the education partners on them as well over the coming months. It is anticipated that they will be finalised by the end of this school year. The guidelines will be underpinned by the principles that such intervention is never used for the purpose of discipline, it should be applied proportionately and it should last only as long as is necessary to de-escalate the situation. The guidelines will also underline the importance of continued supervision of children during a crisis period, including matters related to behaviour. It is also expected that the guidelines will underline the importance of recording such incidents and how they are managed.

Where a parent, or any other person, has concerns about the care or safety of a child in school, they should report these concerns to the board of management of the school in the first instance. Where a parent or other person has a concern about the welfare or protection of a child in a school they may report the matter as a child protection concern to Tusla. In 2017, the Department received one child protection complaint, which referred to concerns relating to seclusion, and this complaint was dealt with in accordance with departmental procedures, including referral to Tusla. There were no child protection complaints received in respect of restraint.

Senator Aodhán Ó Ríordáin: I thank the Minister of State for her reply but this sort of reply drives me round the twist. The first paragraph of the reply is a classic case of the Department saying it is somebody else's problem: "The board of management of each school is responsible for the care and safety of all of the pupils in their schools...Schools are not required to report such interventions to the Department." It is not, therefore, up to the Department. Mr. Paddy Connolly, CEO of Inclusion Ireland, stated that the NCSE has asked the Department on three occasions to provide best practice guidelines. That has not happened but, according to this reply, it will respond to the NCSE by June 2019.

I accept this is not the Minister of State's area of responsibility but I want her to impress on the Minister for Education and Skills, the Minister of State with responsibility for disability and the Minister for Children and Youth Affairs, who are responsible, that there is no sense of urgency in this reply. I get the impression from this that everything is fine and tickety-boo, there are ways for people to complain, the Department received only one complaint, and so on. There is nothing in the reply that makes me feel that the people who wrote it have read what I have read into the record today in respect of children being locked in toilets, having their faces held down on bus transport or in classrooms, or being isolated in small rooms. Nobody is suggesting that this is an easy job but a report such as this should have made Departments react in a different way from this classic response of, "It is not really our responsibility, it is somebody else's responsibility. We are looking at it and will come back to you in due course". If anybody

in this House was told that a child of theirs had been locked in the toilet or gone through any of the events raised in this report, I am sure there would be hell to pay but I do not get a sense from this reply that the Department has that feeling. I reiterate that if this was taken seriously, there would be a Minister with responsibility for the area. Will the Minister of State impress on those responsible the need to do something a little more urgent and impressive to give us the sense that they are taking this matter seriously? If I was the mother or father of one of these children with disabilities who have gone through these events and this response was produced, I would not be impressed.

Deputy Catherine Byrne: I will relay all of the Senator's frustration and concerns and will outline the seriousness of some of the cases he has raised. I believe, however, that the reply states clearly that there is a process in place and, from my limited experience of the education system and boards of management, I am conscious that people have to make a complaint and it has to be dealt with in the school. Nobody wants to go back to the days when young children, with or without a disability, were punished for different reasons, whether by restraint or being locked in rooms. As a Member and as a parent and grandparent, it is not appropriate that any child should experience restraint in school. I will relay in a clear message the frustration and concerns raised by the Senator and bring them to the attention of the Minister for Education and Skills on my way back to the Dáil.

Sexual Offences Data

Senator Lynn Ruane: I thank the Minister for Justice and Equality for taking this matter. I am raising the issue of the second Sexual Abuse and Violence in Ireland, SAVI, report which his Government has committed to, and which will investigate and survey the levels of sexual violence and abuse experienced by men and women in Ireland.

It has been 16 years since the first SAVI report was published in 2002, and in light of just how much our understanding of sexual violence has changed since then, it is high time we updated the State data and considered the issue and the realities on the ground once more.

11 o'clock

It has been 16 years since the first Sexual Abuse and Violence in Ireland, SAVI, report was published in 2002 and, in light of just how much our understanding of sexual violence has changed since then, it is high time we updated the State data and looked at the realities on the ground once more. Breda Allen, in the opening words of the 2002 SAVI report, stated that, "This is a groundbreaking study, the importance of which cannot be overestimated." These words have only grown truer in the past decade and a half, especially in light of recent developments in the #MeToo movement and the breaking of a powerful and shaming silence, allowing women to come forward and speak about the abuse of power and sexual harassment they have experienced.

The Minister will be aware that figures released this week from the Rape Crisis Centre showed an increase of 10% in the reporting of sexual crimes in the past year. However, even this increase is only part of the picture as we all know that huge numbers of sex crimes go unreported. The need for another SAVI report to give us an accurate picture on the ground of the experiences of survivors of sexual violence in this country is very important and I hope the Minister is able to confirm a timeline and details of how this will happen today.

We keep sharing our stories, baring our souls, laying ourselves bare for all to see. We risk questions and judgments and we hope that no one pokes away at the emotional scars our sexual assaults have left us with. I carried a shame that was not mine for five years before I told anyone what happened to me and I waited another three years before I went to the Rape Crisis Centre. I am not alone. Do not let the laying bare of all we have endured be for nothing.

For the last two weeks since I shared what happened to me on RTÉ, I have been inundated with hundreds of letters and mails from women and girls from every part of this island. Some sat in their sitting rooms with their families and as I said those words, “I was raped” they found themselves saying the same, for the very first time, in the seconds after I spoke. That is the power of sharing. The Minister has the ability and the resources to take those experiences and transform them into action.

Some people may never be able to speak to another person about their experience of sexual assault, much less a garda. However, just because people cannot report, does not mean they should be invisible. We need a survey that goes into communities, that can reach survivors in their own surroundings and translate their experiences, their pain in sharing that part of themselves into a better understanding of the realities of sexual violence, the barriers to accessing law enforcement, medical and therapeutic services for those abused and their families and how the State can do better and respond to these needs. That is what I am calling for today and I hope the Minister is able to share the steps he and his Department will be taking to start the second SAVI process and begin a better understanding and national conversation about sexual violence, survivors and their experiences. I thank the Minister.

Minister for Justice and Equality (Deputy Charles Flanagan): I very much welcome the opportunity to address this important topic raised by Senator Ruane and I congratulate her on her recent publication. I acknowledge her courage and bravery in the many interviews and public engagements she has undertaken in recent weeks. It is my belief that she has started a national conversation and, as Minister for Justice and Equality, I very much welcome that and thank her for it. I ask her to continue in that vein.

My Government colleagues and I are totally committed to preventing and addressing sexual violence in Ireland. It is extremely important to me and to the Government that policy is driven by accurate, up-to-date, reliable data. Knowledge and information are essential to making effective policies to prevent and combat sexual violence.

The SAVI report was a fundamental piece of research and its results had a significant impact, both at the time of its publication in 2002 and since. Late last year, the Government decided that a scoping study should be undertaken to see just what the situation was regarding data available for the development of policy in this particularly sensitive area and to assess if there were gaps in the data available for policy formulation. To this end, as the Senator may be aware, the Government agreed to establish a scoping group to consider the availability of data and make recommendations on a study to identify the prevalence of sexual abuse and violence in Ireland today, as well as emerging trends. The group was made up of experts and relevant Department officials and was chaired by Professor Dorothy Watson, associate research professor, ESRI, and adjunct professor of sociology at Trinity College Dublin. Presentations and submissions from key non-governmental organisations were made to the group at its first meeting and subsequent submissions from representative groups were also made and presented to the scoping group for their consideration.

In line with the group's terms of reference and work plan, the group's academic members completed a paper on data points relevant to sexual violence. During this work, other relevant international surveys were reviewed and cross-referenced to identify gaps in the original data points and address those gaps by adding new data points and variables not present in the SAVI study. The group considered this paper and it ultimately became a core element of the group's report. The group also considered survey methodology, ethical considerations, the feasibility of periodic data collection over time and data protection issues. The group has since submitted its draft report to my office for consideration.

This work is extremely complex and requires careful consideration of the sensitivities and practicalities involved. A further piece of technical work is being completed by my Department to enable me to bring proposals to Cabinet. I expect to be in a position to do this in a matter of weeks. Once the report has been considered by Government it will be possible to be more specific about its recommendations. I acknowledge the importance of this issue and I acknowledge what the Senator has said. I am very keen to report progress on this matter over the course of the next couple of months.

Senator Lynn Ruane: My question relates to the scoping exercise, which is very important and which I welcome. I know that organisations which work with survivors have been involved but I am concerned that a huge amount of data from women who never access services are missing from the report of the scoping exercise. This is because so much is not reported. Much still needs to be done by way of a public consultation on sexual violence so that we can gather some of that data as they will not be accessible to us via academia or those on the scoping group. The Minister says he will get a commitment from the Cabinet on whether it can publish the specific recommendations of the group. Is it possible to have something else that would enable us to reach the people to whom I referred? Like me, up until now they would never have spoken out loud about their experience but they may be prepared to fill out an anonymous survey and that would give us a clearer picture.

Deputy Charles Flanagan: I am very pleased that this debate is taking place and I thank Senator Ruane for engaging on it. I am here, as Minister, to hear her views and take her advices on the issue. I will do that because sexual violence is a sensitive issue and a gross violation of the individual, not only physically but psychologically and emotionally. Due to the complexities, undertaking a survey into the prevalence of sexual violence raises a lot of issues. The scoping group has given preliminary consideration to the key issues and further intensive work is now under way to resolve a number of technical issues. I am sure Senator Ruane will agree that it is important that any survey which is undertaken will take full account of the care due to individuals who will be answering questions of great sensitivity, as well as to those who actually conduct the survey. It is also essential to have a sufficiently large number of respondents to any survey so that we will be able to draw statistically robust conclusions.

Once the outstanding technical matters are resolved, I will bring proposals to Government and I expect to do so shortly. Once the report has been considered by the Government, it will be possible to be more specific about the recommendations but, in the meantime, I would be very happy to engage further with Members of the Seanad. I very much welcome their views.

Coroners Service

Senator Colm Burke: I thank the Minister, Deputy Flanagan, for taking time out of his

busy schedule to be here. In this country at the moment, when a human remains or a body is not identified there is no central database for the information that is gathered. I understand that the information is kept within each of the coroners' areas. Dr. René Gapert, who is an expert in this area, has suggested that a central database should be established. The cost of doing this would not be huge. It would be important to have such a system in place. Dr. Gapert has received the support of coroners from around the country. I am raising this issue on foot of a case in Dublin involving a person who was reported missing more than ten years ago. A body was washed up on the coast of County Louth within three months of the person being reported missing, but it took nine years for two and two to be put together and for it to be realised that the body which washed up in County Louth was that of the person who had been reported missing ten years earlier. The family of that person lived with uncertainty for ten years. A central database would help the Garda, the coroners and all the people involved. I ask the Department to give serious consideration to this proposal.

Deputy Charles Flanagan: I thank Senator Colm Burke for raising this matter. It is distressing when the remains of deceased people are sometimes discovered on land or washed ashore on our coasts, as in the case mentioned by the Senator. The relevant State authorities make every effort to identify such people by whatever means possible. I am informed by coroners that fortunately there are very few cases in which remains cannot be identified within a foreseeable timeframe. The discovery of skeletal remains or bones, usually as a result of construction activity, happens more frequently.

The Senator is proposing that I should establish a new section for unidentified human remains as a means of centralising information and streamlining the identification process. He has previously submitted to me a proposal from a well-respected forensic anthropologist that a forensic human remains identification specialist position should be established and located within the ambit of the Department. It is proposed that such a specialist would centralise information and provide a service in respect of the identification of discovered bodies or parts of bodies. It is argued that this could help to co-ordinate the expertise required and be of greater assistance to the families of missing people. I have asked the various relevant divisions and agencies within my departmental remit to examine the proposal carefully. This consideration is now under way. The initial feedback I have received suggests that consideration must be given to whether the establishment of a separate section, with attendant costs or impacts on the work of other agencies concerned, represents the best use of available resources. Statutory changes could also be required.

I am informed that there is no evidence to suggest that there are major deficiencies in the handling and ultimate identification of human remains. Most such remains are ultimately identified. I would be happy to engage further with Senator Colm Burke on these issues. I recognise that families and relations of people who go missing for long periods of time have their hopes raised when discoveries are reported. We must ensure that all possible measures are taken to identify the deceased when remains are discovered. I commend Senator Burke on his efforts to enhance the identification of unidentified remains. He has done a great deal of work to advance proposals to allow families to manage the affairs of missing people. His Private Members' Bill in that regard has passed all Stages in the Seanad and is awaiting Second Stage in the Dáil. I hope we can report progress on that issue in the coming weeks. If the Bill is enacted, it will be of considerable assistance to the families of people who have gone missing. I have indicated that I will do everything I can to facilitate its passage.

Senator Colm Burke: I understand that across the various coroners' areas there are ap-

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proximately 200 cases in which the bodies or partial remains of individuals have not been identified. That figure is taken from a survey which added them all up. There is no central relationship that allows such discoveries to be cross-checked with the cases of people who have been reported missing. Problems can arise when people who have been reported missing turn up in a totally different part of a country. I know of a case involving a person whose remains were discovered in County Galway and who has not been identified, in which the evidence suggests that the person was not even from Ireland. I am concerned that there is no central place where the Garda authorities and the coroners can go after bodies are discovered to cross-check information about people who have been reported missing. I am raising this issue in that context. I am asking for serious consideration to be given to the establishment of a central database. I suggest that someone be given responsibility for working on this matter, even on a part-time basis, in order to ensure that people might go to a central place.

Deputy Charles Flanagan: I assure the Senator that I have asked the various divisions and agencies under the remit of my Department to study carefully his proposal for the establishment of a special section to deal with the remains of unidentified people. I will not be in a position to give a definitive response until that consideration has been completed. I commend the Senator on his interest in this matter. I am happy to engage with him in this public forum and bilaterally on the progress that is being made or otherwise. I commend him on his efforts to advance matters concerning unidentified remains and the management of the affairs of missing people. After he raised this issue with me earlier in the year, I had an opportunity to attend a conference of coroners. I am anxious to engage further on this issue with a view towards meeting the Senator's concerns.

Message from Dáil

An Leas-Chathaoirleach: Dáil Éireann passed the Mental Health (Renewal) Orders Bill 2018 on 2 October 2018, considered by virtue of Article 20.2.2° of the Constitution as a Bill initiated in Dáil Éireann, to which the agreement of Seanad Éireann is desired.

Sitting suspended at 11.20 a.m. and resumed at 11.30 a.m.

Order of Business

An Cathaoirleach: I call the Deputy Leader, Senator Noone, to outline the business of the day.

Senator Catherine Noone: The Order of Business is No. 1, motions regarding judicial and extrajudicial documents in civil or commercial matters and co-operation between courts of the member states in the taking of evidence in civil or commercial matters - referral to committee, to be taken on the conclusion of the Order of Business without debate; No. 1a on the supplementary Order Paper, Mental Health (Renewal Orders) Bill 2018 - Report Stage amend-

ments from the Dáil and Final Stage, to be taken at 12.45 p.m.; No. 2, motion regarding earlier signature of the Mental Health (Renewal Orders) Bill 2018, to be taken on conclusion of No. 1, without debate; No. 3, Data Sharing Governance Bill 2018 - Report and Final Stages, to be taken on the conclusion of No. 2 or at 1 p.m., whichever is the later and to be adjourned no later than 3.30 p.m. if not previously concluded; No. 4, Copyright and Other Intellectual Property Law Provisions Bill 2018 - Committee Stage, to be taken at 3.30 p.m. and to adjourn no later than 4.30 p.m., if not previously concluded.

An Cathaoirleach: By way of clarification, No. 3 is being taken after No. 2.

Senator Catherine Noone: Yes. No. 5, statements on the transfer of functions of Dún Laoghaire Harbour Company to Dún Laoghaire-Rathdown County Council to be taken at 4.30 p.m. and to conclude no later than 5.30 p.m., with the time allocated to group spokespersons not to exceed eight minutes, on which members may share time and the Minister to be given no less than five minutes to reply to the debate and No. 6, Private Members' business, Irish Human Rights and Equality Commission (Gender Pay Gap Information) Bill 2017 - Report and Final Stages, to be taken at 5.30 p.m., with the time allocated to this debate not to exceed two hours.

Senator Catherine Ardagh: I wish to raise commitments in the realm of justice that were promised under the programme for Government. Last week, I raised the issue of violent muggings and burglaries on the streets of Dublin. We also learned last week of the horrendous rapes of three college students in Cork, of how they had not reported the incidents to their colleges or to the Garda and of the fact that two of them have dropped out of college as a result of trauma and personal violation. In response, the Government agreed to set up a forum locally so that there could be a central focus by the Garda, the HEA and the presidents of the various colleges involved. The recently published CSO report shows increases in nine of 14 categories of crime. While recognising the work of the Garda in respect of gangland crime, in the sexual offences category there has been a 10.2% increase. This means that approximately 3,000 sexual offences were committed between June 2017 and June of this year. This frightening statistic cannot be ignored. There were also increases in theft offences and a 10.7% increase in weapons and explosives offences. All Senators have heard of increased anti-social behaviour and increased crime in rural and urban areas. The CSO report confirms what we have been hearing.

There is a commitment in the programme for Government to consider the introduction of mandatory sentencing for robbery in the home involving violence. Is this mandatory sentencing ever going to be introduced? There is also a commitment to resource the courts, particularly the Circuit Court, to deal with increased non-summary prosecutions of serious crimes. Will this happen? I ask the Deputy Leader to provide an update on these commitments.

I take this opportunity to convey my sympathies, and those of the Fianna Fáil group, to the family of a woman who died in tragic circumstances on Tuesday when she was run over by a lorry on a residential street in Inchicore. This was a freak accident but it should not have happened. I urge vigilance on the part of those driving articulated lorries or other motor vehicles in residential areas in our cities and towns. This tragedy could have been avoided. My heart goes out to the woman's family.

Senator Billy Lawless: I wish to place on record my thanks to all the Irish support organisations around the world that assist, on a daily basis, Irish people living abroad with many issues of concern. These organisations provide general information and they also assist people in dealing with serious personal difficulties and tragedies. The support they offer to Irish com-

munities goes mainly unrecorded but their work is invaluable. In the United States, the Irish support organisations offer a variety of services ranging from crisis intervention and management, supportive counselling with solution-focused orientation, information, advocacy, accompaniment to court - when required - and inter-agency liaison. This year, in the Boston area, the Irish Pastoral Centre provided advice and support to at least 15 prisoners. The figures on undocumented Irish in detention for deportation nationwide are relatively low year on year but the level of support being given is placing great strain on the limited resources. Due to policy changes in US immigration, the toxic atmosphere is causing severe stress, particularly among the undocumented community. This has resulted in an increased demand for counselling services due to increased anxiety, a siege mentality and insular lifestyles.

This summer, an example of the assistance given by Irish organisations was highlighted by a serious case that came through my office. It was of a young person who was travelling throughout in the US and had not made any contact with home for months, and the family were desperately worried. When the person was found, his mental health was in a fragile state and he needed urgent assistance. I contacted the local Irish Community Services, a not-for-profit immigration organisation, and it made contact immediately with the place where this person was staying. Through sensitive and gentle discussion, he allowed them access. He was in a bad state, both physically and mentally, and was brought immediately to a hospital where he received the urgent medical care required. A few days later, he was able to return to his family in Ireland accompanied by his brother. Only for the professional and sensitive approach from members of our Irish support organisation, this could have had a different and tragic outcome. This type of assistance is replicated in communities throughout the US and elsewhere across the world.

The Government, through its embassies and consulates, provides significant support to Irish support agencies and organisations and we thank them sincerely for their excellent work. The recent increase of crisis cases has reinforced the importance of having an interconnected web of agencies, providing holistic support to the global Irish community.

The Government must do more, through exploring how these non-profit organisations can be further financially supported and I call on the Minister for Foreign Affairs and Trade to ensure the Department continues to fund them to ensure they can continue to provide the excellent assistance they do. Our global diaspora, particularly those who are undocumented, need and deserve the full support of the Government in every way.

Senator Rose Conway-Walsh: I condemn the comments made by the DUP leader, Ms Arlene Foster MLA, earlier this week when she dismissed the Good Friday Agreement and suggested that it could be altered at the whim of the DUP. That should not be surprising to us because, in 2003, Ms Foster left her own party because of her opposition to the Good Friday Agreement. Her party supports Brexit. It is important that Ms Foster understands, as she does not seem to understand, that this is an international treaty between this State and Britain and it is lodged under the United Nations. She needs to get to grips with that. As co-guarantor of the Agreement, the Government and the British Government need to make sure that is upheld as well.

Members of this and the other House have asked why we do not just set up the institutions in the North and have commented that there are no preconditions. However, it is a precondition of any government to treat all of its citizens equally and it is not right for people here to advocate the setting up the institutions where there are not LGBT rights and where there are

not rights for everybody in society. For example, people have had to wait decades just for the truth through legacy inquests. While we desperately want the institutions to be up and running, we could certainly never advocate the setting up of the institutions under such an arrangement. Perhaps all of this gives people down here a better insight into exactly what we have to deal with in the North.

Today, I commend the Sinn Féin alternative budget to the House. I commend my colleague, Deputy Pearse Doherty, and others who have worked so hard on this. This is an alternative budget and it is about lifting the burden from the ordinary people of the cost-of-living crisis and investing in their full potential and in the public services they deserve. It has been fully costed and it takes into account the cost of living. The cost-of-living crisis, we must remember, exists because of Government policies and priorities.

We have presented this budget. We have shown how, through increased investment in education, housing, health, and agriculture and support for enterprise and development and job creation, we can have a different type of society. The additional revenue raised by closing tax loopholes, increasing betting tax and introducing an income levy on those earning in excess of €140,000, among other measures, could be used to open hospital beds. Contrary to some of the nonsensical statements that are made by Members who desperately need to appease their vested interests and those who control their thinking and the actions of those in power, 99% of workers will pay no additional tax under a Sinn Féin budget or a Sinn Féin Government. That is a fact. I accept 1% of the wealthiest in our country are asked to pay a little more but does anybody think that those earning €140,000 a year should be entitled to tax credit? Does anybody think that banks, which made €2.6 billion last year, should continue to be given a tax holiday? If Members think that, this is not the place for them. There is an alternative and that is the Sinn Féin budget.

Senator Paul Gavan: Well said.

Senator Lynn Ruane: Today, I would like to raise the housing crisis and the serious inadequacy of the State's response to a crisis affecting every sector of society. I have no interest in scoring political points but, at this stage, it has to be accepted that the current strategies, whether it be Rebuilding Ireland or the array of other initiatives attempted by the Government, are just not working. The housing system is not experiencing a temporary blip or market correction, as stated by housing experts in *The Irish Times* last week. The system is in freefall as a result of years of underinvestment, structural deficiencies in housing and planning policy, and a market-focused ideology that thinks the market can be relied on to provide the social good that is secure, safe and appropriate shelter for people in Ireland. It can no longer be denied that this approach, and this philosophy, has been a complete and abject failure.

There needs to be a fundamental transformation in how we tackle the crisis and housing policy in general. We cannot wait for the initiatives announced today to be implemented in two to three years' time when our citizens are being evicted from their homes right now. I strongly support the cross-party motion that will be debated in the Dáil later and I call on all Members to attend the Raise the Roof demonstration outside Leinster House at 1 p.m. People are assembling to express their hopelessness because they spend an inordinate amount on rents. Home ownership is increasingly out of reach for a vast number of people while increasing numbers of people, including children, are in emergency accommodation or sleeping on our streets.

We need to declare a national housing and homelessness emergency; dramatically increase

spending on, and supply of, social, affordable and cost rental housing through a significant increase in capital expenditure; prioritise the delivery of public housing on public land; and work harder to bring vacant and derelict properties back into the supply as we proposed in the Civil Engagement Group in this House in February 2017. We should pass emergency legislation by the end of the month banning all evictions as an emergency interim measure where an eviction will directly lead to homelessness.

Senator Paul Gavan: Hear, hear.

Senator Lynn Ruane: We need rent controls without the wide expectations of the current rent pressure zones, with rents to be linked to inflation. We need targets to end long-term homelessness and we need to amend the Constitution to include a right to housing. These are radical calls but they are an appropriate response to the seriousness of the current crisis. I hope to see as many of the Members as possible outside the gates at 1 p.m.

Senator Kevin Humphreys: I welcome the decision yesterday in Washington DC to introduce legislation to regulate Airbnb or short-term lets, an issue I raised in this House on a constant basis over the past 18 months and on which I have been promised action over and over again. The then Minister, Deputy Coveney, set up an internal committee between his Department and the Department of Transport, Tourism and Sport that sat for nearly a year and never published the recommendations. This year, the current Minister promised action and that he would publish proposals in June. He also said in August that he would bring forward legislation or regulations to the Cabinet in September. We are now well into October and nobody has seen the regulations or legislation. Why do I raise this issue so frequently? It is because, at a minimum, it would bring 1,000 units back into the rental market for working people in this city and many other areas. Where did I get the figure of 1,000 from because I believe the number is far higher? It came from the Minister's own research, which states that the legislation he will propose will bring those 1,000 units back into the market. I am frustrated because this has been highlighted for over two years. The Minister has promised action on numerous occasions yet he has not taken any action or published any legislation or statutory instrument relating to this. The Minister says that supply is the problem. If supply is the problem, why has he not taken action with regard to these additional 1,000 units that he could return to the market very quickly? I am putting the Leader on notice that if the Minister does not bring forward proposals to Cabinet next week, I will request, through an amendment to Standing Orders, that he attend this House. I am not seeking that he attend today but I am putting the Leader on notice that if the Minister does not bring forward and publish proposals to Cabinet next week, I will request, through an amendment to Standing Orders, that he attend this House.

An Cathaoirleach: I welcome Mr. Paddy McGowan and Mrs. Mabel McGowan, who are visiting the House for the first time, to the Public Gallery. I hope they have a very enjoyable day.

Senator Tim Lombard: Like many other Members, I refer to the protests that are taking place outside. There is a housing protest and a protest from the agricultural community regarding beef prices. The beef forum met today at 10.30 a.m. It is important that the House acknowledge there is a significant issue with the beef industry. The meeting of the beef forum today is an important one that will be attended by the processors, some farming organisations and the Department to work out what is happening in the beef industry. I attended a meeting in Skibbereen last Monday week that was attended by approximately 400 beef farmers. One could feel the disquiet, to say the least, among the community about where the beef industry,

particularly the suckler industry, is going. This morning's meeting is very important. I realise that there is pressure on the Minister for Agriculture, Food and the Marine and the Department to try to ensure that appropriate prices are paid at the factory gate for the beef product. This will be the significant challenge. The beef processors' control over the industry is the biggest issue. How we formulate a plan to ensure that the farmers get an appropriate price for their product when they go to slaughter is very significant. The Minister needs to engage with the processors to ensure this happens.

I am sure this will be a winter of discontent in the beef industry. From talking to the farmers, I understand that the prices at marts and in the factories have collapsed even though prices in the UK have gone up. I can tell the House the actual price it costs to take an animal all the way to the factory but after that it goes into a black hole and we do not know where the costings go until the product actually ends up in retailers' fridges. These are important issues. I propose that we schedule time for the Minister for Agriculture, Food and the Marine to come to the House to discuss the beef industry. Time needs to be allotted to the beef industry. We need a real debate on it and to identify solutions. More important we need to see what legislation needs to be changed to ensure farmers get what is appropriate at the farm gate. What we really need is a labelling system. We need to ensure that everyone knows exactly how much the farmer gets paid on the label. The knock-on effect will be that we find out the margins the retailers and factories get so we know who is getting what out of every side of beef.

Senator Jennifer Murnane O'Connor: As I stand here, we have a team competing at the IGBA Handa World Blind Golf championship in Rome. I wish the team well.

I raise the matter of the the leaving certificate - words that fill most of us with fear and dread, even the teachers in this room. We have an extraordinary education system. Some of the brightest minds in the world are born, study, invent and shine here but something is very wrong in our education system when those bright minds are being dulled by an unfair system. The State Examinations Commission was defeated in court this week over its role in the incorrect totting up of leaving certificate marks for a Wexford student. That was a win for that student but at what cost? Not only did she have to fight in court, the case could be appealed if full written judgement issued next month gives the State Examinations Commission cause. Thankfully, the student took her deserved place this week and will not suffer from having to play catch up but that is just one good news story. Mr. Justice Richard Humphreys ruled that the current appeals process for leaving certificate students is not only highly unfair, it is not fit for purpose and causes untold stress to students. I was contacted at one of my clinics by students from Carlow and Kilkenny with similar issues concerning a process that causes massive stress. I welcome the fact that the Minister for Education and Skills has said that he will look at speeding up the appeals process for leaving certificate examination students to ensure they do not lose out on potential college places but we need to have a good hard look at the process and also put pressure on the State Examinations Commission to get things right in the first place. It is wrong that a student must go to court to get a college place in time - a place she earned. The future of several hundred students is in the air because they know they need to ask the questions and need to know their results. They could be doing a course they thought they had to do because their points were tallied incorrectly. More students who knew their points were incorrectly tallied have been stuck waiting a year to take a college place that should have been rightfully theirs. A year is an enormous amount of time in a young adult's life and while some choose that route, others do not come back from it. There is a need for a radical overhaul of the leaving certificate because a year is too long. We also need to make sure that we are not putting students under

immense pressure.

Senator Michael McDowell: I return to the topic raised by Senator Ruane, namely, homelessness and the housing crisis that exists in this country. It is about time that we realised a few basic facts. First, there is no prospect of resolving the housing crisis unless the supply of social and affordable housing is increased. Second, that supply will only increase if the Government takes direct action. Third, the market will not solve this problem if left to itself in the short, medium or long term. Fourth, the Government has had plenty of time to consider all of the underlying trends and issues such as market and land availability issues and has not done its duty by the people and addressed this issue properly. It is very evident to anybody who travels around this city that the cranes are on the skylines. Hotels are being built and great projects are in progress but social and affordable housing is not being built to any appreciable extent in Dublin. It is impossible to believe that the Customs House as a Department of State, and I am not going to personalise this, can possibly have its hands on the levers of power or be resourcing local authorities adequately when pitiful results concerning the construction of social housing in particular are trickling in every year. The former Minister for Housing, Planning and Local Government was appointed with responsibility for this and made some efforts to deal with the issue of rising rents, which is a symptom of the shortage. He then became Tánaiste and Minister for Foreign Affairs and Trade. The current Minister has had a number of years to deal with this. Every so often, we hear of initiatives which, to use the phrase thought up by the spin masters in Government Buildings, are game changers. The first thing to say is that this is not a game. It is deadly serious.

12 o'clock

We are told there is to be a new agency. There should be a new agency and it should take direct action but where is the legislation for it? Will we see it this year, next year or the year after? Does anybody take this issue seriously? Above all, does the Department and the Government intend doing anything or does it just intend to continue spinning and spinning and spinning, appearing to be concerned while doing nothing?

Senator Gabrielle McFadden: I was very upset to read in the newspapers over the weekend about a report from Focus Ireland on the growing number of young people leaving State care and becoming homeless. Many young people leave State care and transition successfully into independent living but it is not good enough that any child finds himself or herself homeless. Focus Ireland is calling for money to be ring-fenced for accommodation for care leavers. Focus Ireland and the Irish Aftercare Network have been seeking a meeting with the Minister for Children and Youth Affairs, Deputy Zappone, but to no avail. I would like the Deputy Leader to ask the Minister to come to the House for a debate on what is happening in the context of providing care and homes for young people. It is not good enough that an 18 year old can leave care and be put out on the streets.

Senator Paul Gavan: I commend the Irish Congress of Trade Unions on organising the Raise the Roof protest today. I think it will be a momentous protest and I am looking forward to taking part in it. I acknowledge the fact that all of us on the left are co-operating today. Sinn Féin, which is the leading party on the left, the Labour Party, the Green Party, the Social Democrats and Independents on the left are all behind this. We need to think about the potential the left has when it works together and we should focus on what we have in common, rather on what divides us. We should all agree on something as regards next week's budget before it takes place. We all know there is a crisis in child care and that budgets have not addressed

the crisis to date, either for parents who have to pay for it or workers in the sector. We have a simple proposal in our alternative budget, which has been costed by the Department of Finance. We could raise the pay of every worker in the child care sector to a living wage of €11.90, which would immediately address the crisis in terms of turnover of staff and would give hope to the workers in the sector. It would cost just €15 million. For years my union, SIPTU, has been campaigning for a sectoral employment order for child care workers and this is what we need to have. It will not happen immediately but our proposal could happen immediately. It is the smallest of asks but it would make a huge difference, both for the workers involved and for the sector. I call on the acting Leader and on Fianna Fáil to acknowledge that it is a reasonable proposal and has been costed and to get behind it to make sure it is in next week's budget. Let us do something today that will stand to those child care workers. They are always forgotten about when we talk about child care and its costs

Senator Frank Feighan: Yesterday morning I attended breakfast at a fringe event of the Conservative Party conference, while a week before I was at a breakfast for a fringe event of the British Labour Party conference. I was very concerned to hear statements that the Good Friday Agreement could be changed. The Irish Government will stand up for the Good Friday Agreement and it is not up for negotiation. We want a good result in the Brexit negotiations and we look forward to proposals being put forward by the United Kingdom in the coming weeks. However, it is a very difficult time and I hope the negotiators on all sides can come up with some solution.

An issue concerning the Irish diaspora was raised with me. There is talk of a relief road just off junction 6 of the M42, close to Páirc na hÉireann in Birmingham. This will cause huge problems to the Warwickshire county board. It has gathered 12,000 signatures and I ask the Irish Embassy and Minister for Foreign Affairs to liaise with their UK counterparts to ensure these people have a voice in this matter. They are very concerned but they are hopeful that a solution will be identified. My good friend and colleague Conor McGinn, the Labour Party MP for St. Helens North and chair of the all-party group of the Irish in Britain, has asked me to raise it. I wish to show some solidarity with our colleagues in the UK and hope a solution will be found so that Páirc na hÉireann will not be impacted by these proposed works.

Senator Aidan Davitt: I agree with Senator McDowell's sentiments about the march today. I am on record from two and a half years ago when the then Minister, Deputy Coveney, spoke here, as saying his plan was doomed to fail before it started. This was mainly because of the lack of specific numbers. We had to tell each council to build a certain amount of social housing units because without a target they will not know what to do. They muddled along and eventually got an inventory of the lands they held but the single biggest disconnect has been the building of social houses, which the Government has totally neglected. Until it starts doing this we will go nowhere with this issue. Talking about rent guides, rent caps and pressure zones is all a load of rubbish as the market will do what the market will do. Social housing is where the problem started and social housing is where the problem will finish.

With the budget on our doorstep we should look at the constructive use of co-operative organisations which have had great success in Britain, particularly on the outskirts of London in places such as Kent. Villages in rural Ireland have been cut adrift, although this is not all down to Government policy. Rural Ireland has to be sustained and the co-operative model could progress that and keep open the local shop, the local newsagent, the local coffee shop or public house. I implore the Minister to make funding available for co-operative activity in rural Ireland so that we do not leave our villages to the wolves. If there are grants for these places the

communities will come together and make them a success

Senator Pádraig Mac Lochlainn: Hear, hear.

Senator Victor Boyhan: I organised a meeting of MS Ireland in the AV room today and there was a huge attendance so I thank all the Deputies and Senators who were there. I ask everyone in the Seanad to use their contacts, within and outside political parties, to reinforce the call made by MS Ireland on the Ministers for Finance and Health for €600,000 to sustain a full 52-week respite care service. The MS Ireland care centre offers a range of therapeutic and neurological services and it is an important organisation. It is not a big ask. I acknowledge the attendance of the Minister of State at the Department of Health, Deputy Finian McGrath. We should impress upon the Minister the need for this money. It is a worthy cause and should be supported.

Senator Michelle Mulherin: Earlier this week I met a number of young consultants who were working in our public hospital in Castlebar. They outlined an issue that gives me great cause for concern because of the ramifications for our health system. It is basically a matter of pay equality. After 2012, all new consultants were on 30% less than their counterparts registered before 2012. This means younger consultants are working alongside people registered before 2012 for significantly less remuneration. On top of that, numerous locums are being brought in to fill vacancies or cover, and they are on significantly more money than these young consultants, notwithstanding the fact they are less qualified and not registered or qualified in the same fashion as the younger consultants. These locums are brought in with any walk of life but it is pretty much an industry at this stage because of the number of vacancies across different disciplines for consultants. I know there are vacancies in Mayo University Hospital in Castlebar and it is the case throughout the country.

I am particularly concerned as in just a few years there will be senior consultants and surgeons in Castlebar who will retire so how will we fill these positions? As I understand it, it costs €100 million to pay locums. We need to look at a better way to spend money and retain our Irish-qualified doctors and consultants in the system. If the matter is not tackled now, the problems will only get worse and I am worried about my local hospital. I am sure that throughout the country people will be worried about their own acute hospitals. We need to act now and I ask that the Minister for Health be brought in to discuss this, along with a number of other pressing health matters.

Senator Pádraig Mac Lochlainn: I have raised the following matter a number of times in this Chamber. I raised it as a Commencement Matter and I will raise it again today with genuine and deep regret. It is the matter of the three-school campus for Buncrana in County Donegal. We have two secondary schools and a primary school. We have Crana College, which is a fantastic school but it is packed to the gills. It is using space that should be for physical education to educate in prefabs. It is completely unacceptable. Gaelscoil Buncrana and Coláiste Chineál Eoghain are on community development sites and whereas people are very grateful to be able to use them, they are not appropriate for children's education.

Many years ago - over a decade at this stage - the boards of management of those three schools came together and generously agreed to go for a three-school campus, meaning there would be one location for all three schools. One would have thought it was a straightforward proposition. Initially the vocational educational committee in Donegal was tasked with this and, more recently, it was Donegal County Council on behalf of the Department of Education

and Skills. Yet again, the same sites have been identified in the new process, and there have been negotiations on the site for years. There is no deadline. What happened in recent days is truly shocking, as it has been confirmed that the site has been sold to a private sector third party. That has left a process that was apparently close to conclusion in complete disarray, despite the parties waiting on this for more than a decade.

Donegal Oireachtas Members have requested a meeting with the Minister, Deputy Richard Bruton, but we have not heard from his office about the meeting being confirmed. This is an urgent matter. The boards of management acted in good faith. They did not bring people out in the streets or protest. They have acted patiently and in good faith, and they have waited for the deal to be done. Now the entire deal is up in the air. The Minister and the Department of Education and Skills must answer serious questions about what has gone wrong and they must reassure us that a solution will be forthcoming immediately. I ask the Deputy Leader to relay to the Minister the need to meet Donegal Oireachtas Members urgently and find a resolution to this.

Senator Keith Swanick: Recent information from Galway City Council demonstrates that more than 150 lifesaving buoys are stolen from Galway city every year. We know it is not a problem unique to Galway and Cork City Council has a similar problem. It had to replace 300 lifebuoys last year due to theft or damage. This forces the State to replace these lifebuoys at great cost. In 2015, a 15 year old boy, Caolan Seoige-Webster, got into trouble when he went swimming with friends in Athlone, County Westmeath. The youngster's friends ran to get a lifebuoy from the station but, unfortunately, it had been stolen the night before and Caolan lost his life.

The Minister for Rural and Community Development, Deputy Ring, spoke about this vandalism in County Galway and appealed to the public to help gardaí clamp down on lifebuoy vandals by reporting any incidents they witness to the Garda. However, it is not tenable to deal with these types of crime under the Criminal Damage Act 1991 any more. The thugs who damage lifesaving equipment need to know they will be dealt with harshly. I disagree with the Minister, who has said the offences are already provided for in legislation dealing with criminal damage and theft in a general way. The penalties set out in the Life Saving Equipment Bill 2017, which I drafted, would send a clear message to these thugs that they will not get a slap on the wrist but rather a significant fine and the very real possibility of up to five years in prison. I ask the Deputy Leader to make it a priority to bring the Life Saving Equipment Bill 2017 before the House for Committee Stage. I would like an update on when that may happen.

Senator Rónán Mullen: I received my booklet from the Referendum Commission this morning relating to the blasphemy referendum, although I have not had time to look at it. I am sure it is fine. I have raised the issue of the scandalous waste of €3 million of public money in running a referendum to solve a problem that simply does not exist. We heard from our colleague, Senator Boyhan, about the presentation from MS Ireland. I made it along to the end of that fine presentation. The organisation is seeking €600,000 to ensure year-round running of its respite care service, which is a fifth of that €3 million. That is what could be done with that kind of money instead of wasting it on pointless referendums.

This morning I wanted to raise the matter of elderly care on foot of disturbing information recently released by HIQA. Deputy Fergus O'Dowd in the other House got a report indicating serious deficiencies in care centres for disabled and elderly citizens. It indicates 51 disability centres were threatened with closure last year, of which three were shut and 18 showed suf-

ficient improvement in care. This report raises serious questions that need to be addressed by the Minister about the management of abuse allegations within the centres. What is to happen with the 30 disability centres operating in spite of HIQA concerns about the standard of care for which no sufficient improvement has been reported?

We must learn what are the procedures in place to ensure these centres come into line with HIQA guidelines in a prompt manner, and what happens if these centres are unable to show improvement? How long are people with disabilities expected to stay in or use these centres if they are not in line with HIQA guidelines? In the reports for each centre, dates of compliance are listed for each breach of regulation. For centres highlighted by HIQA as having serious deficiencies, what period is allowed and how long do these centres have to operate in an inadequate fashion before they are finally shut? Does HIQA have enough funding and resourcing to monitor all this? We cannot just say that because this information has come out, it shows that things are being monitored and all is well.

One report into a care facility in Dublin, the CASA breakhouse, recorded that eight of the nine action points from the previous visit were reissued to the centre with serious concerns over oversight arrangements. There was an absence of fire safety training and wholly inadequate safekeeping of medicines. People need to know how the Government is responding or has responded to the closure of the three disability centres and if there are contingency plans if some of the remaining 30 disability centres have to close because of non-improvement. Have the services of the three centres already closed been reallocated?

There has been a succession of scandals in recent years regarding the care of elderly and disabled citizens and I do not need to recount them here. This is very worrying and the Minister must urgently investigate the matter to ensure services are adequate and people are not at risk.

Senator Martin Conway: There are two matters I wish to raise with the Deputy Leader. There is an award from the National Adult Literacy Agency relating to plain English. Plain English is a concept that has operated internationally. Departments and organisations of a similar vein are encouraged to use plain English in their documents and pamphlets so that more people can understand and get the context of what is being proposed or described. English can often be written in a convoluted manner and while some people are able to digest it, others cannot. To ensure Government and other documentation is accessible to as many people as is possible, plain English is desirable. In the good old days when there was a decent President in the United States, former President Obama introduced a plain writing Act which has been of enormous benefit to people with literacy challenges in the United States. The awards are being promoted. I encourage people who come across documents that are complex to ask that they be rewritten in plain English.

The second issue is one I have raised previously with the Leader, namely, gazumping. As the economy improves and house prices spiral, once again buyers who have paid a booking deposit and sale agreed a property are having deposits returned to them a few weeks later and the properties are being put back on the market at increased prices. In most other countries, this is illegal. It should be illegal here too. I suggest that gazumping should be outlawed as part of the suite of measures to deal with the housing crisis affecting so many families.

Senator Niall Ó Donnghaile: Go raibh maith agat, a Chathaoirligh, agus a Leas-Cheannaire. Ba mhaith liom ábhar a lua atá luaite ag comhghleacaithe cheana féin. I rise to express what is, I am sure, a shared concern at the public utterances of the leader of the DUP yesterday

in regard to the Good Friday Agreement. As has been stated by colleagues across the Chamber, the Good Friday Agreement is an international, binding agreement. It is not up for negotiation in the context of Brexit, nor should it be. It is only by dint of the will of the people of Ireland we can subject that agreement to change.

I understand why Government colleagues and Ministers who have come to this House have erred on the side of caution in regard to the Brexit negotiations. I appreciate that they have been sensitive to the live nature of those negotiations. However, as I and other colleagues have said, the Good Friday Agreement is not up for negotiation and we should not be behind the door in defence of it.

I note and commend the remarks of the Taoiseach and the Tánaiste yesterday in defence of the Good Friday Agreement. It is important to remind Members that when we hear such dangerous, reckless public utterances, be it those uttered yesterday about the Good Friday Agreement not being sacrosanct or it being open to change, or today's latest statement about blood red lines in regard to Brexit, not only should we remain united in our constitutional obligations to the Good Friday Agreement and its delivery in full but, politically, we should defend the people North and South who mandated all of us to live up to and fully implement the agreement in its entirety.

Last week, I called for a debate on Brexit. There is also merit in having statements on the Good Friday Agreement and the importance of it such that the Government can reiterate its position in defence of the agreement in order that we can move forward. I ask that the Deputy Leader schedule that debate.

Senator Robbie Gallagher: Today I raise the current crisis within the Defence Forces. Yesterday, I listened to Mr. Gerard Guinan, general secretary of PDFORRA, outline the extent of this crisis at the PDFORRA annual conference in Castlebar, County Mayo. He spoke of how the Minister of State had given a strong commitment to PDFORRA that the strength of the Defence Forces would not fall below the level of 9,500. I am disappointed to say that this commitment has fallen 600 short such that the current strength of the Defence Forces is 8,900. Members are walking away from the Defence Forces in droves. This year, 173 of them paid a large amount of money to walk away from the Defence Forces. In 2017, over 700 people left the Defence Forces. The Defence Forces are in crisis. PDFORRA recognises this crisis and the wives and partners of Defence Forces members recognise it is a crisis but, unfortunately, the Minister of State and the Government refuse to accept it. I ask the Deputy Leader to arrange for the Minister of State, Deputy Kehoe, to come to the House for a discussion on this important issue.

Yesterday, two reports on the North-South interconnector were published, one of which examined the technical feasibility of undergrounding the cables while the other examined compensation levels for those affected. I am not surprised at the outcome as I have spoken in this House on several occasions about the credibility of these two reports. As far as the three affected counties - Monaghan, Cavan and Meath - are concerned the credibility of EirGrid and the Department on this issue is in tatters. I call on the four Ministers currently living within those three counties to listen to what the local people are saying. As far as they are concerned, there will be no pylons built on their lands. I plead with the Ministers concerned to listen to the people and to bring their views back to their Cabinet colleagues.

Senator Catherine Noone: I thank all Senators who raised issues on the Order of Busi-

ness. Senator Ardagh raised the issue of crime and highlighted a number of worrying statistics, particularly in the area of sexual offences. They are frightening statistics, as far as I am concerned. I do not know when mandatory sentencing will be introduced but it is something in which I would be very interested. I agree with Senator Ardagh that it is necessary. The Senator also expressed sympathy to the family of a lady who was killed tragically in her constituency. We all extend our sympathies to the family concerned.

Senator Lawless raised the important issue of organisations that support the Irish diaspora abroad and he spoke very eloquently about the services that they provide to many vulnerable people and, in particular, the undocumented. There is great uncertainty among the undocumented in the US under the Trump Administration, which is very worrying for individuals on a daily basis. It is vital that the Department of Foreign Affairs and Trade increases the funding to those worthwhile organisations.

Senator Conway-Walsh and others raised the issue of the Good Friday Agreement. We are all at one in that regard. As stated by Senator Ó Donnghaile, the Taoiseach and the Tánaiste have been very strong on the issue. Ms Arlene Foster, MLA, and her hard core DUP supporters are on a solo run. Nobody on the island of Ireland supports what she said. The Good Friday Agreement is internationally recognised as having been a success and it is not up for negotiation.

Senator Ruane raised the housing crisis. Homelessness is one of the greatest challenges facing this Government. It goes without saying that nobody wants to see people homeless. That is why there is a massive social housing programme under way at the moment. Under Project Ireland 2040 the Government is committed to providing 100,000 new social homes over the next decade. Since 2016 more than 15,000 new social homes have been provided. We are on track to have almost 8,000 new social homes provided this year, 9,500 in 2019, 11,000 in 2020 and more than 12,000 in 2021 and we are committed to keeping the level of new social home provision at 12,000 per annum thereafter. This is a level of social housing provision that is unprecedented in recent decades. It is obviously very much needed and something to which the Government is committed. The Department of Housing, Planning and Local Government is working with local authorities to bring a number of additional hubs on stream in 2018, details of which will become available as projects are finalised by housing authorities. Given the continuing numbers of families presenting to homeless services, as well as the continuing use of hotels, early in January the Minister for Housing, Planning and Local Government commenced a rapid hub programme that will see additional family places added to existing hubs. Family hubs offer families living arrangements with a greater level of stability. All of the indicators are now showing some improvement but obviously it is still a monumental challenge and one which the Government is committed to meeting.

Senator Kevin Humphreys raised the related issue of regulating Airbnb. It is my understanding that an announcement will be made in that regard in a number of weeks. I was in touch with the Minister about that very issue yesterday and while he did not give me an exact timeframe, he said that there are variables relevant to the budget which he is trying to work out. I would expect an announcement very soon but if I get anything more concrete on that, I will pass it on to Senator Humphreys who has been raising this issue consistently in the House.

Senator Lombard raised the issue of beef prices and the beef forum that is taking place today. He spoke of how much commercial enterprises control the food environment including in the fruit and vegetable and tillage sectors. Food production in so many areas is very much

commercially driven. Labelling is important, not just from the perspective of knowing the source of food but also in terms of knowing who got what along the way. That would be very helpful because some supermarkets drive down the prices so much that it is just not sustainable for producers to continue producing.

Senator Murnane O'Connor referred to the leaving certificate and the State Examinations Commission. I was also shocked to see that the case involving a student from Wexford went as far as it did and that she had to go to the High Court. It is simply not good enough. Senator McDowell also raised the homelessness issue and the supply of social and affordable housing. His point was highly appropriate and I have already addressed the issue in my response to Senator Ruane. Senator McFadden raised the issue of young people in State care. She spoke about those leaving State care at 18 being put out on the street, which is appalling. It raises the question as to how we handle that type of situation and what guidance those young people are given as they approach their 18th birthday. It would be worthwhile having a debate in the House on the matter with the Minister for Children and Youth Affairs, Deputy Zappone. I will ask the Leader to arrange such a debate sooner rather than later.

Senator Gavan raised the issue of childcare, on which I have done some work in recent years. It is an issue that comes up all of the time because parents are finding it very difficult to afford childcare. It is regrettable that on the last occasion there was an increase in the minimum wage, the cost was passed on to those who were procuring childcare services. At the end of the day, childcare is one of the worst paid sectors and getting the balance right is difficult. It is an area that has been neglected traditionally. In fairness to Fine Gael, it was the first party in government to put in place a dedicated Minister for Children and Youth Affairs. Progress has been made in the area but I and many of my Fine Gael colleagues would agree that a lot more needs to be done. Obviously there is a balance to be struck between the rights of workers and those who need childcare services. I hope the Minister will be mindful of that when increasing childcare supports. Hopefully there will be some positive announcements in that Department in the budget.

Senator Feighan raised the issue of Brexit and Páirc na hÉireann. I agree with his comments on the latter. It does seem like a very worthwhile organisation that is deserving of support. It is very supportive of the Irish in the UK, in the same way as similar organisations are supportive of the Irish in the US, as outlined by Senator Lawless. Senator Davitt raised a couple of issues, including homelessness which I have already covered. On rural Ireland, it must be remembered that there is a Minister for Rural and Community Development which demonstrates the Government's commitment to rural Ireland. If we manage to curb the trend towards urbanisation, we will be the first country in the world to do so but that is not to say that we should not be trying to ensure that rural areas are well supported. The co-operative idea is a good one and if money is available in the budget for that, it should be supported.

Senator Boyhan referred to Multiple Sclerosis, MS, Ireland and I congratulate him on organising an event in the AV room today. I agree that €600,000 does not seem to be a lot to continue that service and I hope that the current level of funding will be maintained in the upcoming budget. Senator Mulherin raised the issue of pay equality for medical consultants, which is a huge issue. She referred to the fact that some locum doctors are being paid more than consultants who qualified after a certain date. It is a very hard pill to swallow for people who have so many choices internationally in terms of where they can work. It is no wonder that we are finding it difficult to retain consultants, especially those at a certain qualification level.

Senator Mac Lochlainn raised the issue of the three-school campus in Buncrana. He gave a very articulate explanation of how that situation has evolved. While I cannot comment on it, I will relay the Senator's concerns to the Minister when I meet him later at the Fine Gael parliamentary party meeting. I am sure the Senator's concern is shared by the Minister of State at the Department of Culture, Heritage and the Gaeltacht, Deputy McHugh, who would also be keen to see the meeting referred to by the Senator taking place. I will certainly relay Senator MacLochlainn's desire for the meeting to take place as soon as possible to the Minister. It seems entirely reasonable that the Donegal Members of the Oireachtas would ask for such a meeting.

Senator Swanick asked about the status of his Lifesaving Equipment Bill, which sounds like very good legislation. I will find out when that Bill is due to come before the House and ask the Leader's office to respond to the Senator on that. It is a difficult crime to understand and is probably mostly perpetrated by vandals who do not know any better. Certainly, promoting a greater awareness of the harm caused by damage to lifesaving equipment would be a good idea, in tandem with legislation like that referred to by Senator Swanick.

Senator Mullen raised the issue of the forthcoming blasphemy referendum. It is important to say that if it was not being held with the presidential election, it would cost considerably more. While it may not be a day to day problem in most people's lives, many people feel that it would be preferable for it not to be in the Constitution. Elderly care is another issue which Senator Mullen raised in the context of the publication of a report on the matter. It is an important issue and one which we should debate in the House. Indeed, it is too serious an issue not to be discussed in more depth with the Minister in this House as soon as possible. All of us abhor the findings of the report, much of which was so difficult to read. Senator Mullen is right to raise it in this House and I will suggest to the Leader that we have a debate on it sooner rather than later.

Senator Conway raised the plain English initiative. Lawyers and many other professionals are guilty in this regard because they believe that if they express something in verbose language, they will sound like they know what they are talking about whereas there is a greater skill in being able to put across a complicated idea in simple language that people can understand. In that sense, the initiative is worth highlighting. Senator Conway also raised the issue of gazumping which I thought was illegal. If not, clearly it should be and I suggest that the Senator consider drafting legislation on the matter.

Senator Ó Donnghaile referred to the Good Friday Agreement and the Brexit negotiations. We should have a debate on Brexit - possibly with a discussion on the Good Friday Agreement. It would be timely. It never seems as though we are going to be finished with or tired of discussing Brexit because it is just so important to us. A further debate on the issue in the next few weeks would be a good idea.

Senator Gallagher referred to the Defence Forces. The Chief of Staff of the Defence Forces has described what is happening as a challenge, not a crisis. Nevertheless, there are significant problems. I think the Minister for Defence should come to the Seanad to discuss this issue. Senator McFadden tabled a Commencement matter in respect of this issue last week and I know that, along with Senator Craughwell, she raises it consistently. It is something we should discuss in the House in the near future. It is an issue that will not go away and that clearly needs to be dealt with.

Order of Business agreed to.

Judicial and Extrajudicial Documents in Civil or Commercial Matters: Motion

Senator Catherine Noone: I move:

That the proposals that Seanad Éireann approves the exercise by the State of the option or discretion under Protocol No. 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, to take part in the adoption and application of the following proposed measures:

(i) Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1206/2001 of 28 May, 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters,

a copy of which was laid before Seanad Éireann on 6 July, 2018; and

(ii) Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No. 1393/2007 of the European Parliament and of the Council on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents),

a copy of which was laid before Seanad Éireann on 21 June, 2018,

be referred to the Joint Committee on Justice and Equality, in accordance with Standing Order 71(3)(k), which, not later than 11 October, 2018, shall send a message to the Seanad in the manner prescribed in Standing Order 75, and Standing Order 77(2) shall accordingly apply.

Question put and agreed to.

Mental Health (Renewal Orders) Bill 2018: [Seanad Bill amended by the Dáil] Report and Final Stages

Acting Chairman (Senator Gerry Horkan): This is a Seanad Bill which has been amended by the Dáil. In accordance with Standing Order 148, it is deemed to have passed its First, Second and Third Stages in the Seanad and is placed on the Order Paper for Report Stage. On the question “That the Bill be received for final consideration”, the Minister may explain the purpose of the amendment made by the Dáil. This is looked upon as the report of the Dáil amendment to the Seanad. The only matter, therefore, which may be discussed is the amendment made by the Dáil. For Senators’ convenience, I have arranged for the printing and circulation of the amendment. Senators may speak only once on Report Stage.

Question proposed: “That the Bill be received for final consideration.”

Acting Chairman (Senator Gerry Horkan): I call on the Minister of State at the Depart-

ment of Health, Deputy Jim Daly, to speak on the subject of the amendment.

Minister of State at the Department of Health (Deputy Jim Daly): I am returning to the Seanad to the Dáil with an amendment to section 4 of the Mental Health (Renewal Orders) Bill 2018, proposed by Deputy Buckley of Sinn Féin, which was accepted by the Dáil yesterday. I am satisfied that this amendment brings an additional level of clarity to the text of the Bill. As this clarification relates to the new right of review by the patient, I am happy to ask this House to agree this amendment. Again, I thank all Senators for their co-operation.

Question put and agreed to.

Question, “That the Bill do now pass”, put and agreed to.

Mental Health (Renewal Orders) Bill 2018: Motion for Earlier Signature

Senator Catherine Noone: I move:

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

Senator Máire Devine: Do we get a chance to speak on this?

Acting Chairman (Senator Gerry Horkan): No. It is done now. I might indulge the Senator for 30 seconds but I am not supposed to do so.

Senator Máire Devine: If the Acting Chairman is not supposed to, I would rather not. I like to stick to the rules. I had a great speech organised.

Senator Alice-Mary Higgins: Senator Devine indicated that she wanted to speak.

Acting Chairman (Senator Gerry Horkan): I did not see her indicate.

Senator Alice-Mary Higgins: She did so at the end of the debate on the Bill.

Acting Chairman (Senator Gerry Horkan): There was no opportunity at the end. There was an opportunity before the end. However, once the end is reached, that is it.

Question put and agreed to.

Sitting suspended at 12.45 p.m. and resumed at 1 p.m.

1 o'clock

Data Sharing and Governance Bill 2018: Report and Final Stages

Acting Chairman (Senator Diarmuid Wilson): Before we commence, I remind Members that a Senator may only speak once on Report Stage, except for the proposer of an amendment who may reply to the discussion on it. Each amendment must be seconded. Amendments Nos. 1 and 83 are related and will be discussed together.

Government amendment No. 1:

In page 7, line 9, after “Board;” to insert “to amend the Social Welfare Consolidation Act 2005;”.

Minister of State at the Department of Public Expenditure and Reform (Deputy Patrick O’Donovan): We had a good discussion on Committee Stage on a number of different issues relating to the Bill. We have reflected on much of what was discussed and, in particular, on amendments raised by Senators Higgins and Ruane. I have made many amendments to the Bill as a result. There will be some other amendments, which I will need to take to the Dáil and, as a result, return to the Seanad. I have been able to accommodate many of the amendments proposed on Committee Stage. I have reflected on the language of some and there are some that, unfortunately, I cannot accept. It will become clearer as we go through this Stage but I have taken much on board. I thank the Members for their contributions.

Amendment No. 83 creates a new section of the Bill providing for the addition of the National Shared Services Office, NSSO, to the list of public bodies specified under the Social Welfare Consolidation Act 2005 to collect and process the personal public service number, PPSN. Amendment No. 1 is a consequential technical amendment to the Long Title of the Bill to reflect the change. The NSSO currently uses the PPSN to provide human resources, pensions and payroll services to the Civil Service. It relies on the same lawful basis that all organisations, public or private, use to provide these services to staff. NSSO functions are currently being expanded to include the processing of financial transactions for the Civil Service, Departments and offices. Many of the grant schemes the NSSO will be expected to carry out processing on will utilise the PPSN, where appropriate, where they involve applications, claims and payments. To ensure the NSSO is able to fulfil this expanded remit and to use and process the PPSN where this is required, there is a need for the office to be made a specified body under the Social Welfare Consolidation 2005 Act. I ask the House to support the amendments.

Senator Alice-Mary Higgins: I will comment briefly on this because it is a new amendment. I do not have a counter amendment. Concern has been raised about the single customer view dataset associated with the public services card, PSC. The Minister of State referenced the PPSN but the single customer view dataset is wider than that. The issues are subject to some debate around interpretation. I refer to special categories of personal data in the form of biometric information contained within the single view customer view dataset. That part of that information cannot be exchanged under this Bill because the largest part of the Bill explicitly excludes special categories of personal information. I will not oppose or call a vote on the amendments at this point, or perhaps I will just to deal with them technically. I realise I do not have a counter amendment. I am concerned, when we go towards the exchange, that it is not simply the PPSN. Can the Minister of State assure me that only the PPSN will be affected or will there be access to the single customer view dataset? This will create problems down the line, perhaps ones that can be dealt with in Dáil.

Deputy Patrick O’Donovan: To clarify, the full public service identity, PSI, dataset will be covered.

Senator Alice-Mary Higgins: Those issues will arise but I expect they can be debated in the Dáil.

Amendment put and declared carried.

Acting Chairman (Senator Diarmuid Wilson): Amendment No. 2 is a Government amendment. Amendments Nos. 2 to 9, inclusive, 16, 22 to 24, inclusive, 34 and 82 are related. Amendment No. 3 is a logical alternative to amendment No. 2. Amendment No. 8 is a logical alternative to amendment No. 7. Amendments Nos. 2 to 9, inclusive, 16, 22 to 24, inclusive, 34 and 82 will be discussed together.

Government amendment No. 2:

In page 9, between lines 24 and 25, to insert the following:

“Application of Act to special categories of personal data

5. This Act, other than *Part 5, Part 8 and Chapter 3 of Part 9*, shall not apply to special categories of personal data.”

Deputy Patrick O’Donovan: We had a lengthy debate on Committee Stage on the application of this Bill to the sharing of special categories of personal data as defined under Article 9 of the general data protection regulation, GDPR. While it has always been the intention that the legislation would not provide a general legal basis for the sharing of specific special category data, I acknowledge that the text of the Bill may not have been fully clear that this was the case. Accordingly, I propose an amendment to provide for the insertion of a new section that explicitly states that the Bill may not be used for the sharing of special category data. That was one of the points Senator Higgins raised.

There are also a number of consequential technical amendments to remove various references to special category data that will be rendered redundant by the insertion of the new provision. There are three exceptions to the prohibition on the processing of special category data in the Bill. The first of these relates to the processing of data under Part 5 concerning public service information. In some cases, it will be necessary to process special category data under these provisions, for example, to record if a public servant has retired on health grounds. The second relates to the personal data access portal. This is so that users of the portal will be able to see what, if any, special category data on them is held by public bodies. That was a point a number of Senators and I raised the last night. The third relates to Chapter 3 of Part 9 concerning the prescription of rules, procedures and standards for data management. That is also an issue we had much conversation on in the previous debate. Such best practice standards should also apply to special category data. Senator Higgins has tabled several amendments on the applicability of the Bill to special category data. Amendments Nos. 3 and 82 propose that section 64 apply to special category data. I wish to inform the Senator that section 64 is not concerned solely with data sharing. Rather it is concerned with how all of the public service manages all of its data, including special category data. We may have a need, for instance, to prescribe strong binding standards for the handling of sensitive data, such as health data. If this amendment were accepted, this would not be possible. This cannot be what the Senator intended and I ask her to withdraw these amendments as I cannot accept them.

Amendment No. 5 would have the effect of making section 38 of the Data Protection Act 2018 apply to special category data. Section 38 does not currently apply to special category

data so this would have a significant effect on the Data Protection Act.

Amendments Nos. 4, 5, 7, 8 and 9 are intended to exclude the application of specific sections of the Bill to special category data. These amendments are unnecessary, since the amendment that I am proposing to section 5 provides that the Bill does not apply to special category data, excepting for Parts 5, 8 and 9, for the reasons I have outlined and, given there is no need to keep restating that the Bill does not apply to special category data, I ask the Senator to withdraw these amendments.

Amendment No. 6 proposes that processing of special category data shall be subject to section 38 of the Data Protection Act 2018. I would like to inform the Senator that section 38 of the Data Protection Act relates only to the processing of “personal data” and does not provide a legal basis for processing special categories of personal data. Where special categories of personal data are concerned, the relevant provision under the Data Protection Act is section 49(b), which provides that subject to suitable and specific measures being taken to safeguard the fundamental rights and freedoms of data subjects, the processing of special categories of personal data shall be lawful where the processing respects the essence of the right to data protection and is necessary and proportionate, another issue raised here the last time we debated this, for the performance of a function conferred on a person by or under an enactment or by the Constitution. I appreciate that this is very technical but the debate the last night was technical. I apologise for going on a bit. This amendment could have the effect of amending the Data Protection Act to permit the processing of special category data under section 38. This cannot be what the Senator intended when she made this amendment and I ask her to withdraw it.

Amendments Nos. 7 and 8 proposed for section 6 relate to interactions with the Social Welfare Consolidation Act 2005. These amendments seek to clarify that any elements of the public service identity, PSI, data set that constitute special category data cannot be shared in accordance with this Act. From the outset, we have been clear that the Bill does not provide a general basis for the sharing of special category data. That is an important point. We are reinforcing this with the proposed amendment to section 5, which I am adding on foot of the Senator’s comments on Committee Stage. This means that in the event that any part of the PSI included special category data, it would not be lawful to share that data under this Bill.

Senator Alice-Mary Higgins: Can the Acting Chairman clarify whether we are also speaking to amendments Nos. 16, 22, 24, 34 and 82 in this group?

Acting Chairman (Senator Diarmuid Wilson): Yes.

Senator Alice-Mary Higgins: I thank the Minister of State and I acknowledge that there have been some significant steps forward on this, notably the provision in his amendment No. 2, which makes it clear that nothing in this Bill, except Parts 5 and 8 and Chapter 3 of Part 9 shall apply to special category personal data alleviates many of the amendments. Many of my amendments were submitted prior to the Government amendments. It is useful to see this. Several of my amendments which sought to address case by case the dangers of an inadvertent inclusion of special categories of personal data will no longer be necessary. That is very positive.

I have concerns about Chapter 3, Part 9. I addressed them here and that is why I propose that the Bill exclude special categories of personal data, not just from Parts 5 and 8 where I realise the case is strong in respect of pensions, in Part 5, and access to information on data breaches under Part 8. I do have some concerns on Chapter 3, Part 9, but I seek to address them

in a later amendment in a different way and have had some indication from officials that they may be interested in considering that in another way so I might not need to press it.

My concerns were that because Chapter 3, Part 9, included several measures in respect of the grounds on which the Minister might be promoting data sharing, it would be important and probably inadvertent, if it were to suggest that the Minister is promoting data sharing in order to encourage data sharing, that it would not include special categories of personal information. There is a separate issue because it is a tautological argument. I am sure it will be addressed. I will leave it for now.

I recognise that amendments Nos. 3, 4 and 5 are perhaps not necessary in this case. In terms of amendment No. 6 I want particularly to recognise this was one of my deepest concerns in respect of the special categories of personal information and it was the danger that there could be an exclusion from section 38 of the Data Protection Act which would affect special categories of personal information and, as the Minister of State mentioned, there are suitable and specific measures involved. I am happy to withdraw that amendment.

I will press amendment No. 7 because it is important. This is an ongoing debate between me and the Minister for Employment Affairs and Social Protection, Deputy Doherty, with whom I agree on several issues but we disagree on photographs and biometric data. I would like the definition from the GDPR included in this Bill. I am happy to leave amendment No. 9.

Amendment No. 16 is a Government amendment. There would be no point in pressing amendment No. 22 because it seeks to replicate the measures in the Data Protection Act for clear procedures where public interest is invoked. I realise that given the location of my amendment it is no longer applicable to this section and to the Bill because special categories of personal data are no longer covered under that section.

I urge my colleagues in Sinn Féin and Fianna Fáil who supported the insertion of this measure into the Data Protection Act to ensure there is a similar measure which states that the Minister when invoking public interest, needs to set out very clear reasons for that public interest, and that it is placed in the appropriate section when the Bill goes to the Dáil.

My final amendment in this group is amendment No. 82 and is perhaps no longer necessary given the wide exclusion of special categories of personal data offered by the Minister. I sincerely thank his officials for engaging with me on that. It will narrow and clarify the function of this Bill in a constructive way.

Deputy Patrick O'Donovan: I am accepting amendment No. 8 in the names of Senators Higgins and Ruane because it strengthens the language after the word "identity". Similarly with amendment No. 9, where the Senators have drawn attention to Article 9 of the GDPR, it strengthens the language and I am prepared to accept it.

To go back to some of the commentary on section 22, the main issue, which the Senators will appreciate, is we do not want in any way to compromise the independence of the data commissioner. I know this is not what is intended but it would have that unintended consequence.

I am happy to accept amendments Nos. 8 and 9.

Amendment agreed to.

Acting Chairman (Senator Diarmuid Wilson): Amendment No. 3 has already been dis-

cussed and cannot be moved because amendment No. 2 has been agreed to.

Amendment No. 3 not moved.

Amendments Nos. 4 to 6, inclusive, not moved.

Acting Chairman (Senator Diarmuid Wilson): The Minister of State has indicated that he will accept amendment No. 8. If amendment No. 7 is agreed then amendment No. 8 cannot be moved.

Senator Alice-Mary Higgins: On the basis of the Minister of State's clarification of his acceptance of amendment No. 8 I will not move amendment No. 7.

Amendment No. 7 not moved.

Senator Alice-Mary Higgins: I move amendment No. 8:

In page 10, line 3, after "identity" to insert the following:

"excepting such parts of that public service identity which constitute special categories of personal data".

Senator Rose Conway-Walsh: I second the amendment.

Amendment agreed to.

Senator Alice-Mary Higgins: I move amendment No. 9:

In page 10, line 5, after "Act" to insert "and compliant with Article 9 of GDPR".

Senator Rose Conway-Walsh: I second the amendment.

Amendment agreed to.

Acting Chairman (Senator Diarmuid Wilson): Amendments Nos. 10, 18 to 20, inclusive, and 35 to 37, inclusive, are related. Amendments Nos. 19 and 20 are physical alternatives to amendment No. 18. Amendment No. 20 is a physical alternative to amendment No. 19. Amendment No. 36 is a physical alternative to amendment No. 35. Amendments Nos. 10, 18 to 20, inclusive, and 35 to 37, inclusive, may be discussed together by agreement. Is that agreed? Agreed.

Senator Alice-Mary Higgins: I move amendment No. 10:

In page 10, line 8, to delete "*section 12(2)(a)(ii)(VIII)*" and substitute "*section 2(2)(a)(ii)(III) or (VIII)*".

Senator Rose Conway-Walsh: I second the amendment.

Senator Alice-Mary Higgins: What is the grouping?

Acting Chairman (Senator Diarmuid Wilson): Amendments Nos. 10, 18 to 20, inclusive, and 35 to 37, inclusive, are in this grouping.

Senator Alice-Mary Higgins: My concern is with regard to the only exemption to a specified body disclosing a person's public service identity information to another specified body.

The intention of the amendment is to expand the grounds not to be considered appropriate for the sharing of somebody's personal information with a specified body. Avoiding the financial and administrative burdens that would otherwise be imposed on a second public body or another person where the amount to be collected is mentioned. I recognise the Government has tabled its own amendment in this regard. Legal concern has been expressed at the highest European courts about the invoking of financial and administrative ease as the grounds on which personal information may be shared between specified bodies. The Government has tabled amendments with regard to avoiding a financial or administrative burden on the person. I recognise significant progress has been made in this regard because the Government now recognises that a financial or administrative burden for a body is not an adequate legal basis on which to share information and has reframed it to deal with financial and administrative burdens on a person. This is positive and I will support the Government's amendment in this regard.

I intend to press amendment No. 20. To make this meaningful, people need the option of being able to state they do not regard it as a financial or administrative burden to provide the information twice, and that it would be their preference to give each of the specified bodies the information separately rather than have them share it.

We cannot have an assumption that the preference of people is that their data would be shared between bodies without their explicit consent. They have to be asked. I do not go so far as stating they should be asked, which is what I would like to have included. I have tried to be reasonable and accommodate reasons of efficiency. I am simply looking to insert an opt-out so people can state they have given information to a particular public body and would prefer other public bodies that wish to use the information to ask them directly rather than having the information shared. It comes back to financial and administrative burdens. Some people will say it is convenient and wonderful that their data is shared between many bodies, that they do not have to think about it and that they have to be asked for it only once, but others will state that for them it is not burdensome to decide in each instance to give their information directly to a number of different bodies for the reasons and purposes they set out and to have control of their data. For some people it is more financially and administratively burdensome to trace retrospectively where their information has been exchanged. Some people will make a point of trying to track it.

I accept there is progress. I recognise the default measure will be an assumption that people are happy to have their information shared but I ask for a mechanism, and perhaps it is something that may be considered in the Dáil, to allow those probably quite few individuals who do not want their information shared without their knowledge to have the option to state they would prefer to engage directly with each body. It is a very small point but it is important for the dignity and element of choice of the person. This is with regard to amendment No. 20, which is the only amendment of particular concern to me in this grouping.

Amendment No. 35 makes the same point. In amendments Nos. 20 and 37 I have given two approaches and it would be good if the Minister of State was able to indicate whether one of the approaches is more amenable to him. In amendment No. 20, I suggest a person could give instruction that he or she does not regard collection of personal data directly by a public body as burdensome. In amendment No. 37, I suggest a mechanism might be provided to allow a person to whom a service is about to be delivered to give instruction that he or she does not regard collection of personal data directly as a burden. These are the two approaches and I am very happy to press only one. The Minister may have a suggestion as to how to address the issue but he will understand the point I am trying to get to.

Deputy Patrick O'Donovan: Government amendments Nos. 18 and 35 arise directly out of discussions we had with Senator Higgins on the previous occasion, and they clear up some of the issues.

On amendment No. 20, Senator Higgins referred to mechanisms that would be available to the individual. There is a right to object enshrined in the GDPR process. There is also a fairly protracted public consultation process that goes on well in advance of the agreements being set out. In addition, the public can avail of the data protection complaints process. One of the concerns - I have gone through this in detail with the officials in my Department and I know it would not be an intended consequence - relates to the fact that the genesis of the Bill is to allow for data sharing. We do not want to have a situation where every single individual would have to be contacted in advance of the data being used. and I know that is not what the Senator intends either.

All data sharing under the enactment of the legislation goes through a rigorous governance process which has been identified and which has been accepted by the House, which includes a public consultation inviting the public to make submissions on the proposed data sharing. Also under GDPR, the right to object applies, giving data subjects the right to object to the processing of their individual data at any time. A data subject may also lodge a complaint with the Data Protection Commissioner if he or she feels that his or her personal data is being processed inappropriately. The purpose is to remove the financial or administrative burden placed on them as a person. This is a positive thing for citizens as I am sure the House will agree. However, as I have outlined there is also ample measure in place for citizens to make an objection if they see fit. I ask the Senator to consider withdrawing amendment No. 20 on the basis of the thrust and the spirit of what is envisaged to be captured in it already being available through other mechanisms.

Senator Alice-Mary Higgins: As the Minister of State, Deputy O'Donovan made clear, there is a right to object, but I hope a better way of dealing with it will be found in the Dáil. This amendment is not simply about objecting to the processing of personal data because in many cases people do not object at all but they may object to an automatic mechanism being put in place as to how their data will be processed. People may say they have absolutely no problem with a sports authority or another body having their data but may want them to ask them individually. There is a letter in one of today's newspapers from a large number of ex-academics from Maynooth, Digital Rights Ireland, the Irish Council for Civil Liberties and Data Compliance Europe explicitly addressing the concerns about the automatic mechanism, the idea that one should not assume that people want to give their data once to the system and have it go on its journey forevermore. A mechanism will have to be found, not to object to the data use because in many cases people do not want to object to the data, but to object to the mechanism deployed. It may only involve a small number of people but the simplest way to address it is to put a measure in place for those involved.

I accept that my wording and my approach to this might not be perfect. It would neither serve the State nor the citizen well if the only means by which people can address what is in fairness a very small but, for many people, deeply personal concern, is through laborious journeys through our court system, through objections and the full mechanisms of the Data Protection Commissioner. Yes there are hefty complaint mechanisms in place but I think mechanisms of consent would be an easier way to deal with the issue.

I ask the Minister of State to reconsider my wording. I absolutely acknowledge that there

has been a shift in this area. If we say we are concerned for the individual, we need to follow through by allowing a person to express concern.

Deputy Patrick O'Donovan: I will accept Senator Higgins's suggestion that I reflect further on this in advance of the Bill going to the Dáil. I think the Senator understands the reason I cannot accept the amendments today. I noted the contents of the letter that was published in the newspaper. I hope that some of the clarifications that have been given here today on the existing legal mechanisms that are in place will ease the concerns of the academics who have voiced them.

I hope the Senator will appreciate the constraint I have. Further amendments along the line may address some of the points she has raised.

Acting Chairman (Senator Diarmuid Wilson): Before I proceed with the Bill, I wish to welcome Deputy Charlie McConalogue and his guests to the public Gallery.

Is Deputy Higgins pressing amendment No. 10?

Senator Alice-Mary Higgins: No. I will withdraw it.

Amendment, by leave, withdrawn.

Acting Chairman (Senator Diarmuid Wilson): Amendment No. 11 in the names of Senators Higgins and Ruane arises out of committee proceedings-----

Senator Alice-Mary Higgins: Apologies, have I missed my opportunity to press amendment No. 10?

Acting Chairman (Senator Diarmuid Wilson): Yes. Unfortunately I have moved on to amendment No. 11. Amendment No. 11 in the names of Senators Higgins and Ruane arises out of committee proceedings. Amendments Nos. 11, 17 and, 38 to 41, inclusive, are related. Amendments Nos. 40 and 41 are physical alternatives to amendment No. 39. Amendments Nos. 11, 17, and 38 to 41, inclusive, may be discussed together by agreement. Is that agreed? Agreed.

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

In page 10, between lines 14 and 15, to insert the following:

“(6) A specified body may not make presentation of a public service card or access to a person's public service identity the sole or exclusive basis by which a person may confirm their identity in order to conduct a transaction or access a service.”.

Senator Máire Devine: I second the amendment.

Acting Chairman (Senator Diarmuid Wilson): The Senator may discuss the other amendments that are grouped with No. 11.

Senator Alice-Mary Higgins: Amendments Nos. 11 and 17 relate to the concern about the public service card and the single customer view dataset. Again the measure we are looking to tackle here has become more important because we now have the Social Welfare Consolidation Act included in the rubric and it is now explicitly implicated in this Bill.

We have major questions around the public service card and legal concerns have been raised. There is a report on this, which is not yet published but due to be published under a section 10 investigation by the Data Protection Commissioner. There have been numerous stories during the summer since our last discussion, highlighting the very serious concerns, including potential legal concerns, on this matter. On that basis, amendment No. 11 is very reasonable. It simply proposes that while a public service card might be presented as a basis for conducting a transaction or accessing a service, it cannot be the sole or exclusive basis for so doing. While there are still question marks over this mechanism and a serious concern that has not been addressed, it should not be the case that it is the only basis on which a service user can be identified. One is effectively forcing people to comply because many of these services are vital. We have seen very positive movement from the Minister for Transport, Tourism and Sport in respect of the driver's licence because there was a situation whereby one could not access a driver's licence. In some cases a person's employment would be precarious if they could not drive unless the individual was willing to agree to the exchange of data or joining the single customer view dataset. This is again around the options for the individual. It is particularly important at a time when we cannot robustly stand up and say the single customer view dataset is adequately and completely to the satisfaction of the Data Protection commissioner in terms of the legal basis for sharing how information is stored. It may be the case that we get to that point, but at present we do not have that assurance. That is the basis for this amendment, which is simply saying if one wants to access a bus or other service, one should not have to have a single customer view dataset card as the only acceptable identification.

That causes a lot of distress for people. These issues can be abstract but they can be deeply personal as well, as we know from the large number of people who were distressed at having to get a PSC as a condition to attend college or access child benefit. This is particular to other bodies outside of the social protection system. So much for amendment No. 11. Amendment No. 17 effectively addresses the same issue.

I turn to amendments Nos. 38 to 41, inclusive,. Amendment No. 38 provides that the Minister will "have regard to whether provision is made for a person's right to verify their identify using an

alternative process". We have been told that the PSC is not an identity card. Surely there must be another mechanism by which a person can prove their identity. Amendment No. 39 is the Minister of States and I will respond when he has contributed.

Given the changes that he is making, I will not speak to amendments Nos. 40 and 41 yet. Amendment No. 40 will no longer be necessary if the Minister's amendment is successful, as I am sure it will be. I acknowledge that it represents progress, but it is not fully clear to me. I find it hard to see what it means. I was concerned about this Part of the Bill because it seems to suggest that in cases where information is stored in a base registry, the public body would be obliged to go to the registry to access the data and would not have other mechanisms or opportunities. I recognise that there has been a change. Perhaps the Minister of State can explain how this change addresses my concern, namely that there are instances in which the best practice is to gather information from a person. I am particularly thinking of some of the social and other services that may involve particular vulnerabilities. Sometimes the very act of asking for consent or information has an empowering and sociologically necessary function. I am genuinely not sure about this. I can see that the Government has changed it. I am not exactly sure how it addressed my concerns, and I apologise that I need clarification on that.

Finally, amendment No. 41 still stands. It is perhaps a little more bluntly worded. It inserts the wording, “other than where that information may be sought or collected on the basis of direct consent of the person or data subject”. There might be times when someone should be personally asked for a name or address, for example, for inclusion in a Christmas list or a therapeutic project. Whatever the reason might be, this allows for human engagement, which is one of the indicators of success for social work. It is quite technical. I apologise, but I am not clear on amendment No. 39.

Deputy Patrick O’Donovan: The Senator has raised some of the points I wished to raise about amendments Nos. 11, 17 and 38. The basic issue relates to the Social Welfare Consolidation Act 2005, to which the Senator has referred. It is pre-existing law, whether we like it or not. I cannot accept amendments that would be in direct conflict with provisions relating to the PSC set out in existing legislation.

In regard to amendment No. 39, which amends altering section 42, I note that the third last line of the amendment is the most important in figuring out what it is about - “the information so collected is collected for the purposes of enabling that public body to access information”. The information is an enabler. It is the first piece of data, accessed before the dataset is even compiled. It was referred to earlier as the key rather than the lock itself. It is the initiating piece of data, which allows the public body to collect the initiator, as opposed to the subsequent pieces of data that will be collected thereby.

Senator Higgins is correct about amendments Nos. 40 and 41. If amendment No. 39 is accepted, amendments Nos. 40 and 41 will be nullified. I appreciate the issues the Senator has raised about the PSC in the amendments. In respect of section 6, the Senator is proposing to provide that the card, or the underlying public services identity data associated with the card, cannot be “the sole or exclusive basis by which a person may confirm their identity in order to conduct a transaction or access a service”. Similarly, the Senator proposes to amend section 12 to provide that the data may be shared “as one non-mandatory means to verify the identity of a person”.

Amendments Nos. 38 and 41 provide for the person receiving the service to decide for themselves what is an appropriate means of identification. Current legislation clearly sets that out. Service providers must put in place necessary and proportionate requirements for identity verification to ensure services are provided to the right person and to protect personal data.

The Senator will appreciate that in light of the GDPR and the importance that Government places on the protection of personal data, it is more important than ever that we ensure the providers of public services are certain they are dealing with the correct people. This is only fair, given that in many cases it is not only a question of dealing with the right person but also one of dealing with large sums of the State’s money. That is an important part of the security with which the State wants to be surrounded. The State has invested significant money and resources in the PSC MyGovID and the underlying safe registration process and it continues to do so. It is a result of the safe registration process that the card and MyGovID are the most robust and assured means of establishing a person’s identity when he or she accesses a public service. In this context, it is a matter for each service provider to decide the most appropriate means by which it verifies a person’s identity. That is why I referred to the Social Welfare Consolidation Act 2005, because in that case it is identified. This should be necessary and proportionate to each service. I know we will discuss the words “necessary and proportionate” later. It is something the Senator referred to a lot. One never knows; there might be further good news. It is not ap-

appropriate to place a blanket restriction on how the PSC or public services identity data can be used to facilitate data protection. On that basis, I do not propose to accept the amendments and I ask for consideration to be given to their withdrawal.

Acting Chairman (Senator Diarmuid Wilson): Does Senator Higgins have anything further to outline on the amendments?

Senator Alice-Mary Higgins: I refer to amendment No. 11.

Acting Chairman (Senator Diarmuid Wilson): The Senator is entitled to contribute once more.

Senator Alice-Mary Higgins: I realise we have much to get through so I will not speak at length. Given that the Social Welfare Consolidation Act 2005 is referred to in this Bill, it is opened up to this suggested interpretation. Amendment No. 11 is compatible with that Bill. The Social Welfare Consolidation Act 2005 provides that there may be a requirement for the Minister to be satisfied. Amendment No. 11 complies with this requirement. It simply suggests that there may be other mechanisms by which the Minister may be satisfied.

There is no point in having the social welfare debate here. There are serious concerns around that. We need to be clear, because there is a misapprehension, that contrary to what anybody may have seen on the side of a bus, a significant incidence of identity fraud does not affect public services. There are instances of it. There have been one or two high-profile cases, which have been covered extensively. Error within the Department of Employment Affairs and Social Protection constituted a large and probably larger proportion of the concerns expressed in the reports. There are also more instances of data breaches. There are some instances, and I can see the Minister of State's officials passing him notes on some. However, the savings on identity fraud come nowhere near recouping the significant cost of the public services card, which I acknowledge is being investigated by other committees in this House.

I will press amendment No. 11 while recognising that amendments Nos. 40 and 41 fall.

Acting Chairman (Senator Diarmuid Wilson): We have noticed that there are several additional buses on the road in the past week, with a lot of data on their sides. I wonder if that is covered in this legislation. Is amendment No. 11 being pressed?

Senator Alice-Mary Higgins: Yes.

Amendment put and declared lost.

Acting Chairman (Senator Diarmuid Wilson): As amendments Nos. 12, 27 and 28 are related, they may be discussed together.

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

In page 10, to delete lines 24 to 32 and substitute the following:

“Data-sharing: meaning

8. (1) In this Act, “data-sharing” means the execution and operation of defined processes for the exchange of information between one or more entities for the purpose of supporting the delivery of statutory public sector services, or the execution of obligations under EU law.

- (2) The basis on which data sharing processes may operate include—
- (a) a case by case basis for the validation and verification of data,
 - (b) on a defined batch processing basis for the validation, verification, and updating of specific populations of data, or
 - (c) as once-off consolidation and integration of disparate data sets to form a new, shared, master data repository.”.

Senator Máire Devine: I second the amendment.

Senator Alice-Mary Higgins: I could debate at length the differences between what I am proposing in amendments Nos. 12 and 28 and the Government’s exact proposal in amendment No. 27. It is important to acknowledge that the Government has gone a considerable way towards clarifying the basis on which data is being shared, the impetus for data-sharing and the kinds of ways in which data is shared. For example, clarification has been provided regarding whether the information relates to individuals or to classes of data subject, and regarding whether it is being collected on a once-off or ongoing basis. I have sought to spell out a number of these issues in amendments Nos. 12 and 28. In light of the movement from the Government in this regard, I think I will withdraw amendment No. 28. Amendment No. 12 might involve duplication. I would like the definition of “data-sharing” that is set out in amendment No. 12 to be included in the Bill. I recognise that it is not in it at present. Maybe it can be considered. Amendment No. 12 proposes that “In this Act, “data-sharing” means the execution and operation of defined processes for the exchange of information”. I would like if that part of the amendment could be included in the Bill. I recognise that the rest of the amendment might not fit. For that reason, I am not going to press my amendments. I suggest that my colleagues in Sinn Féin and Fianna Fáil might take up the definition issue. I acknowledge the Government’s amendment and, on that basis, I will not pursue my amendment.

Deputy Patrick O’Donovan: Government amendment No. 27 reflects the discussion we had in this House on Committee Stage. As I do not accept the proposal in amendment No. 12 to alter the definition of “data-sharing”, I do not propose to accept the amendment. A simple definition of “data-sharing” is required here and that is what we have provided for in the text of the Bill. Section 12 sets out the purposes for which data sharing may be carried out. The wording proposed by Senator Higgins directly conflicts with that. I imagine that this is not what she intends. Amendments Nos. 12 and 28 are very similar. Amendment No. 27 certainly covers the intention of what was identified on Committee Stage. I suggest that it covers what is intended in amendments Nos. 12 and 28 without the unintended consequences of those amendments.

Acting Chairman (Senator Diarmuid Wilson): Senator Higgins has indicated that she does not wish to press amendment No. 12.

Amendment, by leave, withdrawn.

Acting Chairman (Senator Diarmuid Wilson): As amendments Nos. 13 to 15, inclusive, and amendment No. 79 are related, they may be discussed together.

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

In page 10, to delete lines 34 to 38, and in page 11, to delete lines 1 to 30 and substitute the following:

“9. (1) In this Act, “public body” is given the same meaning as a public body and a public authority as set out in section 2 of the Data Protection Act.”.

Senator Máire Devine: I second the amendment.

Senator Alice-Mary Higgins: This is a somewhat technical issue. I do not think there is a point in belabouring it. I know the Minister of State and his officials are very aware of the difficulties being caused by the inconsistency between the definition of “public body” in this Bill and the definition set out in the Data Protection Acts. There are public authorities and public bodies under the Data Protection Acts and there will be another definition under this data-sharing legislation. The effect of this will be that certain bodies which are authorities for the purposes of the Data Protection Acts will be public bodies for the purposes of this legislation. I feel that the potential for confusion exists. I appreciate that it might be difficult to unravel this one. This amendment is noting that and putting a marker down.

Amendment Nos. 14 and 15 are included in this grouping. There is concern about the fact that the definition of “public body” in this Bill includes commercial or private companies that may be contracted to deliver public services or functions. Amendment No. 14 attempts to ensure “the Minister will make and publish regulations on suitable and specific” measures to make sure it is not the case that commercial activities taking place within companies that have contracts for the delivery of public services, which will be considered to be public bodies under this Bill, are not suitably corrected. Amendment No. 15 seeks to address situations in which bodies that are considered to be public bodies under this legislation may also have commercial interests. It is the same concern.

I will let the Minister of State speak on amendment No. 79 because it is a Government amendment. I know he has looked at this key issue. I appreciate that it is difficult to reconcile the Data Protection Acts and the Bill before the House. I am very concerned about the commercial companies. This matter will arise at a later stage of this debate when we talk about the data governance board. I note that this Bill proposes to give the Minister the power to hire consultants, for example, in respect of the data governance board. We need to be very careful when commercial actors are operating in a public service delivery and public regulatory space.

Deputy Patrick O’Donovan: I will respond in simple language to what the Senator said in proposing amendment No. 13 about the difference between how public bodies are defined in existing legislation and in this proposed legislation. To put it simply, there must be a definition in this Bill to facilitate the sharing of information between body A and body B. That is why we have taken the approach we have taken. Otherwise, we could get into an even more difficult situation. If we were to provide for a loose definition of the bodies that are sharing information, organisations and public bodies that need to have data-sharing agreements might unintentionally fall outside the scope of it as an unintended consequence. I do not think that is something anyone would want.

The Senator is seeking to align the definition of a “public body” in this Bill with the definition that is already set out in the Data Protection Acts. I understand the logic of the Senator’s proposal and I do not disagree with it. However, I cannot accept it because of the language that is used in her amendments and the way in which they are constructed. The primary reason for the difference between the definition of “public body” in this Bill and the definition in the Data Protection Acts is the need for this Bill to specify a legal person or entity that can sign the data-sharing agreements. No similar requirement applies in the case of the Data Protection

Acts, which means that a different approach to the definition can be used. The two definitions do not have to be identical. The differences between them reflect the different requirements of both pieces of legislation. The important point here is that we are talking about sharing between body A and body B. In any event, the Data Protection Acts and the GDPR will continue to apply to all public bodies that come within the scope of this legislation and, therefore, will capture the issues to which Senator Higgins has referred.

In addressing amendment No. 14, I should point out that amendment No. 79 came out of the discussions we had on Committee Stage. I intimated at the time that I was prepared to come back and do something. In that context, amendment No. 79 proposes to amend section 64 of the Bill to allow the Minister to issue rules, standards and procedures in respect of “the processing of personal data by a public body designated in an order made under section 9(4)”. I believe this will have the effect the Senator is seeking here. I ask her to consider withdrawing her amendments on the basis of the context in which we had our previous discussions. Amendment No. 15 would have the perhaps unintended effect of excluding public bodies from data sharing in the furtherance of any commercial activities in which they may be involved. While I can see where the Senator is coming from with these amendments and I support the principle of what she is trying to achieve, there are a number of technical difficulties with the wording.

2 o'clock

For instance, commercial interests are not defined. I ask the Senator to withdraw the amendment, and I will propose an amendment with the same effect on Committee Stage in the Dáil. My amendment proposes an change to section 64. It adds a requirement that a Minister can issue rules, standards and procedures in respect of the processing of personal data by a public body designated in an order made under section 9(4). This will have the effect that the Senator is trying to achieve, and I ask her to consider withdrawing her amendment and supporting mine instead.

Senator Alice-Mary Higgins: I will support the Minister of State’s amendment and I recognise it as progress. My only concern is that it states the Minister may introduce regulation in this area but it does not require that regulations would be put in place, as my amendment would have done. That is still a concern and I imagine it might be taken up by others. Senator Devine will know that the difference between “may” and “shall” is important in many cases. I recognise, however, that this is significant progress and there will be capacity for regulatory measures to be put in place in this regard. I accept the Minister of State’s amendment and withdraw mine. I would also like to thank the Minister of State for indicating that he will look to reframe my other amendment on Committee Stage. On that basis, I will not press that either.

Amendment, by leave, withdrawn.

Amendments Nos. 14 and 15 not moved.

Government amendment No. 16:

In page 13, lines 31 and 32, to delete “(other than special categories of personal data)”.

Amendment agreed to.

Acting Chairman (Senator Diarmuid Wilson): Amendment No. 17, in the names of Senators Higgins and Ruane, arises out of committee proceedings. It has been discussed with

amendment No. 11. Is it being pressed?

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

In page 14, to delete lines 5 and 6 and substitute the following:

“(I) as one non-mandatory means to verify the identity of a person, where the first or second mentioned public body is providing or proposes to provide a service to that person, without prejudice to a person’s right to seek to verify their identity by other means;”.

Senator Máire Devine: I second the amendment.

Amendment put and declared lost.

Government amendment No. 18:

In page 14, to delete lines 9 to 12 and substitute the following:

“(III) to avoid the financial or administrative burden that would otherwise be imposed on a person to whom a service is being or is to be delivered by the first or second mentioned public body were the second mentioned public body to collect the personal data directly from that person;”.

Amendment agreed to.

Amendments Nos. 19 and 20 not moved.

Acting Chairman (Senator Diarmuid Wilson): Amendment No. 21, in the names of Senators Higgins and Ruane, arises out of committee proceedings. Amendments Nos. 21 and 30 are related and will be discussed together.

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

In page 15, line 4, to delete “body.” and substitute the following:

“body, and

(f) the sharing of personal data is necessary and proportionate.”.

Senator Máire Devine: I second the amendment.

Senator Alice-Mary Higgins: Amendments Nos. 21 and 30 relate to the issue of necessity and proportionality. One of the core requirements of the GDPR is that sharing be done in a way that is both necessary and proportionate in order that it does not exceed what is required. We debated these two points at such length on the previous Stage that we do not need to go over them again. The Minister of State has indicated progress on the inclusion of the concern of “necessary and proportionate” in the Bill. On that basis, I would like to hear from him before proceeding with these amendments.

Deputy Patrick O’Donovan: The Senator will be glad to know her efforts last night were not in vain. While she had reason to suspect I was trying to be obstreperous or difficult, I have taken on board what she advocated. Considering it is in line with other European legislation, I propose to accept amendments Nos. 21 and 30.

Amendment agreed to.

Acting Chairman (Senator Diarmuid Wilson): Amendment No. 22, in the names of Senators Higgins and Ruane, arises out of committee proceedings. It has been discussed with amendment No. 2. Is Senator Higgins pressing the amendment?

Senator Alice-Mary Higgins: I move amendment No. 22:

In page 15, between lines 5 and 6, to insert the following:

“(4) Where special categories of personal data are disclosed by one public body to another public body for reasons of public interest, regulations shall be made—

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

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

(5) The Minister or any other Minister of the Government shall consult with the Commission before making regulations under *subsection (4)*.

(6) The Commission may, on being consulted under *subsection (5)*, make observations in writing on any matter which is of significant concern to it in relation to the proposed regulations and, if the Minister or any other Minister of the Government proposes to proceed to make the regulations notwithstanding that concern, that Minister shall, before making the regulations, give a written explanation as to why he or she is so proceeding to—

(a) the Committee established jointly by Dáil Éireann and Seanad Éireann known as the Committee on Justice and Equality or any Committee established to replace that Committee, and

(b) any other Committee which that Minister considers appropriate having regard to the subject matter of the regulations.

(7) Regulations made under *subsection (4)* shall specify—

(a) the personal data that may be processed,

(b) the circumstances in which the personal data may be processed, including specifying the persons to whom the data may be disclosed, and

(c) such other conditions (if any) as the Minister or any other Minister of the Government, as the case may be, considers appropriate to impose on such processing.”.

I recognise that if I moved this it would be in conflict with an amendment that has been accepted in respect of the sections to which special categories of information apply. While I strongly believe in the spirit of this amendment, I will not press it at this time. It was originally a Sinn Féin amendment, supported by Fianna Fáil, and I hope it can be relocated constructively.

Amendment, by leave, withdrawn.

Government amendment No. 23:

In page 15, line 7, to delete “(1) This section applies to personal data, other than special categories of personal data.”.

Amendment agreed to.

Government amendment No. 24:

In page 16, lines 31 and 32, to delete “(other than special categories of personal data)”.

Amendment agreed to.

Acting Chairman (Senator Diarmuid Wilson): Amendments Nos. 25 and 26, in the names of Senators Higgins and Ruane, arise out of committee proceedings. The amendments are related. Amendment No. 26 is a physical alternative to amendment No. 25. They will be discussed together.

Senator Alice-Mary Higgins: I move amendment No. 25:

In page 17, to delete line 6 and substitute the following:

“16. (1) A data-sharing agreement shall be published and made available to any Oireachtas committee on request.

(2) An opinion of the data sharing-agreement by the Data Protection Commission must be published before the date of commencement of the agreement and made available to any Oireachtas committee on request.”.

Senator Máire Devine: I second the amendment.

Senator Alice-Mary Higgins: This relates to an issue of transparency. My concern is that currently line 6 states that the formal requirement in a data-sharing agreement is simply that it must be in writing. It certainly cannot exist in thought alone and, therefore, the requirement that it be in writing is good and clear but we need more than that. I am sure it is probably the intention, but the data-sharing agreement should not only be written but also published. The question then arises as to where it should be published, accessed and shareable. The proposals I make in these amendments are that it could be published and made available to any Oireachtas committee on request. For example, if a committee is dealing with local government and sport, a data-sharing agreement might be implied and the relevant committee should be able to access it. If there was a data-sharing agreement between an educational body and another body, the relevant committee would be able to access it and it would be made available.

I recognise that this will be pushed back. My original proposal had been that an opinion on each data-sharing agreement should be sought from the DPC and published before the date of commencement of the agreement, and made available to Oireachtas committee on request. I can anticipate the concerns there might be about that as I know the Government wishes to ensure the independence of the commissioner’s role. I am happy to review this but my intention is not that the commissioner would be consulted in advance of the data-sharing agreement, rather, that following the agreement between the public bodies, there should be an advance opportunity to give an opinion on it prior to its commencement. It will make the life of the DPC’s

office easier if it does not have to respond following commencement, and mistakes could be avoided. The commission will not be involved in the preparation of the data-sharing agreement but, following the conclusion of the agreement, it should be given the opportunity to express an opinion prior to commencement. If issues arise, we would anticipate the problem rather than retrospectively seeking to address it. My preferred version, therefore, is No. 25.

Amendment No. 26 has the same intent. It is a simple amendment relating to the publication of data-sharing agreements, but I am also happy if the Minister of State has another way to address that issue.

Deputy Patrick O'Donovan: During the early stages of the drafting of the Bill, officials in my Department had extensive engagement with the Data Protection Commission. My office took the view that it would not be appropriate for it to have a role in scrutinising at that point. I have no difficulty accepting amendment No. 26. I draw attention to section 60(2), which states that the Minister shall cause copies of the documents received by him or under subsection (1) to be laid before each House of the Oireachtas and to be sent to the board. It is already catered for, but I do not see a difficulty in accepting the amendment as it is proposed.

Amendment, by leave, withdrawn.

Senator Alice-Mary Higgins: I move amendment No. 26:

In page 17, to delete line 6 and substitute the following:

“16. A data-sharing agreement shall be published and made available to any Oireachtas committee on request.”.

Senator Máire Devine: I second the amendment.

Amendment agreed to.

Government amendment No. 27:

In page 17, between lines 26 and 27, to insert the following:

“(f) specify whether the impetus for the disclosure of information under the agreement will come from a data subject or a public body,

(g) specify whether, where information is disclosed under the agreement, the disclosure will be of information in relation to individual data subjects or classes of data subjects,

(h) specify whether the disclosure of information under the agreement will be on a once-off or ongoing basis.”.

Amendment agreed to.

Amendment No. 28 not moved.

Acting Chairman (Senator Diarmuid Wilson): Amendments Nos. 29 and 31 to 33, inclusive, are related and may be discussed together by agreement. Is that agreed? Agreed.

Government amendment No. 29:

In page 17, between lines 30 and 31, to insert the following:

“(h) include an undertaking by the parties to the agreement to comply with Article 5 of the General Data Protection Regulation in disclosing information under the agreement.”.

Deputy Patrick O’Donovan: Amendment No. 32 in the name of Senator Higgins is very similar to amendment No. 29, which arises out of Committee Stage proceedings. Amendment No. 29 provides that, as part of the data-sharing agreement, public bodies will formally undertake to share data in accordance with the principles of data protection in the GDPR. This was agreed on Committee Stage and I indicated that I would revisit the matter. I ask the Senator to reflect on the matter and withdraw her amendment.

The subject matter of amendment No. 31 is already provided for in section 18(1)(i), which requires a data-sharing agreement to “specify the security measures to apply to the transmission, storage and accessing of personal data in a manner that does not compromise those security measures”. Accordingly, the amendment is unnecessary and I ask the Senator to withdraw it.

I do not have a difficulty with amendment No. 33 because it is proposed in the context of GDPR. We discussed the matter to which it relates at length on Committee Stage. Without prejudice, it does not limit the right of a person or data subject in respect of any data controllers in the data-sharing agreement. I do not have a difficulty with that and I propose to accept the amendment.

Amendment agreed to.

Senator Alice-Mary Higgins: I move amendment No. 30:

In page 18, between lines 11 and 12, to insert the following

“(n) demonstrate necessity and proportionality of sharing.”.

Senator Máire Devine: I second the amendment.

Amendment agreed to.

Amendments Nos. 31 and 32 not moved.

Senator Alice-Mary Higgins: I move amendment No. 33:

In page 19, between lines 38 and 39, to insert the following:

“(6) This section is without prejudice to and does not limit the rights of a person as a data subject in respect of any or all data controllers in a data sharing agreement.”.

Senator Máire Devine: I second the amendment.

Amendment agreed to.

Government amendment No. 34:

In page 31, to delete lines 14 to 17.

Amendment agreed to.

Government amendment No. 35:

In page 31, to delete line 34, and in page 32, to delete line 1 and substitute the following:

“(b) avoiding the burden that would otherwise be imposed on a person to whom a service is being or is to be delivered by a public body if the information concerned was collected directly from that person, and”.

Amendment agreed to.

Amendments Nos. 36 and 37 not moved.

Senator Alice-Mary Higgins: I move amendment No. 38:

In page 32, between lines 26 and 27, to insert the following:

“(5) The Minister shall, when making an order under *subsection (1)*, have regard to whether provision is made for a person’s right to verify their identify using an alternative process.”.

Senator Máire Devine: I second the amendment.

Amendment put and declared lost.

Government amendment No. 39:

In page 33, to delete lines 32 to 35, and substitute the following:

“(1) Subject to *subsection (3)*, where the information contained in a base registry meets the qualitative requirements of a public body in respect of the purpose for which it intends to use that information, the public body shall not collect such information for that purpose from a source other than the base registry, save where the information so collected is collected for the purposes of enabling that public body to access information on the base registry relating to the information so collected.”.

Amendment agreed to.

Amendments Nos. 40 and 41 not moved.

Acting Chairman (Senator Diarmuid Wilson): Amendments Nos. 42 to 56, inclusive, are related and may be discussed together by agreement. Is that agreed? Agreed.

Government amendment No. 42:

In page 34, line 15, to delete “system,” and substitute “system”.

Deputy Patrick O’Donovan: These amendments, some of which are technical in nature, provide for an extension of the scope of the personal data portal so that it can be used as one means by which public bodies may communicate data breaches to data subjects in accordance with what is provided for under Article 34 of the GDPR. This is on foot of amendments proposed and agreed in principle at Committee Stage with a number of Members, including Senators Higgins and Ruane. I note that Senator Higgins has proposed similar amendments and I ask that she might consider withdrawing her amendments and accept those I am proposing.

Senator Alice-Mary Higgins: I thank the Minister for the amendments he has put forward. They address the concern we had, including that the data portal would be a space where people could fully access their information as it related to data breaches. In light of amendments Nos. 42 to 45, inclusive, put forward by the Government and relating to the same issue, I am happy to withdraw my amendments. One of the most fundamental issues for any person is that he or she is made aware of the position when his or her personal data has been breached, and that he or she has a mechanism to access it. What is proposed strengthens the data portal. I acknowledge the work of the Minister of State and his engagement on that issue.

Acting Chairman (Senator Diarmuid Wilson): I welcome Deputy Jackie Cahill and his guest to the Public Gallery.

Senator Alice-Mary Higgins: The issues that are not, perhaps, as comprehensively addressed in the Bill are those relating to the content of data-sharing agreements where data is shared with public bodies. In that context, I have tabled amendment No. 50. While data-sharing agreements can be accessed, it is sometimes difficult for people to know where to look or which agreement is relevant. There is transparency in the context of data-sharing agreements as such, but the provision could still be strengthened for the individual seeking to access information about the agreements which impact upon him or her. Given the very good spirit with which the Minister of State has addressed the majority of concerns in this area, I am not going to press my amendments.

Deputy Patrick O'Donovan: I thank Senator Higgins for that. Earlier, I neglected to say that I propose to accept amendment No. 50, which relates to section 44.

Senator Máire Devine: Is amendment No. 46 a Government amendment or is it in the names of Senators Higgins and Ruane? It is a bit confusing. Is there a typo?

Acting Chairman (Senator Diarmuid Wilson): It is in the names of the Government and Senators Higgins and Ruane.

Amendment agreed to.

Government amendment No. 43:

In page 34, lines 15 and 16, to delete all words from “to” in line 15 down to and including line 16 and substitute the following:

“to—

(a) exercise his or her rights under the General Data Protection Regulation, and”.

Amendment agreed to.

Government amendment No. 44:

In page 34, between lines 16 and 17, to insert the following:

“(b) view information in relation to the personal data breaches, if any—

(i) which affect his or her personal data, and

(ii) in respect of which a notification has been made for the purposes of Article

34(1) of the General Data Protection Regulation.”.

Amendment agreed to.

Government amendment No. 45:

In page 34, line 22, to delete “and” and substitute the following:

“(b) view information in relation to the personal data breaches, if any—

(i) which affect his or her personal data, and

(ii) in respect of which a notification has been made for the purposes of Article 34(1) of the General Data Protection Regulation,

and”.

Amendment agreed to.

Government amendment No. 46:

In page 34, line 24, after “18,” to insert “19,”.

Amendment agreed to.

Amendments Nos. 47 to 49, inclusive, not moved.

Senator Alice-Mary Higgins: I move amendment No. 50:

In page 34, between lines 25 and 26, to insert the following:

(c) view the contents of the data-sharing agreements under which his or her data has been shared between public bodies.”.

Senator Máire Devine: I second the amendment.

Amendment agreed to.

Government amendment No. 51:

In page 34, line 30, after “(2)(a)” to insert “and (b)”.

Amendment agreed to.

Government amendment No. 52:

In page 34, line 34, to delete “*subsection 2(b)*” and substitute “*subsection 2(c)*”.

Amendment agreed to.

Government amendment No. 53:

In page 34, lines 37 and 38 and page 35, line 1, to delete all words from and including “of” in line 37 down to and including page 35, line 1 and substitute the following:

“of—

- (a) providing the information referred to in *subsection (2)(a)* or *(b)*, or
- (b) facilitating or responding to a request referred to in *subsection (2)(c)*.”.

Amendment agreed to.

Government amendment No. 54:

In page 35, line 4, after “*(2)(a)*” to insert “or *(b)*”.

Amendment agreed to.

Government amendment No. 55:

In page 35, line 5, to delete “*subsection 2(b)*” and substitute “*subsection 2(c)*”.

Amendment agreed to.

Government amendment No. 56:

In page 35, between lines 18 and 19, to insert the following:

“(9) In this section “personal data breach” has the same meaning as it has in the General Data Protection Regulation.”.

Amendment agreed to.

Acting Chairman (Senator Diarmuid Wilson): Amendments Nos. 57 to 59, inclusive, are related and will be discussed together.

Government amendment No. 57:

In page 36, between lines 11 and 12, to insert the following:

“(5) The Minister may enter into an arrangement for the provision of consultancy, advice or other services to the Board.”.

Deputy Patrick O’Donovan: Amendment No. 57 is an amendment to section 46 in respect of the functions of the data governance board to provide that the Minister may enter into an arrangement for the provision of consultancy, advice or other services to the board. This is a standard provision given to most boards. I would expect that the skill sets each member will bring to the board will be sufficient for it to carry out its functions internally most of the time. However, I foresee circumstances where it would be appropriate for the board to seek external advice and assistance on specific matters. We discussed this during a previous debate on the Bill. This particularly arises where the board is developing data management rules, procedures and standards and may need to draw on specialised technical advice on certain matters. Nobody would want a situation where we tie the hands of the board so it could not get external advice.

I propose to accept amendment No. 58.

With regard to amendment No. 59, I understand where the Senators are coming from but the phrase “annual review and expiry” would mean we could have a situation where consultancy advice required for more than one calendar year would have to be procured every year. That is not intended. As the Minister of State with responsibility for public procurement, I am aware

of the level of administration that has to be dealt with by public bodies and by those tendering who hope and aspire to secure public contracts. Given that amendments Nos. 57 and 58 are accepted, the Senators might consider withdrawing amendment No. 59.

Senator Alice-Mary Higgins: Amendment No. 59 is a response to the question of private companies that may be contracted. It is a transparency mechanism. We do not want a consultant to become a de facto member, which we know sometimes happens. An adviser or consultant can be there for ten or 15 years, effectively managing a board while members come and go. I know this is not the intent of the Minister of State. Given his generosity in accepting amendment No. 58, I will not press amendment No. 59. Amendment No 58 will, in itself, require clear parameters of service and will address the concerns I was dealing with in amendment No. 59.

Amendment agreed to.

Senator Alice-Mary Higgins: I move amendment No. 58:

In page 36, between lines 11 and 12, to insert the following:

“(5) Any contracts in respect of consultancy, advice or other services to the board shall be subject to public competition.”.

Senator Máire Devine: I second the amendment.

Amendment agreed to.

Amendment No. 59 not moved.

Acting Chairman (Senator Gerry Horkan): Amendments Nos. 60 to 68, inclusive, are related. Amendment No. 64 is a physical and logical alternative to amendment No. 63. Amendment No. 66 is a physical alternative to amendment No. 65. Amendments Nos. 60 to 68, inclusive, will be discussed together.

Senator Alice-Mary Higgins: I move amendment No. 60:

In page 36, between lines 13 and 14, to insert the following:

“(2) Of the members of the Board, an equal number shall be male and female.”.

Senator Lynn Ruane: I second the amendment.

Senator Alice-Mary Higgins: These amendments relate to the composition of the data governance board, which plays a key role in the data-sharing Bill and the proposed new system of data governance. I acknowledge the Minister of State has addressed the majority of the concerns I have regarding gender balance, composition and ensuring clarity on the time people might sit on the board. In this regard, I will not press the majority of my amendments. There is only one area in which we will come to a slight conflict, which is with regard to amendments Nos. 63 and 64. My concern is that the overall positive amendment No. 63 allows the Minister to appoint no fewer than two and no more than four people who are not employees or holders of an office or other position in a public body. If the number of members of the board is increased in the future, the cap of no more than four people who are not employed by a public body could be an issue. I agree with every other word of the amendment. Amendment No. 64 also proposes no fewer than two members who are not employees of a public body but removes the cap of having four such people. This is the only difference, otherwise the wording is identical. I ac-

knowledge the thought that has gone into these amendments on the part of the Minister of State. Amendment No. 64 is slightly better worded and could address a concern that might arise.

Deputy Patrick O'Donovan: I do not disagree with the Senator. With the consent of the House, I will withdraw amendment No. 63 and accept amendment No. 64. I ask that the remainder of the amendments in the Senators' names be withdrawn.

Senator Alice-Mary Higgins: Absolutely.

Amendment, by leave, withdrawn.

Amendment No. 61 not moved.

Government amendment No. 62:

In page 36, line 17, after "Board" to insert " , including in relation to the protection of personal data".

Amendment agreed to.

Deputy Patrick O'Donovan: I move amendment No. 63:

In page 36, between lines 17 and 18, to insert the following:

"(4) When appointing members of the Board, the Minister shall have regard to—

(a) the objective that at least 40 per cent of members of the Board shall be women and at least 40 per cent shall be men, and

(b) the guidelines, if any, prepared by the Minister in relation to appointments to boards of State bodies.

(5) The Minister may, following consultation with the Minister, if any, in whom functions in relation to the public body are vested, appoint a person who is an employee of, or holds an office or other position in, a public body to be a member of the Board.

(6) The Minister may appoint not less than 2 and not more than 4 persons who are not employees of, or the holders of an office or other position in, a public body to be a member of the Board.

(7) The Minister shall ensure, where practicable, that not less than one third of the members of the Board are appointed pursuant to subsection (6)."

Amendment, by leave, withdrawn.

Senator Alice-Mary Higgins: I move amendment No. 64:

In page 36, between lines 17 and 18, to insert the following:

"(4) When appointing members of the Board, the Minister shall have regard to—

(a) the objective that at least 40 per cent of members of the Board shall be women and at least 40 per cent shall be men, and

(b) the guidelines, if any, prepared by the Minister in relation to appointments to

boards of State bodies.

(5) The Minister may, following consultation with the Minister, if any, in whom functions in relation to the public body are vested, appoint a person who is an employee of, or holds an office or other position in, a public body to be a member of the Board.

(6) The Minister may appoint not less than 2 who are not employees of, or the holders of an office or other position in, a public body to be a member of the Board.

(7) The Minister shall ensure, where practicable, that not less than one third of the members of the Board are appointed pursuant to *subsection (6)*.”

Senator Lynn Ruane: I second the amendment.

Amendment agreed to.

Amendment No. 65 not moved.

Government amendment No. 66:

In page 36, lines 20 and 21, to delete “, including the term of office,”.

Amendment agreed to.

Government amendment No. 67:

In page 36, between lines 21 and 22, to insert the following:

“(6) Subject to *subsection (7)*, each member of the Board shall hold office for 3 years from the date of his or her appointment.

(7) A person’s appointment under *subsection (5)* shall be terminated with effect from the earlier of—

(a) the date on which the person ceases to be employed by, or to hold an office or other position in, the public body concerned, and

(b) the date that is 3 years from the date of their appointment.

(8) A member of the Board whose term of office expires by the effluxion of time or whose appointment is terminated in accordance with *subsection (7)* shall be eligible for reappointment to the Board, but the total period of membership of the Board of a person shall not exceed 9 years.”.

Amendment agreed to.

Government amendment No. 68:

In page 36, lines 22 and 23, to delete all words from “by” on line 22 down to and including “in” on line 23 and substitute “by, or does not hold an office or position in,”.

Amendment agreed to.

Acting Chairman (Senator Gerry Horkan): Amendments Nos. 69 to 72, inclusive, are

related and will be discussed together.

Government amendment No. 69:

In page 36, after line 37, to insert the following:

“(5) A committee established under *subsection (1)* shall prepare and submit a report on its activities to the Board on a regular basis.

(6) A report prepared and submitted by the Board under *section 52* shall include a summary of the activities of the committees, if any—

(a) established under *subsection (1)*, and

(b) in existence in the period to which the report relates.

(7) A committee established under *subsection (1)* may be dissolved by a resolution of the Board at any time and shall stand dissolved on the date that is 2 years from the date of its establishment, unless the Board resolves that the committee is to continue in existence.”.

Deputy Patrick O’Donovan: Amendment No. 69 was requested by Senator Higgins on Committee Stage. The amendment imposes a requirement on committees established by the board to make regular reports on their activities and for the board to report on the activities of its committees in its annual report to the Minister. It is straightforward. The amendment also sets a time limit for the time a committee may remain in existence unless this time is extended by way of a resolution of the board.

Senators Higgins and Ruane make a similar proposal in amendments Nos. 70 and 71. I ask that they consider withdrawing them.

Amendment No. 72 is a technical amendment to insert the words “its committees”. I propose to accept that.

Senator Alice-Mary Higgins: Some of my amendments were tabled prior to seeing the Government’s amendments. I am happy to withdraw amendments Nos. 70 and 71 and support the Minister of State’s amendment. Amendment No. 72, as he said, is technical.

Amendment agreed to.

Amendments Nos. 70 and 71 not moved.

Senator Alice-Mary Higgins: I move amendment No. 72:

In page 38, line 16, after “it” to insert “, and its committees,”.

Senator Lynn Ruane: I second the amendment.

Amendment agreed to.

Acting Chairman (Senator Gerry Horkan): Amendments Nos. 73 to 75, inclusive, are related and will be discussed together.

Government amendment No. 73:

In page 39, between lines 13 and 14, to insert the following:

“(c) where no data protection impact assessment has been carried out in relation to the processing proposed to be undertaken under the proposed agreement, a summary of the reasons why no data protection impact assessment has been carried out.”

Deputy Patrick O’Donovan: The amendment arises out of earlier discussions. Amendment No. 73 has the same effect as amendment No. 74, and is probably even stronger.

Amendment No. 73 provides that public bodies, where they have not carried out a data protection impact assessment, shall set out the reasons in the public consultation documents they are required to publish under section 55, which was a moot point here on the previous occasion but which I accepted and said that I would revert on. It, basically, requires them to state why they would not do it. I note that Senator Higgins has proposed a similar amendment, and I ask that she, together with Senator Ruane, might consider withdrawing it in favour of my proposal.

I propose to accept amendment No. 75. Given that we are providing for the signatories to the data-sharing agreement to comply with Article 5 of the GDPR, to which amendment No. 29 refers, I accept the amendment.

Senator Alice-Mary Higgins: I will support amendment No. 73 and withdraw amendment No. 74. I thank the Minister of State for accepting amendment No. 75.

Amendment agreed to.

Amendment No. 74 not moved.

Senator Alice-Mary Higgins: I move amendment No. 75:

In page 39, between lines 19 and 20, to insert the following:

“(iii) is satisfied that the agreement adheres to the principles of data protection as specified in Article 5 of the General Data Protection Regulation and is necessary and proportionate.”

Senator Lynn Ruane: I second the amendment.

Amendment agreed to.

Acting Chairman (Senator Gerry Horkan): Amendments Nos. 76 to 78, inclusive, are related. Amendment No. 78 is a physical and logical alternative to amendment No. 77. Amendments Nos. 76 to 78, inclusive, will be discussed together.

Senator Alice-Mary Higgins: I move amendment No. 76:

In page 42, to delete line 23 and substitute the following:

“(a) the time periods referred to in:

(i) *section 55(1)(d)(iii)* setting a minimum of two weeks;

(ii) *section 56*,

and”.

The amendment intends to ensure there will be a time period. I acknowledge that the Minister of State has in amendment No. 77 met that. Of course, I pushed the boat out with a further ambition that there would not simply be a 14-day, but a 30-day, concession or time period. However, given that he has moved towards me on the 14 days, I will not press the 30 days. I hope that colleagues may take that up to further increase our ambition in terms of consultation.

I acknowledge amendment No. 77 and I will withdraw amendment No. 76 in that context. I will not press amendment No. 78.

Senator Lynn Ruane: I second the amendment.

Deputy Patrick O'Donovan: Senator Higgins was pushing her luck. We agreed two weeks and that was explicitly stated on the previous occasion. I ask that she might consider withdrawing amendments Nos. 76 and 78.

Amendment, by leave, withdrawn.

Government amendment No. 77:

In page 42, between lines 24 and 25, to insert the following:

“(2) The time period specified by the Board for the purposes of *section 55(1)(d)(iii)* shall not be less than 14 days.”.

Amendment agreed to.

Amendment No. 78 not moved.

Government amendment No. 79:

In page 43, between lines 7 and 8, to insert the following:

“(e) the processing of personal data by a public body designated in an order made under *section 9(4)*,”.

Amendment agreed to.

Acting Chairman (Senator Gerry Horkan): Amendments Nos. 80 to 81 are related. Amendment No. 81 is a physical alternative to amendment No. 80. Amendments Nos. 80 to 81 will be discussed together.

Senator Alice-Mary Higgins: I move amendment No. 80:

In page 43, to delete lines 13 to 16.

Senator Lynn Ruane: I second the amendment.

Senator Alice-Mary Higgins: This is the most fundamental amendment. There was confusion in the Bills Office that three amendments due to be made in this section, the third of which would also include lines 13 and 14.

These are the grounds. This is probably the final substantive concern that we have. It relates to the fact that the purposes under which the Minister may prescribe rules and promises, procedures and standards relating to base registries, for example, and how information is recorded in

public databases, include “to promote increased sharing of information between public bodies in accordance with this Act”. We could end up with a tautology whereby one could share data to share data so that there is a kind of self-fulfilling loop. It could undermine much of the positive work that has been done on the rest of the Bill if we had a situation whereby promoting “increased sharing” became a value that we were pressing rather than the sharing of information being something that was necessary and proportionate given all the other excellent concerns that have been addressed in the Bill, which have made it more robust. It may be an oversight in that section.

I am conscious also that Chapter 3 of Part 9 reflects special categories of personal information. As the Minister of State pointed out earlier, what is set out in that section on governance under Chapter 3 extends much wider than this Bill. Effectively, it relates to much of what the Minister of the day might do in many areas. In that regard, lines 13 and 14 are a serious concern.

There are also concerns in respect of lines 15 and 16. The language is broad in terms of ensuring “a consistent approach to the management of information by public bodies so as to facilitate the exchange of information between them”. Given that we have a number of other areas where performance of the functions, modernisation and appropriate management are addressed, I do not know what is added by that caveat. There is a danger that we fall into that same trap of administrative concerns being the driver in this regard.

I will probably press is the amendment providing for the removal of lines 13 to 16, inclusive, but my primary concern relates to lines 13 and 14. It would be very positive if the Minister of State could indicate that he will move on these issues. If not, I will press the amendment proposing the removal of lines 13 to 16. The section has a very wide impact and it does not just relate to personal information but to special categories of personal information.

Deputy Patrick O’Donovan: The proposed amendment seeks to remove a number of the purposes under which rules, procedures and standards may be prescribed by the Minister regarding data management. I will address each of the purposes in turn. First, the Senator proposes to remove the following purpose, “to promote increased sharing of information between public bodies in accordance with this Act and any other enactment providing for such sharing of information”. It is not the intent of this Bill to promote the sharing of information as an end in itself. It is merely the means to achieving a modern and safe infrastructure for the delivery of public services. As such, I accept this part of the amendment.

The Senator also proposes to remove the following purpose, “(c) to ensure a consistent approach to the management of information by public bodies so as to facilitate the exchange of information between them”. With the sharing of data between public bodies for the delivery of public services, it is essential that such sharing is performed in a consistent and secure manner. This provision allows the Minister to ensure that public bodies follow best practice when undertaking such sharing. The removal of this purpose would unintentionally limit the ability of the Minister to ensure that sharing is performed in a safe and reliable manner and, as such, I cannot accept this part of the amendment.

Lastly, the Senator proposed to remove the following purpose:

- (d) to increase the usefulness of information held by public bodies for the purposes of—
 - (i) performing their functions,

- (ii) modernising and developing public services,
- (iii) evaluating the effectiveness of services provided by public bodies, and
- (iv) evaluating the effectiveness of expenditure by public bodies;

This purpose is limited by a set of sub-purposes where it is clear there is a benefit to citizens and businesses. It behoves the Government to increase the usefulness of data to continue to improve and modernise our public services. As such I cannot accept this part of the amendment.

As I have said, I would be willing to remove section 64(2)(b) but unfortunately, for the reasons I have given, I cannot accept the amendments that propose removing other parts of section 64(2). If the Senator will withdraw the amendment, I will propose an amendment on Committee Stage in the Dáil to remove section 64(2)(b), ensuring the most contentious word, that is, “promote”, is removed from the Bill.

Senator Alice-Mary Higgins: That is the substantive concern and it is not the intention of the Bill. In light of that, and in faith that the Minister of State will remove the two lines, I will not press the amendments.

Amendment, by leave, withdrawn.

Amendments Nos. 81 and 82 not moved.

Government amendment No. 83:

In page 48, after line 2, to insert the following:

“Amendment of Social Welfare Consolidation Act 2005

73. Schedule 5 to the Act of 2005 is amended by the insertion, in paragraph 1(4), of “the National Shared Services Office,” after “the National Council for Special Education”.”

Amendment agreed to.

Bill, as amended, received for final consideration.

Question proposed: “That the Bill do now pass.”

Senator Paddy Burke: I thank the Minister of State for bringing the Bill through the House. It will prove to be a very important piece of legislation. I also thank him for the co-operation he has shown to Members of the House and for accepting amendments. He has accepted many amendments to the Bill which will enhance it. I am delighted the Bill has been passed by this House and I look forward to it being enacted in due course.

Senator Alice-Mary Higgins: I thank the Minister of State and his officials for their engagement with me between the Stages of the Bill. We made significant progress together and the Bill is strengthened by that. I look forward to watching the further debates from a distance. I am sure that it will move very quickly when it comes back with the amendments that have been committed to on Committee Stage in the Dáil.

Acting Chairman (Senator Gerry Horkan): I am normally my own party’s spokesperson on this issue but I cannot say much because I am in the Chair. I thank the Minister of State and his officials and I thank Senator Higgins for her input. She has put a lot of time and effort into it.

3 October 2018

Minister of State at the Department of Public Expenditure and Reform (Deputy Patrick O'Donovan) (Deputy Patrick O'Donovan): I thank the House for passing the Bill 15 minutes ahead of time.

Acting Chairman (Senator Gerry Horkan): It is 45 minutes ahead of time.

Deputy Patrick O'Donovan: That is a lot more than I thought. I thank Senators for their co-operation and my officials from the Department of Public Expenditure and Reform. I thank those Senators who engaged with the Bill, particularly Senator Higgins who has engaged a lot. After Second Stage and Committee Stage, she may have thought I would come back with no amendments on Report Stage and without having listened to anything she suggested. It was a very constructive debate and a lot of what was discussed on Committee Stage worked successfully. I agree with Senator Paddy Burke that further legislation could be initiated in this House. Given some of the showboating one sees in the other House from time to time, it might make for a better quality debate. I look forward to going into the Dáil with the Bill but I look forward to being back in the Seanad with it too, because there are amendments to which I have committed and there may also be Dáil amendments.

Acting Chairman (Senator Gerry Horkan): This is the Upper House. We are very civilised here.

Question put and agreed to.

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

Copyright and Other Intellectual Property Law Provisions Bill 2018: Committee Stage

Acting Chairman (Senator Catherine Noone): I welcome the Minister of State, Deputy Halligan, to the House.

Sections 1 to 17, inclusive, agreed to.

SECTION 18

Acting Chairman (Senator Catherine Noone): Amendments Nos. 1 and 3 to 5, inclusive, are related. Amendment No. 4 is a physical alternative to amendment No. 3. The amendments will be discussed together by agreement. Is that agreed? Agreed. A seconder is not required at this Stage for the first amendment.

Senator David Norris: I move amendment No. 1:

In page 16, line 18, after “given in” to insert “an educational institution or in”.

I have very valuable and able seconders, including my colleague, Senator Bacik. I have just landed from a six hour flight so I am a bit daft. Senator Warfield and probably Senator Ruane also support the amendment.

I have been briefed on these matters by Professor Eoin O'Dell. I am not sure if he is in the Gallery; I cannot see because I have broken my glasses. I tried over the past five days to contact

him by email and telephone without success but luckily I managed to get a copy of the amendments on my way to the plane in Larnaca this morning. I have read them and I have a certain understanding of them.

Although this is a technical Bill and the amendments are therefore technical as well, they seem to cover an important range of subjects. I will deal with the first two as I am sure we will have a little argument to and fro, particularly as I have distinguished legal colleagues with me. As I see it, the primary aim of the amendments is to enable people in an academic atmosphere - in a university, library or somewhere like that - to have access to copyrighted material outside the restrictions of natural copyright. I very much welcome the fact that the Minister of State is taking charge of the Bill as I know he is open-minded. I remember approximately 15 years ago there were alarms about the question of copyright and the length of copyright. I spoke to the then Minister who was responsible for the matter and warned about the attempt by the European Union to standardise copyright. I argued it would have a very significant effect on the studies of the works of Mr. James Joyce, for example. The Minister took that on board but this was introduced as a statutory instrument from the European Union under a heading that did not immediately attract attention to the literary component. As a result, it went through and we followed the example of the majority of countries in Europe, extending the length of time under which copyright subsisted from 50 years to 70 years, with pretty catastrophic consequences for Joyce scholarship.

The Bill would insert the following subsection:

(2) Without prejudice to the generality of section 50(1), the brief and limited display of a copy of a work —

(a) either—

(i) in a prescribed library or prescribed archive or by the librarian or archivist of a prescribed library or prescribed archive, or

(ii) during the course of a public lecture given in a prescribed library or prescribed archive or given by the librarian or archivist of a prescribed library or prescribed archive,

In a brief discussion with the Minister of State in the ante-room, he assured me the scope of the amendments was covered by the Bill. Professor O'Dell and my supporting colleagues are concerned that the Bill is not broad enough.

We need to include the words “an educational institution or in”. It seems to be restricted to a library or a public lecture in a prescribed library or undertaken for the sole purpose of education accompanied by sufficient acknowledgement. It would strengthen the Bill if we included “an educational institution or in”.

Senator Ivana Bacik: I welcome the Minister of State to the House and the opportunity to debate this Bill on Committee Stage. I echo the words of Senator Norris about my Trinity colleague, Professor Eoin O'Dell. I thank him for his engagement with so many of us on this Bill and on potential amendments to it. Speaking on Second Stage, I pointed out some of the issues raised by Professor O'Dell which we are hoping to address in these amendments. As Senator Norris has said, they have been proposed by a number of us - not only Senator Norris, myself and the other members of our technical group, Labour Senators Nash, Humphreys and

Ó Ríordáin, but also by Senators Boyhan and Warfield. In these amendments, and specifically in the group I am discussing now, amendment Nos. 1 and 3 to 5, inclusive, we are hoping to address the concerns I raised on Second Stage. The concern was that the Bill was unbalanced without amendment because it seems to ignore the copyright review committee's main recommendations in its 2013 report, *Modernising Copyright*. That committee was chaired by Professor O'Dell.

The recommendations we are concerned about relate to users. To put it simply, we want to ensure that the Bill provides for user rights to format, shift and to back up and to provide for a private copying levying scheme to compensate rights owners accordingly. The difficulty, and Senator Norris expressed this eloquently, is that people may not realise they are carrying out activities that may amount to an infringement of copyright. We must ensure those activities are protected by exceptions, that are permitted by EU law, in the Bill. Exceptions to copyright allowed by EU directive include what I have mentioned - format shifting and backing up. Format shifting means transferring music from one device to another, copying music from a compact disc, CD, to a phone to listen to it or copying a digital video disc, DVD, to a tablet.

These sorts of matters should be excepted where they are done for private purposes and are not damaging the underlying aims of copyright law. We should make exceptions like this in our copyright legislation. I understand the concern from Professor O'Dell. I am no copyright expert nor do I purport to be but the concerns expressed are that the Bill does not take sufficient account of the recommendations in the report on making copies for private use, such as in the ways I have described - format shifting and making backups. We have been told that the main argument in favour of such private copying exceptions is to reflect consumers' reasonable assumptions, basic expectations and widespread practices. That is what the copyright review committee has said. The EU directive permits national law to introduce limitations and exceptions to enable user rights. That is Directive 2001/29/EC of the European Parliament on the harmonisation of certain aspects of copyright and related rights in the information society.

The specific point is that private copying exceptions for format shifting and backing up, which would be permitted by the directive and were proposed by the committee, are not included in the Bill. If they are and we have missed that, we would be delighted to hear it, as Senator Norris has said. The Minister of State has mentioned that he thinks the concerns we have raised are addressed through this Bill. We are being told that they are not and we are concerned to ensure that they are. Otherwise, the concern is that the law would not be realistic. It would be a law that would, effectively, be unenforceable, unenforced and widely ignored by consumers. Private users and consumers, however, would incur liability if we do not provide for the sort of user rights we are describing. That is the crux of the amendments we are proposing. We do have longer explanations for the need for the amendments but, essentially, they are trying to ensure that the recommendations of the review committee on user rights are enshrined in this law. I will come in at a later stage if debate arises.

Senator Fintan Warfield: I welcome the Minister of State to the House. As I stated previously, it sets a bad precedent when the State uses a substantial amount of time and resources in compiling reports and then ignores the recommendations. The *Modernising Copyright* report was widely welcomed by all the stakeholders who contributed to that process. The omission of aspects that allow for private copying exceptions, such as format shifting and backing up as mentioned by previous Senators, are particularly disappointing. Amendments Nos. 1 and 3 provide for fair usage in public lectures and educational establishments. In those circumstances, the use of content is for the public good and format shifting or backing up should not be re-

stricted when the content was legally obtained and done purely for educational purposes. The protection we seek here is crucial for teaching and learning and it does not go past those confines. I hope the Government will accept this and allow the use of content for the public good.

Amendments Nos. 4 and 5 replace “means” with “includes” in the definitions of fair dealing. It is a simple amendment that changes the definitions so that we can re-examine this in the future. The reasons for doing so are clear. We should not close the door on private copying exceptions. This was stated in the Modernising Copyright report as well. We are an outlier in the EU for having these in place. In conclusion, these amendments are second best to what we could potentially provide for in amendments Nos. 6 to 8 and I would be happy to withdraw the amendments we are discussing here should the Government indicate support for amendments Nos. 6 to 8.

Acting Chairman (Senator Catherine Noone): Would the Minister of State like to respond?

Minister of State at the Department of Business, Enterprise and Innovation (Deputy John Halligan) (Deputy John Halligan): I would please. I thank all of the Senators for their amendments. Senator Bacik, if I am not wrong, spoke about amendments Nos. 6 and 8. We might talk about those later. I will concentrate first on amendments Nos. 1 and 3 to 5, inclusive. I will not be accepting amendments Nos. 1 and 3 as provision has already been made elsewhere in the Bill and I will go through that as comprehensively as I can. It is a complicated and technical Bill. I will also not be accepting amendments Nos. 4 and 5 because that would result, as we have been advised, in a measure which is not legally sound because it does not have sufficient certainty.

Amendments Nos. 1 and 3 propose the inclusion of additional wording. This would provide that educational establishments will not be liable for copyright infringement if they make a copy or a communication of a work or a performance for the sole purpose of illustration for education, teaching or scientific research or the preparation for education, teaching, or scientific research. It is not required. On amendment No. 1, section 18 relates solely to fair dealing in copyright works for libraries and archives. It proceeds to outline the various exceptions applicable in that area. The exception sought by the Senators is already provided for in the Bill in section 14, which amends section 57 of the Copyright and Related Rights Act 2000. That is in regard to illustration for education, teaching or scientific research. It provides for an exception for the use of copyright works in illustrating for education, teaching and scientific research.

On amendment No. 3, the section it relates to, section 28, relates solely to fair dealing and performance for libraries and archives and proceeds to outline the various exceptions applicable in that area. The exception sought by the Senators is to amend section 28 of the Bill by replacing subsection 3 of section 221 of the Copyright and Related Rights Act 2000 to ensure that educational establishments, libraries and archives will not be liable for copyright infringement if such bodies make use of the performance as long as the interests of the rights owner are not affected and where use is accompanied by sufficient acknowledgement. It is not proposed to accept the amendment because section 28 relates solely to fair dealing for performance for libraries and archives. The exception for performance in education sought by the Senators is already provided in section 29 of the Bill through the inclusion of new sections 225B, 225C and 225D in the Copyright and Related Rights Act 2000. The exception for libraries and archives is provided for in section 31 of the Bill which creates a new section 235A in the in the Copyright and Related Rights Act 2000. Both of the exceptions, already included in the Bill, provide

that it is not a copyright infringement to make a copy of a communication of a copyright work or performance for the sole purpose of illustration for education, teaching or scientific research or for the preparation for education, teaching or scientific research. This would include being used as part of a lecture in an educational institution. Sections 14, 29 and 31 clearly meet the objectives of the Senators, namely, to permit the use of works while providing education and I respectfully request that amendments Nos. 1 and 3 be withdrawn.

I will discuss amendments Nos. 4 and 5 put forward by the Senators, which propose the deletion of the word “means” and replacing it with the word “includes” in two different sections. Section 28 of the Bill, which amends section 221 of the Copyright and Related Rights Act 2000, and section 37 of the Bill, which amends both sections 54 and 329(2) of the Copyright and Related Rights Act 2000. The proposed amendment would have the effect of broadening the scope of the exception on fair dealing with a copyright protected work that is provided for already in section 54 of the Copyright and Related Rights Act, fair dealing with a copyright protected performance in section 221 of the Copyright and Related Rights Act, and fair dealing with a copyright protected database in section 392(2) of the Copyright and Related Rights Act 2000.

During extensive legal drafting of the Bill, the Department consulted the Office of the Parliamentary Counsel, OPC, and discussed at length the wording in the Bill to ensure that it is legally sound, including on that precise point. The use of the word “means” in the three sections of the Copyright and Related Rights Act involved provides clarity as to the meaning of fair dealing and ensures that there are boundaries and limits around the use of copy protected works, performances and databases. Changing the word from “means” to “include” would broaden the scope of these fair dealing exceptions and could result in an unintended consequence such as a reduced protection for the rightsholders, and could result in rightsholders, and we are told this legally, challenging the legality of this section of the Bill.

I know this matter is complicated. If Senators would like further meetings to discuss the matter I would be delighted to oblige. I have been given the legal advice that amendment No. 1 is covered. In terms of amendments Nos. 4 and 5, we have been told for legal reasons that it would be unacceptable to accept the amendments.

Senator David Norris: I thank the Minister of State for his very clear explanation. It seems to me that there is quite a large amount of justification behind what he says so I am not going to call a vote on these amendments. However, I will see if I can contact Professor O’Dell, who is a very distinguished member of the staff of Trinity College, and has gone to a great deal of trouble to provide these amendments to myself and my colleagues. I will take back what the Minister of State has said and see where we go and reserve the right to reintroduce these amendments, or some of them, on Report Stage.

I have a certain amount of sympathy with the argument that holders of copyright might be prejudiced in this. I know, for example, in the music industry there is a very considerable concern about the fact that nowadays people do not get royalties from records and-----

Deputy John Halligan: Yes.

Senator David Norris: -----they do not get royalties from DVDs. People are able to download this material, and I know that many young people think this is an absolutely marvellous idea. People with creative energy have to be rewarded so I will take these amendments back.

My attention was drawn to section 28(2) of the Bill and I was delighted to see the follow-

ing: “Fair dealing with a recording of a performance for the purposes of caricature, parody or pastiche shall not infringe the copyright in that work”. Hear, hear. I am all in favour of parody, pastiche and satire. There is not half enough of it around and anything that encourages it is to be welcomed.

Acting Chairman (Senator Catherine Noone): I know the Minister of State wants to comment but Senator Bacik indicated a wish to speak. Does she wish to comment before him?

Senator Ivana Bacik: No.

Deputy John Halligan: I am delighted to be able to clarify, as best as I can, the issues that both of the Senators raised. I would be delighted to further clarify the matters for them at a meeting to be arranged as their convenience.

Senator Ivana Bacik: I thank the Minister of State.

Deputy John Halligan: I appreciate that the Senators will not call a vote. We have gone to great exhaustive lengths legally to make sure that every precisely was carried through in this Bill. I regret that maybe at an earlier Stage that we were not able to indicate to Senators that the matter was already included in the Bill. My apologies for that.

Senator David Norris: I am sure the Minister of State would agree that my colleagues, who signed the amendments, could be included in such a meeting.

Deputy John Halligan: Absolutely. I would be delighted.

Acting Chairman (Senator Catherine Noone): Is the amendment being withdrawn?

Senator David Norris: I withdraw my amendment but retain the right to resubmit on Report Stage.

Acting Chairman (Senator Catherine Noone): Yes. I will come back to the Senator.

Senator David Norris: Yes.

Acting Chairman (Senator Catherine Noone): I call Senator Bacik.

Senator Ivana Bacik: I thank the Minister of State for clarifying issues. Some of my comments would be better addressed to the later amendments Nos. 6 to 8, inclusive. The entirety of our amendments share the same purpose and that is to ensure there is greater balance in terms of user rights and so on.

I take the point made by the Minister of State about the language used in amendments Nos. 3 to 5, inclusive. Like Senator Norris, I agree to withdraw the amendments and I welcome the opportunity to meet the Minister of State and his officials to discuss the issues in them.

On amendment No. 1 specifically, I thank the Minister of State for his clarification. He made the point that the issue is already addressed in amendment No. 14, which amends section 57 of the principal Act and refers to the education, teaching and scientific research. I am puzzled, from a drafting point of view, as to why section 18 is, therefore, necessary at all or why section 14 did not simply include, within the amendment to section 57, the fair dealing by librarians and archivists. It seems to be somewhat----

Senator David Norris: Clumsy.

Senator Ivana Bacik: -----a duplication that one has both exceptions about copies and communications of work “for the sole purpose of illustration for education, teaching or scientific research” contained in section 14 provision yet there is a whole separate section, which will now be section 69A of the principal Act, provided for in section 18, which relate to fair dealing by librarians and archivists. The legislation is so specifically drafted. I presume there is a reason for that but I just fail to see it and why it could not simply have been encompassed - the use of copying in public lectures by librarians and archivists. I cannot understand why that provision could not have been encompassed in what seems to me the broader provision, which would be the amended section 57 provided for in section 14 of this Bill. It just struck me as odd and that is why we made that proposal in our amendment No. 1. We did so because it clearly seemed to us that it would be much more likely to have these sort of public lectures given in educational institutions. It seemed odd that the Government would have such a lengthy and specific exception provided for in section 69A, without referring to educational institutions. I wonder what was the reason for doing so. Again, like Senator Norris, I am happy to withdraw the amendment. As Senator Warfield has said, all of us would take the view that these amendments are of less import than amendments Nos. 6 to 9, inclusive, which we will be discussing shortly.

Acting Chairman (Senator Catherine Noone): I will let Senator Warfield to comment before the Minister of State. Perhaps the Senator wishes to raise similar issues.

Senator Fintan Warfield: Yes. Senator Bacik mentioned my small contribution. Like I said in my opening remarks, I believe these amendments are somewhat unnecessary if the Government is willing to accept amendments Nos. 7 and 8. Will the Minister of State let us know what he is thinking in terms of amendments Nos. 7 and 8?

Deputy John Halligan: What was required in this detailed and technical matter was precise clarification of all aspects of the Bill. I will refer again to section 14, which relates to education provisions. To follow existing structures of the CRRA, libraries and archives are in a separate section and we do not want to cause confusion for the stakeholders. I think that was the reason. Maybe it was done too precisely but the objective was to cover every aspect. The two separate sections were put in so as not to cause confusion for the stakeholders.

Senator Ivana Bacik: There are libraries in educational institutions.

Deputy John Halligan: I understand that.

Senator Ivana Bacik: I take the point made by the Minister of State. Of course, municipal libraries and Dublin City Council libraries, for example, are very different from lectures in universities, institutes of technology or colleges. Obviously there are libraries in educational institutions where public lectures are given too.

Senator David Norris: Yes. One also gives public lectures in public libraries.

Senator Ivana Bacik: Yes. I have given lectures in such places.

Senator David Norris: There are public lectures in the Pearse Street Library.

Senator Ivana Bacik: Yes. It just seems that there is some duplication and certainly some overlap.

4 o'clock

Senator David Norris: They should give public lectures in public libraries.

Senator Ivana Bacik: Yes, certainly. It just seems that there is some duplication - certainly there is some overlap. Perhaps the principle Act provides for that, but I am not aware that there is a different definition of libraries in educational institutions.

Deputy John Halligan: I understand where the Senator is coming from. I have provided the results in order to avoid confusion for stakeholders. Perhaps at a later meeting we might be able to clarify this with officials and go through it in more detail, because I appreciate that it is very technical. I found it very technical when I went through it. However, I believe that the best interests of the stakeholders has been taken into account in all aspects of this Bill. If any Senators require further clarification I would be delighted to set up a meeting with the officials as early as possible to go through it and clarify it.

Senator David Norris: I will withdraw the amendment, with the provision that I might introduce it on Report Stage.

Amendment, by leave, withdrawn.

Section 18 agreed to.

Sections 19 to 26, inclusive, agreed to.

Senator Fintan Warfield: I move amendment No. 2:

In page 21, line 41, to delete “any combination thereof).” and substitute the following:

“any combination thereof).

(4B)(a) It is not an infringement of the rights conferred by this Act if a Board or authority to which this section applies reproduces any work that is made available in the State through the internet.

(b) Where any work has been made available in the State through the internet without a restriction as to its access or use, then it is not an infringement of the rights conferred by this Act if a Board or authority to which this section applies reproduces that work and makes it available through the internet without a restriction as to its access or use, whether or not that work continues to be available elsewhere through the internet.

(c) For the purposes of this subsection, a work shall have been made available in the State through the internet where—

(i) it is made available to the public either from a website with a domain name which relates to the State or to a place within the State, or by similar or related means, or

(ii) it is made available to the public either by a person any of whose activities relating to the creation or the publication of the digital publication takes place within the State, or by a person with similar or related connections to the State.”.

Amendments Nos. 2 and 9 provide for the creation of a legal digital deposit. I have raised

his issue many times in the House. The legislation puts the onus on copyright deposit institutions to request each and every publication they wish to deposit. This is well beyond the resource capacity of any of our national institutions, for example, the National Library of Ireland. The inevitable result of this is that material will be lost. While other states have facilities for capturing their web domains, for example, nobody is systematically capturing the *.ie* web domain. I have been designing websites since I was 15, and the Minister and his colleagues in the Department will know all too well about the Wayback Machine. It is a not-for-profit enterprise, like Wikipedia, which captures web pages. We need to reflect on the law that provides for hard copies of books and apply it to the digital age, and we need to do it fast.

The only logical solution is to allow the National Library of Ireland and other bodies to sweep the *.ie* domain at regular intervals and to capture the contents. Libraries and museums have historically been the custodians for everything that is published. They are custodians of our national cultural heritage, and they are the best places to collectively store that knowledge. Such a process would have to be mindful of journalism or other work behind paywalls. We could look at international best practice for that. Some national libraries have every website available on-site; one would have to go into the national libraries to view the files or contents of the websites. If we do not act we risk websites such as the campaign for civil marriage equality, the Together for Yes campaign or the pro-life campaign disappearing. Most web pages disappear, on average, within 100 days, so the longer we wait the more we lose.

The legislation proposes that the responsibility for depositing the material would be given to each publisher. Notwithstanding the administrative burden and resource problems I mentioned, such an approach would leave the process open to non-compliance. Mass non-compliance in the creation of a legal deposit simply defeats the purpose. I am aware that the Fianna Fáil amendment, which was accepted in the Dáil during Report Stage, establishes a feasibility study into the creation of a legal digital deposit to start 12 months after the enactment of this Bill. However, the study may take one to two years to complete and a further one to two years to be brought forward as legislation, which is too long. I have mentioned that the average life of an individual web page on any website is 100 days. I have also mentioned the fact that we are lagging behind our European counterparts on this. For these reasons, a feasibility study would only delay this matter further.

My interest in this comes from the cultural aspect. The Department of Culture, Heritage and the Gaeltacht commissioned a consultation on establishing a legal digital deposit. The support from Trinity College Dublin and the National Library of Ireland, among other libraries, was overwhelming; some 90% of the feedback the Department received was in support of the establishment of a digital deposit. It was strongly recommended. Has there been much engagement between the two Departments? The consultation developed when the Minister for Business, Enterprise and Innovation, Deputy Humphreys, was the Minister for Culture, Heritage and the Gaeltacht.

The need for such an endeavour has been pointed out by the copyright deposit institutions, which strongly supported this proposal in the public consultation. It was also mentioned in the modernising copyright report, published in October 2013, five years ago. The consultation with the Department of Culture, Heritage and the Gaeltacht was carried out in April 2017. The time for examining feasibility has long passed. It should have been done as soon as it was recommended. The only way we can have certainty in respect of this issue is to provide for it in law through this Bill, and I respectfully encourage the Government to do so.

Senator David Norris: I have a good deal of sympathy with the intentions behind this amendment. It seems that it would be absurd to allow material to be publically available on the Internet yet still make it an offence for someone else to copy it. It is something of a nonsense, and Senator Warfield has made a good point about that. I am slightly concerned about one of the subsections, which reads:

For the purposes of this subsection, a work shall have been made available in the State through the internet where—

(i) it is made available to the public either from a website with a domain name which relates to the State or to a place within the State, or by similar or related means.

That seems to be very broad indeed, and would allow for all kinds of odd websites to make this type of claims. I am interested in what the Senator has to say about that.

My understanding is that we are talking about amendments Nos. 2 to 9, inclusive. Is that correct?

An Leas-Chathaoirleach: No, we are only talking about amendment No. 2.

Senator David Norris: I thank the Leas-Chathaoirleach. I was going to speak to some other amendments.

An Leas-Chathaoirleach: The Senator is looking at the wrong Bill.

Senator David Norris: I have developed the gift of prophecy. I beg your pardon, it is the wrong Bill.

An Leas-Chathaoirleach: The Senator stands corrected. Did Senator Bacik indicate that she wishes to speak?

Senator Ivana Bacik: No.

An Leas-Chathaoirleach: I call the Minister of State.

Deputy John Halligan: I thank Senator Warfield for his amendment. I have listened to the rationale behind it. I wish to ensure that the issue of capturing the web is not confused with a digital deposit system, particularly as they are two distinct matters. As recommended by the copyright review committee, the Bill broadens the existing copyright deposit system to enable the copyright deposit institutions to accept published material in electronic format as well as, or instead of, physical copies. This will allow copyright deposit institutions to collect non-print works in order to produce a shared archive of digital works, and facilitate the development of Ireland's national printed archive. It will also allow for works no longer published in hardcopy format to be deposited and ensure the continued archiving of important documents, including many Government reports and documents which are no longer published in hardcopy as a matter of course.

On the Senator Warfield's amendment, regarding the inclusion of a section to permit the deposit institution, board or authority to capture the web. This amendment essentially provides for a full digital deposit system that would facilitate recording and archiving and would make available websites with Irish domain names that are not currently archived, as long as the website is not paywall or password protected. I understand that the Minister of State, Deputy Eng-

lish, provided a response in respect of this issue on Second Stage, but I am happy to elaborate further and clarify the position. Providing for a full digital deposit system that would facilitate capturing the web is not simply a matter of changing copyright legislation. It is a significant national project that requires multi-institutional collaboration, significant resources and Skill-snet for capturing and preserving Ireland's digital record, according to my advice. I reiterate that this is a matter for the Minister for Culture, Heritage and the Gaeltacht, who has responsibility for policy in this area. My Department and the Department of Culture, Heritage and the Gaeltacht have actively worked together on that matter for some time and we will continue to do so until the robust regulatory framework is developed. We will facilitate the necessary corresponding legislation amendments in due course.

This work, however, is not yet sufficiently progressed for any technical amendments to copyright law. As that is the final aspect of the project, now that all the necessary due diligence has been done, Government mechanisms have been established and funding has been agreed with the Minister for Public Expenditure and Reform, it is not possible for amendments to copyright law to be progressed in isolation from Government approval for the project as a whole. An initial amendment was tabled on Committee Stage in Dáil Éireann by a number of Deputies, including Deputy Quinlivan from the Senator's party, and it gave rise to a good debate. Consequently, a new section 106 was inserted in the Bill on Report Stage. This new section stipulates that a report be published within 12 months of the Bill being enacted. This was accepted by all parties and was viewed as a pragmatic way to advance the project while allowing time for the necessary work to take place in the Department of Culture, Heritage and the Gaeltacht, in co-operation with my Department and the Department of Public Expenditure and Reform. The House can rest assured that both Departments are actively engaged in advancing the proposal, and the report will be prepared within 12 months, as specified in the Bill.

I see the merits in the proposal and I agree that we need to be mindful of preserving our national memory. It is important, however, that we do not put the cart before the horse and that we allow the requisite work be undertaken in order that the capturing of any information is done properly, with which I am sure everyone would agree, without undue burden on the public purse, while ensuring that there are mechanisms in place to properly protect and regulate personal information which people have put on the web. I ask the House to allow this process to take place with both Departments, and the report will be prepared within 12 months, as specified in the Bill and as I have insisted. Again, it is important that what we do we do correctly. We are engaging with the Minister for Culture, Heritage and the Gaeltacht, who is responsible for policy in that area. I urge the Senators to leave this as it is, as the Deputies have done. Of course, I invite the Senators, if they wish, to meet any representatives from my Department or the Department of Culture, Heritage and the Gaeltacht, and I would be delighted to facilitate such a meeting. I am advised that it is the responsibility of the Department of Culture, Heritage and the Gaeltacht, but we are working in collaboration to ensure everything is done precisely in order that whatever is done is done right.

I urge the Senator not to press this amendment. There is goodwill from both Departments to ensure any aspects the Senators might be worried about will be dealt with.

Senator Fintan Warfield: I was in the committee rooms before I came here. The Minister for Culture, Heritage and the Gaeltacht was also there. It seems the buck is being passed between the two Departments, and I cannot identify who has responsibility for this issue. The consultation was published in April 2017 and the copyright review committee has called for this since 2013. It is not difficult to sweep and the National Library of Ireland already has the

ability to do it.

To clarify, Senator Norris asked about the new paragraph (c)(i), proposed in the amendment, which states that a work would be made available to the public either from a website with a domain name which relates to the State, that is, a *.ie* domain name, or which relates to a place within the State, such as a *.org* or a *.com* domain name. My website is a *.com* website even though it is Irish. Therefore, it might not necessarily have to be a *.ie* domain name.

Senator David Norris: I thank the Senator.

Senator Fintan Warfield: The Senator is welcome. I would be disappointed to withdraw this amendment.

An Leas-Chathaoirleach: The Senator can table it again on Report Stage if he wishes.

Senator Fintan Warfield: Yes, but the Fianna Fáil amendment has delayed it for two years. How long does the Minister of State expect the feasibility study to take?

Deputy John Halligan: I can only say it as I see it and as I have been informed, and I have been in discussion with both Departments. I reiterate that my Department and the Department of Culture, Heritage and the Gaeltacht have already been actively working together on this issue for some time. I can only give my word without passing the buck on this. We want a robust regulatory framework put in place. I assure the Senator, as I have assured Deputies, that this is already happening. The Minister for Culture, Heritage and the Gaeltacht has direct responsibility for the National Library, and the policy includes funding and governance. We have no alternative but to liaise with that Department. We will make a copyright amendment when needed. I understand where the Senator is coming from but it is obligatory for us to cooperate with that Department. The Minister has direct responsibility for the National Library of Ireland and its policy, which includes governance and funding, as I mentioned. I know from speaking with my officials we are already doing that and over the past number of months both Departments have been engaging.

There is no problem with giving regular updates to the Senator and it is not just a question of me leaving the Chamber, saying thanks and that in 12 months everything will be sorted.

Senator David Norris: There could be an election.

Deputy John Halligan: Do not say that yet. I do not give instructions but I have advised both Departments that they should formulate a comprehensive plan on what needs to be done. It may very well happen before those 12 months are up. I ask the Senators to bear with us on this as we are all in unison. I can see where they are coming from on the matter. I have no choice but to liaise with that Department for the time being.

Senator Ivana Bacik: I have not contributed on this amendment before but it seems, listening to the debate, that Senator Warfield was raising a matter that deserves serious consideration in the course of the debate on this Bill. The Minister of State is saying that until the feasibility study concludes, he cannot engage in any other way of dealing with the matter through this Bill. It seems a pity, given that we said earlier that we would be delighted to meet the Minister of State and his officials to discuss the matters in the other amendments. Is it possible to include in the meeting a discussion of the matter in Senator Warfield's amendment, even if a study is ongoing?

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Deputy John Halligan: There is no question of non-engagement. Of course we are willing to engage on that matter. I am saying I am obliged to follow this advice I have been given, particularly when there is a crossover between both Departments. There is certainly no question but that we will engage.

Senator Ivana Bacik: I thank the Minister of State and we might endeavour to have the meeting before Report Stage. I do not know what the timeframe is for Report Stage.

Deputy John Halligan: There is no problem with that.

Senator Fintan Warfield: The feasibility study that has suddenly become the main part of this debate was only included by Fianna Fáil in the Dáil as a result of the legislation entirely ignoring the digital deposit. The legislation deals with ebooks. I would not be doing my job as someone who holds the Government to account if I did not take into account the 90% of the people who came to the Department calling for this legal deposit. That includes all libraries, including Trinity, the National Library of Ireland and so on. If we called a vote on this, it would only help focus minds.

Amendment put:

The Committee divided: Tá, 19; Níl, 17.	
Tá	Níl
Bacik, Ivana.	Burke, Colm.
Black, Frances.	Burke, Paddy.
Boyhan, Victor.	Butler, Ray.
Clifford-Lee, Lorraine.	Coffey, Paudie.
Conway-Walsh, Rose.	Coghlan, Paul.
Daly, Paul.	Conway, Martin.
Devine, Máire.	Feighan, Frank.
Gavan, Paul.	Hopkins, Maura.
Horkan, Gerry.	Lawlor, Anthony.
Humphreys, Kevin.	Lombard, Tim.
Mac Lochlainn, Pádraig.	McFadden, Gabrielle.
Norris, David.	Mulherin, Michelle.
O'Sullivan, Grace.	Noone, Catherine.
Ó Céidigh, Pádraig.	O'Donnell, Kieran.
Ó Donnghaile, Niall.	O'Mahony, John.
Ó Ríordáin, Aodhán.	Reilly, James.
Ruane, Lynn.	Richmond, Neale.
Warfield, Fintan.	
Wilson, Diarmuid.	

Tellers: Tá, Senators David Norris and Fintan Warfield; Níl, Senators Gabrielle McFadden and John O'Mahony.

Amendment declared carried.

Progress reported; Committee to sit again.

The Transfer of Functions of Dún Laoghaire Harbour Company to Dún Laoghaire-Rathdown County Council: Statements

An Leas-Chathaoirleach: I welcome the Minister and call on him to address the House.

Minister for Transport, Tourism and Sport (Deputy Shane Ross): I thank the Leas-Chathaoirleach. I welcome the opportunity to address the dissolution of Dún Laoghaire Harbour Company, DLHC, and the transfer of its functions to Dún Laoghaire-Rathdown County Council. I can confirm to the House that I have signed the transfer order with the consent of the Minister for Public Expenditure and Reform and the Minister of State at the Department of Housing, Planning and Local Government. The harbour company was dissolved earlier and all assets, liabilities and staff transferred to Dún Laoghaire-Rathdown County Council. The port, once central to the traffic of freight and passengers between Ireland and the UK, has had no commercial shipping since the withdrawal of the Stena Line in 2015. Declining car and passenger numbers, combined with increasing fuel and operating costs, made the Stena route unsustainable.

However, I am optimistic about the future of DLHC. As outlined in the national ports policy, published in 2013, the future of the harbour lies in marine leisure, maritime tourism, cultural amenity and urban redevelopment. As a local amenity, it is best placed under the local authority, which is better positioned to achieve the maximum from the harbour. I am delighted that it has committed to ensure, on transfer, “that the harbour will continue to be recognised as a location of choice for marine and leisure activities as well as a destination of choice for visitors.”

For a number of years, DLHC has faced a challenging operating environment as it transitioned from commercial shipping activities towards a different operating model focused on marine leisure and marine-related tourism. The company has been restructuring its business to keep it on a sustainable financial footing in preparation for transfer. Its income is now derived from rents, moorings and property.

As Senators will be aware, the transfer of DLHC to Dún Laoghaire-Rathdown County Council is agreed Government policy. The national ports policy recommended that five designated ports of regional significance, Drogheda, Dún Laoghaire, Galway, New Ross and Wicklow, transfer to more appropriate local authority-led governance structures. These ports retain important roles as facilitators of their regional economies and, in some instances, as centres of marine-related amenity and tourism activities. However, the scale and nature of their port activities are not of a scale that warrant continued central government involvement. The longer-term development of these ports is best placed within their regional and local communities to allow them to develop in a mutually beneficial manner.

The Harbours Act was signed into law on 25 December 2015. It provides the necessary primary legislative framework to allow the transfers to take place. Two ports have been trans-

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ferred. Wicklow Port transferred on 30 August 2016 to Wicklow County Council and Drogheda Port transferred on 2 October 2017 to Louth County Council. The transfer process is complex and takes a number of years to complete.

The chief executive of Dún Laoghaire-Rathdown County Council undertook due diligence in preparation for transfer and presented her report to the council on 9 January 2017. As the report raised a number of further issues for clarification, the chief executive engaged a financial consultant to carry out a risk assessment to enable the council to fully understand the implications of the two different models of transfer and the responsibility that will transfer in financial and other terms.

The two models outlined in legislation are: (1) transfer of shareholding keeping the limited company structure intact, or (2) dissolution of the company and transfer directly under the local authority. It may help if I explain how remedial works are usually funded in the ports sector. National ports policy clearly states that the Exchequer does not provide funding for a port company. Ports must operate on a commercial basis without recourse to State funding. Ports fund their activities and capital infrastructure investment from their own resources. This can be done in a number of ways, such as using reserves or profits, selling assets, borrowing or by attracting private investment into ports.

In respect of funding remedial works, it is normal procedure in port companies to prioritise engineering and remedial works and to phase those works and the funding to undertake those works over a period of time, immediate, medium and long-term. The port has a substantial asset as well as seven digit cash reserves, both of which transferred to the council and will allow for any urgent and immediate infrastructural works to be carried out. However, how the council decides to use these assets is up to it. The port will be a welcome boost following the granting of the planning application for the harbour innovation campus. In addition, DLHC has significant fixed assets. The dissolution of the port may present different opportunities to the council for funding that was not available to the port as an independent commercial port company, such as funding under the urban renewal scheme. I look forward to hearing the views of Members.

Senator Gerry Horkan: We are discussing this topic as a result of a request I made on the Order of Business last Thursday that we have a debate on the DLHC transfer in advance of the Minister signing the order, and I ask him to clarify whether he signed it today. No Member has a problem with his strategy. It is a good idea for harbour companies to come under the remit of a local authority as they might be well placed to manage them, albeit that they have plenty of other issues to manage.

I am concerned that up to today, there was not full sight of the exact goings on in the harbour company and the exact extent of its assets and liabilities. The Minister considers DLHC a company with a substantial asset, but it is only an asset if one can sell it off or one can do something with it. It is all very well saying that one has an asset. I am sure I have heard the Minister talk about constituents who are asset rich and cash poor, but there is an estimate of €33 million in liabilities, which some people might say is less but equally other people could argue that it is greater, relating to pensions and works that are needed in the harbour, which might be referred to as “taking in charge type standards”. I am conscious that there are two other fellow former Dún Laoghaire-Rathdown councillors, Senators Richmond and Boyhan, in the House. Senator Boyhan has great expertise because he served two terms on the board of the harbour company as an appointed director. There was a time when the local authority had directors elected from the councillors. At the time that was the case, my party was small and Fine Gael and Labour

shared the spoils of those positions and, as a result, I was never a member of the DLHC but I am familiar with its activities.

What will become clear to the 210,000 residents of Dún Laoghaire-Rathdown is there is a €33 million liability in pensions and other infrastructural costs to be covered, in addition to an €800,000 annual maintenance cost. How is that to be absorbed without closing libraries and forgoing the repair of footpaths, improvements to traffic lights and the building of swimming pools, something that is close to the Minister's heart? I did not have full sight of the liabilities but the due diligence referred to a liability of €33 million. All these works will have to be paid for and if he has signed over a €33 million deficit in the company, which he says is an asset, is he suggesting that the county council should start selling off chunks of the harbour? He referred to using reserves or profits, selling assets, borrowing or attracting private investment. That is the antithesis of what some people who are championing the transfer of the harbour company into the ownership of the council wanted. They do not want privatisation or the sale of assets; they want people power and so on.

5 o'clock

As Minister for the marine, the Minister has ports included in his brief and, as a Deputy for Dublin Rathdown, his constituents are affected by this. The Minister was here last week, as he has been on many occasions. He had a relatively brief speech today. We have a curtailed amount of time because of the vote earlier. That is not the Minister's fault but I am conscious of the time. If we do not get a response today, we may need to come back and look at this issue again. I hope we will all be relatively brief and we will give the Minister enough time.

I implore the Minister to answer the following question. How is Dún Laoghaire-Rathdown, other than by selling assets, which is what the Minister is arguing, or through private investment, to fund the €33 million without increasing property tax or cutting other services? That is the nub of the issue. There are ongoing maintenance costs. There are significant funding challenges. The Minister is not transferring Dublin Airport, which is profit-making, to Fingal but he is transferring a loss-making operation with very significant long-term issues and infrastructural challenges. It behoves the Minister to say to his constituents in Dublin Rathdown, but also to the constituents of the Dún Laoghaire constituency and all the people in Dún Laoghaire-Rathdown who are paying their property tax, whether it will double or triple, or whether it will need to. The discretionary property tax in Dún Laoghaire-Rathdown this year, after the property tax discount was given to the highest property taxpayers in the country, is €2.5 million. One is talking about 13 years worth of discretionary property tax being swallowed up by the €33 million and that is before one looks at the €800,000 a year maintenance cost.

I have probably given the Minister enough issues to which to respond. I have eight minutes and if I speak for eight minutes and Senator Boyhan and everyone else does the same-----

An Leas-Chathaoirleach: I should have said that. I thank Senator Horkan. As the vote interfered with the time, the Minister must be called at 25 minutes past the hour.

Senator Gerry Horkan: That is my point. I want to let other Senators in but I also want the Minister to have as much time as possible to respond.

I hope I have given the Minister enough food for thought. We all want Dún Laoghaire-Rathdown to prosper as a local authority. We all want Dún Laoghaire-Rathdown, and, indeed, Dublin Rathdown, where I live and which the Minister represents, to do well but I do not know

how we will do that with €33 million of liabilities we did not have yesterday. I would like the Minister to address that nub of the issue.

An Leas-Chathaoirleach: I call Senator Boyhan and ask him to be conscious of the time.

Senator Victor Boyhan: I came here to listen. I thought we would have statements and questions. I am not really interested in hearing what the Minister, Deputy Ross, has to say. I do not want dialogue with the Minister. It will be a monologue. He will just have to sit there and listen, or he can do what he likes.

For the record, I was a county councillor from 1999. I was a director of this company for two terms. I can speak categorically about it and have some files here to support all of what I will say. I deal in facts, not in speculation. I hope the Minister knows and appreciates that.

The Taoiseach was Minister in this Department and he was followed by the Minister for Finance, Deputy Donohoe, and Deputy Ross. These three Deputies have been involved and have full knowledge of Dún Laoghaire company. All of them will be aware that the company had major difficulties. All of them - I have evidence which can support these statements - were aware that this company had major financial issues. It had major corporate governance issues. All of them would have been aware of parliamentary questions and responses prepared by them. All of them gave commitments to resolve the issues and investigate them, and all of them appear to have done nothing.

I now will turn to the Minister, Deputy Ross, who is in the Chair.

Acting Chairman (Senator Gerry Horkan): No, I am in the Chair.

Senator Victor Boyhan: The Minister, Deputy Ross, is here. He gave commitments to come in and talk about this harbour company but he did what he has always done. He thought he was smart.

The Minister might have had his hissy fits last week. He made his demands in the Department of Housing, Planning and Local Government to have it signed and he thinks he got his own way. He has transferred it but he will be aware there are corporate governance issues with this company.

The Minister is the man who made a lot of money in the *Irish Independent* writing about governance from a nice room up in Agriculture House and preaching and lecturing about corporate governance and finance. What has he done? I am convinced there is a role for the Committee of Public Accounts in relation to this. I will certainly put in a number of questions.

I am aware of the provisions of the Protected Disclosures Act 2014 and I put in a request to the Minister's Department and received an email telling me to contact an individual. I did so today but I have not heard back. That is not the individual's fault. He may be away.

I will deal with a few issues. My interest is in protecting the future of the harbour's estate, its employees, the real estate and marine leisure and related tourism potential. The Minister has responsibility in that area too. My interest is also in protecting Dún Laoghaire-Rathdown County Council, its elected members and its executive from unreasonable exposure to a potential of €33 million.

The Minister was aware there was due diligence in relation to this company. He had access

to sensitive information about this company. Will he not take some responsibility in relation to that? Is it acceptable that he should saddle Dún Laoghaire-Rathdown County Council, with which he is extremely familiar, with this? He constantly sent out newsletters about his wonderful Glenalbyn pool but he did not get his pool or his Garda station. The Minister is running; he is panicking. He does not want lose his seat but he is motivated by the wrong things. He is attacking the wrong people and is not supporting the local authority. Why should a local authority, therefore, support the Minister?

The Minister is preoccupied with the Judiciary, with a little station in Steppaside and with a small swimming pool but he took it out on this local authority. I am putting it to him that he took it out on this local authority because he did not get his way. Hissy fits and tantrums do not get one somewhere. I do not like to personalise it but the Minister likes to give it but does not like to take it.

The bottom line is there are issues, which I will summarise. There is the EU grant and funding issues. I am satisfied and have evidence that the Minister is aware of them and of the repayments in relation to them. He is aware of the corporate governance issues, of which I am fully satisfied. He is aware of the potential financial risk and exposure to Dún Laoghaire-Rathdown County Council, of which I am fully aware. He is aware of, and gave advice on, HR issues, privately, of which I am fully aware. Is the Minister in support of the trustees and the company's defined benefit pension scheme in respect of the future viability of the scheme with Invesco? Is the Minister aware of a breach of the Code of Practice for Governance of State Bodies? Has he had sight of reports of the audit committee in terms of risk and remuneration? Did he or any of his predecessors follow up on responses to parliamentary questions in respect of directors who were in breach? There were conduct issues. There were repayments to be made. The Minister, the Taoiseach and the Minister's predecessor, the Minister for Finance, are aware of them.

The Minister lectures about transparency and accountability in respect of due diligence and the transfer of operations. What has he done about it? The Minister breezed in with a smile to tell us what he had done. I had already heard it from the local authority. I received a telephone call about ten minutes earlier. I left here when I got the Minister's statement and faxed it to the 40 councillors.

The bottom line is this is not all over. There will be no funding because the local authority will have to be prudent. There will be no funding for phase 2 of Fernhill. There will possibly be no funding for Marley Park or for Glenalbyn pool, and the Minister can lecture about it being ring-fenced. He is not an elected member of the Dún Laoghaire-Rathdown local authority. The local authority can amend its capital programme at any time.

I do not want to hear a response from the Minister. He has come in here unprepared to listen and to tell us what he has done despite telling us he would come in and listen to us. I am exceptionally disappointed with the Minister.

I will give the Minister the following commitments. I will make further inquiries in regard to the protected disclosures, I will put in a number of freedom of information requests on to these matters and I will speak at his next public meeting. When he has his next meeting about Glenalbyn pool, Marley Park or Fernhill, I will tell the people another story. They will not be hearing about it in the *Dublin Gazette* or *The Irish Times*. They will be hearing from big-mouth Boyhan, who will stand up and be counted and say what has to be said.

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Enough is enough. The Minister has let people down. He is panicking; he is running. That shows his inexperience as a Member of Dáil Éireann and a Minister. I am exceptionally disappointed in him and I really do not want to hear excuses from him. He did not listen. He signed off on this and he has come in here to tell us. Big deal; the Minister has achieved little.

Senator Neale Richmond: I welcome the Minister to the House and thank him for his statement.

Like other speakers, I also was a member of Dún Laoghaire-Rathdown County Council. I am a resident of the lovely village of Stepside in Dublin Rathdown. I am grateful the Minister has come in, hopefully, to answer some questions on the transfer of the harbour company into local authority ownership. Senator Horkan mentioned that this is of interest and importance to the 210,000 people living locally but it should be of major interest and importance to the country as a whole and to the future of local government and marine policy. I have a number of questions which I hope the Minister will answer in his reply. If not, perhaps one of his officials would follow up with me on them in due course. I had intended to ask if the order has been signed but the Minister has answered that question. I understand it was signed today. If so, at what time was it signed? Will the Minister detail the engagement between his Department and Dún Laoghaire-Rathdown County Council since the ports policy was approved by Government? Has the county council and the port company been in contact in preparation of the transfer? I refer in this regard to the company as an entity and not the CEO. Why is the port company being subsumed into the county council, rather than having the shareholding function transfer? Will there be an indemnity for the county council against claims under way? Have indemnities been provided to other local authorities in other transfers? Will there be a package for any staff member wishing to leave and, if so, who will pay for it? Have staff been notified of the transfer? I understand that under legislation, they are required to receive 30 days notification in this regard? I would appreciate if the Minister could clarify if this is the case. What assets are attached to the harbour company on its transfer? Is Gresham House, a famous building in the town of Dún Laoghaire, being transferred? Also, what is the value of that building and is there any debt attached to it?

During the summer, it was reported that the Dún Laoghaire Harbour Innovation Centre was being progressed by the harbour company and would generate €1.5 million in rents and rates. What is the status of this project? Will additional local property tax be allowed to remain with to Dún Laoghaire-Rathdown County Council to cover the cost of infrastructure? As Senators Horkan and Boyhan will recall, 20% of local property tax receipts within Dún Laoghaire-Rathdown were transferred to local government and distributed around the country. I held a public meeting last night - I am delighted Senator Boyhan was unable to attend - at which one of the key issues was reform of the local property tax system and where property taxes for the area are going. When I take a walk or go for a run in Marlay Park, I like to know that my property tax is paying for that fantastic facility. I look forward to going for a swim in Glenalbyn once again soon.

What support was provided to other port companies and harbours that have transferred to local authorities? The Minister mentioned Wicklow Port but other ports such as Drogheda and Tralee and Fenit have also been transferred. He also mentioned that the national ports policy highlights that the future of the port is urban regeneration, leisure, public amenity and tourism. Given that under Project Ireland 2040, which the Minister and I are enthusiastic supporters of, more than €200 million is provided over the next decade for tourism capital, will he, given his responsibility for tourism, engage with the county council on accessing this funding?

I share the concern about this transfer but I welcome it. I wish the Minister, his officials and the Government the best in this transfer but I intend to ensure that it does not negatively impact my home, my family's home and the facilities which I intend to spend the rest of my life enjoying. This is a matter of most seriousness. I look forward to a fulsome response from the Minister.

Senator Fintan Warfield: I commend Senator Horkan for calling for this debate. The transfer of the functions of DLHC to Dún Laoghaire-Rathdown County Council is shrouded in confusion. It is disappointing that this debate falls on the day on which, I understand, the transfer is due to be completed. The risk assessor's report has projected a net financial risk of €33.5 million to the council, local property taxpayers, commercial ratepayers and the communities of Dún Laoghaire-Rathdown. The Harbours Act 2015 provides for the transfer in respect of all assets, liabilities and staff in accordance with sections 30 and 32. Option B is, therefore, not up for consideration by councillors. Rather, they must consider the impact on the council's budget and whether the transfer will result in the cutting of vital services to communities and vulnerable groups in their area. Yesterday, the Minister of State, Deputy John Paul Phelan, said in the Dáil that not all of the €33.5 million liability would be transferred to the council. This appears to be at odds with the Harbours Act and with what Dún Laoghaire-Rathdown county councillors have been told. Without the benefit of a figure, the Government believes the county council will be liable for the socialising of semi-State private debt. This warrants full scrutiny by the local authority. A substantial liability could have a direct impact on its ability to provide local services and build the homes that are urgently required.

I ask the Minister to clarify how he proposes to ensure the financial burden of this transfer does not impact unduly on the people of the area. The staff of the harbour company have commenced the process of transferring contracts. Can the Minister confirm that all pensions and entitlements of former employees will be honoured? With the council now in charge of the historic harbour, perhaps fresh consideration will be given to the location of the national genealogical centre, incorporating a centre for migration and diaspora studies as proposed by the Genealogical Society of Ireland to the harbour company in 2011. The idea was subsequently incorporated in the harbour company's 2013 proposal for a national diaspora centre and the Dún Laoghaire-Rathdown development plan supports this objective. I encourage the council to work with the society to achieve this objective. I also encourage the Department to engage with the society in support of this venture.

Senator Grace O'Sullivan: I thank the Minister for coming to the House for this debate. In advance, I consulted my Green Party colleague and Dún Laoghaire-Rathdown county councillor, Mr. Ossian Smyth. The Minister will be aware that the Minister of State, Deputy John Paul Phelan, told the Dáil last night that Dún Laoghaire-Rathdown County Council taxpayers will not be liable for the €33.5 million costs incurred in this instance. How much will the council have to pay? Given the harbour company that accrued this debt is a semi-State entity, why is it not being borne by the Exchequer rather than a cash-strapped local authority?

I understand that since the ferry service ended, the harbour company has attempted a number of far-fetched money making schemes, including a floating hotel, a floating swimming pool, a floating housing estate and a cruise ship dock that would have filled the harbour. All of these schemes failed, leaving a trail of debt. Does the Minister believe that it is fair that the residents of Dún Laoghaire-Rathdown will have to pay for this wastage of money by the harbour company on pipe dreams? Will the council now have to cut services to the residents and increase property tax in the area to meet the repayment of this debt run up by a semi-State agency under

the watch of the Minister and his Department?

When established, the harbour company received the harbour assets with no debt attached from the Office of Public Works. Is it fair that it is proposed to dump the debts of this semi-State agency on the Minister's constituents? Does the Department expect the council to continue to pay the chief executive officer of this failed entity the €168,000 package he is reportedly due until he chooses to retire? Why was the chief executive office of the harbour company given a contract of indefinite duration when there is a seven-year term limit on serving as a chief executive of a semi-State agency? Was it not negligence on the part of the Department to allow this happen? Does the Minister believe that his constituents should foot the massive bill for a chief executive whose work will be done by council management into the future? When on the Opposition benches, the Minister was keen on holding State agencies and fat cats to account. I am a little shocked, therefore, to see him rewarding the boss of a failed semi-State agency in this way. He would not have tolerated this when he was in opposition but now he is facilitating the Government in this matter. I was informed by Councillor Smyth that the council is holding a special meeting this evening and that he is written to the Minister's office inviting him to attend. I suggest that when this debate ends, the Minister should take the DART to Dún Laoghaire-Rathdown County Council. As the Minister knows, if it was a constituency meeting and there were votes at stake, he would be the first there.

Senator Kevin Humphreys: What time is this debate due to finish?

Acting Chairman (Senator Gerry Horkan): Unless there is a change to the Order of Business, it is to conclude at 5.30 p.m. The Leader might amend the order of business so that the debate can run until 5.45 p.m., which would be an hour.

Senator Kevin Humphreys: In case that change does not happen I will be very brief in order to allow the Minister time to respond. There is real concern that capital projects are being placed in jeopardy in the council. It is very clear that that is the case. There is a smell about this when a Fine Gael Senator is raising questions that should have been dealt with by the party internally before any order was signed. It stinks to high heaven at this late stage. The Minister has said that there is a seven figure cash reserve, but I do not know why he is not telling us more about that. He has told us there are fixed assets but he will not tell us how much they are worth or whether they are capable of being sold on. We do not know what the liability of the local council is.

A risk assessment was carried out. Was the Dublin Port Company approached to take over Dún Laoghaire port at some stage? Is it the case that it walked away once the risk assessment was carried out and that the council now is faced with the burden of risk? We are having this debate with very little information. Senator Boyhan made some very important points that must be answered for the sake of transparency. There has been very little transparency about this. The Seanad and the local council are both having the debate after the event. We should have had statements on this move prior to any sign-over, and local councillors should have been kept fully informed about the liabilities they will be entering into. I have real problems with capital programmes in the local authorities being placed in jeopardy, especially if those programmes affect housing.

Minister for Transport, Tourism and Sport (Deputy Shane Ross): I will try to answer all the questions I have been asked; I hope I will be able to do so in the short time we have. I thank the Acting Chairman, but I would like to correct him on something. He said I am the

Minister responsible for marine issues. I am not.

Acting Chairman (Senator Gerry Horkan): I said ports.

Deputy Shane Ross: No, the Acting Chairman said Minister responsible for marine issues. I am not. Deputy Creed is the Minister responsible for marine issues. Perhaps the Acting Chairman could address those remarks to him.

The exact extent of the liabilities was mentioned. There has been much talk about liabilities, and several Senators have put on record that they amount to €33 million. It has been agreed between officials on all sides that that figure is not accurate. The figure is closer to €10 million, although it has not been agreed, and is well-known to anybody who has looked at the issue in any detail or who has any knowledge of the matter. Those suggesting that the liability is €33 million are being deliberately mischievous. They are putting that figure out to scare people. It is agreed that the figure of €10 million is far closer to the reality, and will extend over a long period of time. It arises due to a need to repair infrastructure, which is normal in a harbour. It is not the case that €10 million will be spent immediately. It will be spent on the maintenance of the harbour, which any body or entity taking over the harbour would take on. There is no €33 million liability falling due tomorrow, or a €10 million liability. There is a future liability for repairs to be done, and that has to be accepted and will be absorbed.

People are not taking into account the fact that Dún Laoghaire-Rathdown County Council was in favour of this move by a massive majority. I am not sure what the numbers were, but a very large majority said that it should be taken over by the local council. It wanted it because this particular project will be in the interest of the citizens of Dún Laoghaire. That is what local councillors do. They vote, they speak, they push and they urge in favour of their constituents. One or two people are now saying that is not really what the council wanted, and claiming it did not want to inherit €33 million in liabilities. It is not being handed over €33 million in liabilities. Indeed, it is very doubtful that it is being handed €10 million in liabilities. I am not accusing anybody of being deliberately misleading, but the council is receiving a very large asset, including an asset rich company which has not been mentioned by a single person here this afternoon. Its assets are worth up to €40 million, with a single asset worth €12 million. Would the Senators not be glad to receive such an inheritance? It is receiving €40 million but might have to pay out €5 million or €10 million over the next ten years. That is not a bad deal. It is a gift. It is a jewel that is being given to the people of Dún Laoghaire, but it does not suit some people to acknowledge that.

What about income? What about the cash-rich business to which Senator Humphreys referred? For commercial reasons, it would not be wise of me to elaborate, but this company has certainly got a seven digit cash rich bank balance. Would any Senator refuse that, or would they come bleating about the fact that they would have to pay for a few repairs down the road? They would not, but it is very convenient to get up and shout about a figure of €33 million that has been plucked out of the air. It has been agreed by all sides, except for a few opportunist politicians, that that is not a credible figure. That is what is going on here. What has happened has been good for the citizens of Dún Laoghaire and an acknowledgement of Government policy. Those who say it is ridiculous that the matter has come late to the Seanad could have raised it in here at any time in the last four years. This has been delayed, and debated left, right and centre. It should have been signed earlier. It is a pity it was not signed earlier, but there was no great urgency at that stage. People were not coming into this House and screaming about €33 million then, or for the last six months. They come in to complain afterwards because it is

politically convenient.

This is a great deal for the residents of Dún Laoghaire. It will make no difference whatsoever to funding, which has been bandied around in a politically opportunist way. It will not affect local property tax or local projects. Dún Laoghaire will benefit from this asset rich and cash rich transfer. The local councillors were very enthusiastic about this transfer, as I am, and as I expected everyone in this House to be. Suddenly, after the horse has bolted, people come in here thundering that this is a bad deal and that €33 million is owed. That is not the case. It is rubbish, and those saying it know it is rubbish. That figure was dismissed and discounted a long time ago. I do not accept that there is any threat in terms of issues that are politically sensitive and are brought up by people who have ulterior motives. I note that Senator Boyhan does not want to hear what I have to say-----

Acting Chairman (Senator Gerry Horkan): He will not be able to hear it because we must adjourn at 5.30 p.m.

Deputy Shane Ross: He said that he was not interested in what the Minister had to say.

Senator Victor Boyhan: I am not interested in what the Minister has to say.

Deputy Shane Ross: I quote-----

Senator Victor Boyhan: I wrote to the Minister lots of times and he did not respond, so do not-----

Deputy Shane Ross: I listened to everything that Senator Boyhan had to say-----

Senator Victor Boyhan: The Minister did not respond to correspondence from me that he has had for months. This is not a bolt out of the blue.

Acting Chairman (Senator Gerry Horkan): There seems to be a pattern when the Minister comes into the House. Once again, we have run out of time. Perhaps he can come back on another occasion to discuss this further.

Senator Victor Boyhan: He can write to us.

Acting Chairman (Senator Gerry Horkan): The Order of the day holds that this debate must be adjourned at 5.30 p.m. I am sorry about that. Much as we would like to stay on for another hour, we cannot do so. We must move on to the next business.

Irish Human Rights and Equality Commission (Gender Pay Gap) Information Bill 2017: Report and Final Stages

Acting Chairman (Senator Gerry Horkan): I welcome the Minister of State at the Department of Justice and Equality, Deputy Stanton, to the House. Before we commence, I remind the House that a Senator may speak only once on Report Stage, except the proposer of an amendment who may reply to the discussion on that amendment. Each amendment must be seconded. There is only one amendment to the Bill, tabled by Senators Gavan, Conway-Walsh, Warfield, Mac Lochlainn, Ó Donnghaile and Devine.

Senator Máire Devine: I move amendment No. 1:

In page 4, to delete line 22 and substitute the following:

“to a class A fine.

(7) An employer who employs more than 100 staff, and who contravenes the provisions of a scheme made under this section, shall have their company title published by the Irish Human Rights and Equality Commission.”.”.

This is a decent amendment which strengthens the Bill brought to the House by Labour Party Senators. It draws attention to companies that are at fault in that they pay female employees less than their male counterparts.

Will I have an opportunity to speak on the Bill as a whole?

Acting Chairman (Senator Gerry Horkan): Assuming the Bill passes, I will probably allow Senators to make some concluding remarks. As the proposer of the amendment, Senator Devine will have the opportunity to reply to the discussion on the amendment. She can reply at the end of the discussion on amendment No. 1 but we cannot proceed until the amendment is seconded.

Senator Paul Gavan: I second the amendment.

Senator Máire Devine: I will speak now and my colleague can come back in later. I commend my colleagues in the Labour Party for bringing this Bill forward, which Sinn Féin is very happy to support. Equality of wealth is a key objective for gender parity and it is a relevant issue. We know that more equality benefits the economy. It benefits many families in terms of increases in women’s take-home pay. In 1918, women were given the vote but, 100 years later, gender equality has still not been attained. We can never underestimate the size of the task to reverse all history. Patriarchy began when time began and the liberation of women means digging up the roots of human culture and nothing less. Each generation witnessed a wave of brave women stepping up another rung on the ladder and each generation has to do it again until all sexism becomes bizarre ancient history to our great grandchildren. A suite of measures needs to be introduced to cancel the motherhood penalty and the penalty for being a working mother, including improved shared parental leave, affordable childcare and flexible work practices.

Sinn Féin is in favour of making public the names of companies that do not comply with the legislation and the amendment provides for that. The people who engage with these companies, both customers and employees, should have access to this information. They should be aware of the fact that they are giving their business to, or working for, a company that is failing to comply with the law. That is why we propose that any company employing more than 100 staff that contravenes the provisions of this Act should have its company title published.

Sinn Féin welcomes and will support the Bill. We believe our amendment will bring greater transparency in the context of gender pay equality.

Senator Ivana Bacik: I welcome the Minister of State to the House. I also welcome the opportunity to debate this important Bill. I am grateful to all colleagues for supporting the Bill through Second and Committee Stages. This Bill passed Second Stage in the Seanad with full support from all parties on 24 May 2017. It then passed Committee Stage on 25 October 2017. The Bill requires employers to publish information demonstrating any gap based on gender

that exists in their organisation. It is based on legislation introduced in other EU countries and would require companies with 50 or more employees to report regularly on pay transparency in the workplace.

I have spoken with Senator Gavan and thank him and his Sinn Féin colleagues for engaging with us on the Bill and for their support on earlier Stages. I thank them for tabling an amendment on Report Stage, the intention of which is strengthen the Bill and its import. The “gender pay gap” is the term used to describe the difference between the pay of women and men calculated on the basis of the average difference in gross hourly earnings. In 2013, the European Commission showed that women in the EU earn approximately 16% less per hour than men. In Ireland, women earn approximately 14% less than men, a figure equating to women in full-time employment working for free for about one month in every year. Our legislation, which is a pay transparency Bill, aims to tackle this ongoing gender inequality head on. We have had equal pay legislation on the Statute Book for more than 40 years. That legislation tackles the somewhat different issue of pay discrimination between individual men and women in the workplace but has not addressed the ongoing macro-issue of the gender pay gap. Many more actions are needed to tackle the gender pay gap.

I thank the Sinn Féin Senators for raising the issue of publicity around companies that breach any provisions of the Bill. Our Bill requires the Irish Human Rights and Equality Commission, IHREC, to collect the data and to take action against any companies that do not comply with measures aimed at addressing any gender pay gap that exists. Of course, as the Minister of State will be aware, we are doing this to build on the existing powers of the commission. However, we are mindful of the fact that the Government indicated previously its intention to propose amendments to the Bill and we indicated that we would be willing to accept amendments. It is unfortunate that the Government has not done so but, instead, has said that it will introduce its own legislation to tackle the gender pay gap because that will delay the introduction of important pay transparency legislation. By contrast, if this Bill is passed by the House tonight, as I hope and anticipate it will with cross-party support, we would see far speedier introduction of pay transparency legislation than through the Government’s own Bill. It has not yet been published, but once it is it will have to go through pre-legislative scrutiny and then all Stages in both Houses. I have called previously on the Minister to take the approach of amending our Bill. Having said all that, I would like to accept the Sinn Féin amendment. I am conscious, however, that I do not want anything to stand in the way of our Bill being passed by the House tonight as the Government previously indicated that it will not oppose it. I have said this to Senator Gavan before and I know he appreciates the point. The Bill passed on Second and Committee Stages here in the Seanad.

Senator Clifford-Lee and her colleagues in Fianna Fáil have been equally supportive of the Bill, as has Sinn Féin and colleagues on the Independent benches. I do not want to jeopardise cross-party support by changing the Bill at this Stage. It is our intention, however, if it passes through the Seanad tonight to then introduce it in the Dáil, hopefully with cross-party support. The issues Senators Gavan and Devine are raising on publicity for companies that breach the legislation might be addressed at that point. I do not want to accept it now. I hope the Senators appreciate that I am not against it in principle, it is simply that it would be preferable for the Bill to pass, as is, in the Seanad tonight.

I know the Minister of State is cognisant of the issues involved and I have said that before. He was Chair of the Oireachtas Joint Committee on Justice and Equality when I authored that committee’s report on women’s participation in politics some years ago. We brought in gender

quota legislation on foot of that and we were mindful in bringing that forward of the obstacles to women's career progression. They clearly contribute to the gender pay gap. We call them the four Cs that apply in every job: old boy culture; cash, women tend to have a lack of cash; access to childcare; and, of course, confidence, women tend to lack confidence compared to male counterparts. I know the Minister of State appreciates those. We pointed out a fifth C in politics, namely, candidate selection procedures and we sought to tackle that through the gender quota legislation. I see this legislation as very much in keeping with other measures we have introduced over the years to tackle gender inequality. I know the Government is committed to these measures because there was a commitment to publishing and introducing pay transparency in the 2016 programme for Government. We are anxious, however, to get this done speedily. I also know the Minister of State appreciates that. We think it could be done more quickly were the Government to accept this Bill without amendment. That is why I say, with regret, I would rather not accept the Sinn Féin amendment and get the Bill through tonight.

To deal specifically with the issue raised, we look at other jurisdictions, as we did in preparing this Bill. There are some measures in other jurisdictions on publicity, naming, etc. Since we debated this Bill last, we have seen companies in Britain publishing data. Where gender pay gaps exist in British companies it is very much in the public domain. I am thinking of the huge disparity between male and female employees exposed in airlines and the retail sector, for example, in Britain. There is great merit in it. In jurisdictions such as Australia, where gender pay gap legislation has been in place for a long time, companies are named but they name and fame as well as name and shame. If we are looking at publicity for company names, we need to be mindful that there are organisations which have been positive and proactive in addressing the gender pay gap and they should be named and credited. There are equal pay awards for those organisations in Australia where the gender pay gap has been addressed effectively and where improvements have been made. That is the sort of measure that might well be in a final version of this Bill whenever it finally gets passed. I am very grateful, again, to all of my colleagues for their support. Regretfully, I feel it is not appropriate to accept the amendment tonight. The principle behind it should be addressed with this Bill at a later stage.

Acting Chairman (Senator Gerry Horkan): I thank Senator Bacik. We are all doing our best to get it through the House tonight but that will be a function of how long everybody wants to speak for. I call Senator Gavan and then Senators Clifford-Lee, Humphreys and Conway.

Senator Paul Gavan: I welcome the Minister of State. I commend Senator Bacik and my Labour Party colleagues again on this worthwhile Bill.

Senator Ivana Bacik: I thank Senator Gavan.

Senator Paul Gavan: Sinn Féin supports the Bill and we will not do anything to jeopardise-----

Acting Chairman (Senator Gerry Horkan): I ask Senator Gavan to formally second the amendment.

Senator Paul Gavan: I formally second the amendment of my colleague Senator Devine. We support this Bill fully and we will do nothing to jeopardise its passing tonight, as I assured the House earlier. I will say this to the Minister of State. As I think he indicated earlier, he does not intend to oppose this Bill. I hope that is still the case. If it is, I ask him to consider not opposing our amendment either because it is the most moderate of amendments. Section 46 of

the existing Bill states that an employer which contravenes the provisions of a scheme made under this section is guilty of an offence and is liable on summary conviction to a class A fine. We support that provision. The difficulty with the provision is that a class A fine has a value of €5,000. Let us be frank, the head of a large corporation is not going to be too worried about a €5,000 fine. We are not trying to change that.

All we are saying, in addition to that, is that where a company does not comply with the legislation, by refusing to comply with publishing data, let us ensure that its name is published by the Irish Human Rights and Equality Commission. That is it. There is nothing else. The stars will not fall out of the heavens and everything will carry on as before. We are simply asking that the name be published. This is for a simple reason and Senator Bacik referred to it. Publicity is going to be much more powerful in changing the gender pay gap than a fine. We all recognise that. If Senator Bacik's concern about our amendment is just that it might jeopardise the Bill, I ask the Minister of State to reassure her that just as he will not oppose the Bill, he will also not oppose this simple, extremely moderate measure. It only says that if a company refuses to comply, if it refuses to release this data, then its name would be published. That is all. We will not be pushing this to a vote because we do not want to jeopardise the Bill. It is a good Bill and it is great to see so much co-operation on this. Equally, however, I can see no reason the Minister of State would oppose this. It is such a small, simple point. I hope that we can be reasonable, all of us together, and show politics working this evening.

Acting Chairman (Senator Gerry Horkan): I thank Senator Gavan. Before I bring in Senator Clifford-Lee, I would like to welcome some visitors in the Gallery. They are undergraduate students doing a thesis on the gender gap - Ms Sinead Devine, Ms Sophie O'Connor and Ms Emma Tyrrell. We all welcome them to the Gallery and they can see this stuff in action. One of them might even have a connection to one of our Members. We can work out who that might be. I call Senator Clifford-Lee.

Senator Lorraine Clifford-Lee: I welcome our guests in the Gallery. It is great to have such interest in this issue from an academic point of view. I offer the formal support of Fianna Fáil for this Bill. We have continued to support this Bill and we see it as vitally important for women in Ireland today.

Acting Chairman (Senator Gerry Horkan): We are just discussing amendments at the moment.

Senator Lorraine Clifford-Lee: That is fine. I urge the Minister of State to accept the Sinn Féin amendment, not to push this to a vote and to allow the passage of this Bill. We cannot wait any longer for the gender pay gap to narrow. There are gender pay gap deniers out there and we need to confront their denials with hard data. I do not want my daughter facing the gender pay gap but, equally, I do not want my son growing up in a country where the gender pay gap exists. All the data have shown that when the gender pay gap narrows society does much better. I urge the Minister of State to accept the amendment, allow the passage of this legislation and also to support it as it goes through the Dáil.

I will make brief reference to the interesting and insightful presentations in the AV room last July from two UK experts on its legislation. It showed some interesting findings that the principle has worked and given companies the boost they needed to address it. Many people did not even realise what the gender pay gap was and that it existed prominently within their organisations. It shows the value of this as one part of the overall fixing of the gender pay gap.

Colleagues have referred to other issues such as culture and childcare. We also spoke about the gender quota for political representation. We are taking our seat at the table. We need more women in the workforce, progressing through the workforce and taking their seat at the table in industry, commerce, law, healthcare and other areas. This Bill is, therefore, vitally important, particularly this year as we are celebrating getting the vote 100 years ago. We need to move forward with this. I know the Minister of State is committed to it, but introducing his own Bill will only slow things up and push that day further away from us. We cannot wait around any longer. We have waited long enough. I urge the Minister of State to accept Sinn Féin's amendment and the Bill.

Senator Kevin Humphreys: I acknowledge the cross-party support for this Bill, and the hard work and dedication of Senator Bacik in preparing it. It is now on Report Stage. I fully support the sentiment behind the amendment, but I ask Sinn Féin not to press it at this stage. There will be more opportunities to tease it out further. The Senator made a very good point about the class A fine of €5,000. I do not have a legal background, but that would go through the District Court. If the defendant is hit with a €5,000 fine at that point, he or she will also have been hit with the publicity of a prosecution therefor. That is the point. It is not the sum of €5,000. If the case goes to the District Court, it will be publicised by the media. I have not taken legal advice on this, but Sinn Féin's amendment could be open to challenge unless there is a conviction. I am open to correction there. I will not refer to the next stage. I will just deal with the amendment. That is my view on it.

I appeal to the Minister of State. A certain amount of energy has been spent in the House to get this to Report Stage. The fastest way to get legislation through would be to amend the Bill in front of the House this evening, let it go to the Dáil and accept amendments there. Let us work in a co-operative fashion to get this legislation on the Statute Book before Christmas. I think that is fully achievable. The Minister of State has done a certain amount of work on this as well. The Labour Party acknowledges his support, but we want to get this legislation on the Statute Book as quickly as possible.

I ask Sinn Féin not to press its amendment. Let us look at it again and investigate it for the next Stage. We have a commitment from our party that our members will use their time in the Dáil to bring this Bill forward. It has been talked about for too long. I remember the pressure to get pay equality measures over the line in 1999 during the tenure of the then Deputy Proinsias De Rossa. I feel the same now. There is a window during which we can get this over the line if we all work together. If we work on a cross-party basis in this House, in the Dáil and with the Minister of State, this can be achieved. I ask Sinn Féin not to press its amendment.

Senator Martin Conway: I commend Senator Bacik on timely and long-overdue legislation. The fact it is receiving cross-party support reflects its importance. The people in the Gallery, who are most welcome, are researching this at the moment. They will hopefully have something positive to say about the Oireachtas in their theses.

To give credit where credit is due, an election is taking place at the moment and the Sinn Féin candidate Liadh Ní Riada, MEP, announced a very interesting and worthwhile initiative. If my memory serves me correctly, she announced a President's award for excellent working conditions and fair pay. If she becomes President, it will be a very good initiative. It should be considered whoever becomes President. We should be able to pride ourselves in this country on the way we treat people. We have not had gender equality in this country's history. The time has come for gender equality. This legislation is an extremely important incremental step

towards achieving it.

The amendment is a good one. Fine Gael will not have any problem accepting it, but it is really up to Senator Bacik because it is her Bill. The name-and-shame principle should be applied to this. When there are breaches of this nature, the sanction should not just be a fine. Corporations write fines off. The damage being named and shamed could do would be far greater than a €5,000 fine. We need to use the carrot, although it should not be required. When it is not honoured, the stick should be used in every way. The public has a right to know what companies are doing in this area.

Progress has been made in other countries. Some progress has been made in this country, but not nearly enough. It is a very well thought out amendment and that is what this House is for. As legislators, we are here to come up with amendments that will improve and strengthen legislation. The people drafting legislation are so consumed with the big body of work involved in drafting that something like the proposed amendment is more readily identified by people who observe, politically proof and test legislation. That is the nature of this Stage. It is designed to improve legislation. The thinking and motivation behind what this amendment is trying to achieve are certainly things we all share.

Senator Aodhán Ó Ríordáin: I thank the Minister of State and his officials for being here and for working with this House in trying to get this legislation to the next Stage.

Acting Chairman (Senator Gerry Horkan): We are dealing with the amendment.

Senator Aodhán Ó Ríordáin: I also congratulate my colleague, Senator Bacik, on her hard work in this regard. We all know in this House that Private Members' time is fairly precious. When one gets it, one wants to make sure one has a topic or legislation which is very important. This is why we have chosen this one. We feel that we have an opportunity to have cross-party support on this measure to take it to the next Stage. The year we are in has been referenced in regard to gender equality, with the 100th anniversary of some women getting the franchise and this year's referendum. There are very deep gender equality issues in our society which are still unresolved. We separate children at primary school level on the basis of gender. We are almost unique in that regard. We separate children at secondary school level by gender. That is disproportionately prevalent in Ireland, more so than in any European country. One third of our secondary schools are gender-specific, which is very unusual.

Women are under-represented in politics, in the media and on executive boards. There are other countries that take steps in this regard. It is not just Ireland, which insists on gender equality on State boards. Germany has passed legislation to ensure gender equality on commercial corporate boards. The measures we are taking are achievable and attainable and ones everybody in the House should support. I absolutely concur with my colleagues that there is a window of opportunity here. In a place where we can be very divisive and spot opportunities to have a go at each other, there is an opportunity to move this legislation to the next Stage, get it passed in the Seanad and possibly get it passed by Christmas. That would put this House and the Oireachtas in general in a good light considering the current year. I ask Members across the floor to take the goodwill that is evident from all parties and from the Government and move collectively to take this to the next Stage and get it passed. We should apply the same spirit to the amendment.

A huge amount of work has been put into this piece of legislation. There has been research,

and the researchers have been referenced. I refer to the phrase that Hillary Clinton has often used: “You cannot be what you cannot see”. If women, or any members of a minority faith, ethnicity or sexual orientation do not see themselves in positions of power and influence they cannot aspire to them. This is purely what we are trying to achieve with pay, which is basic and fundamental to how people operate in an economy. On that basis, I ask the Minister of State to facilitate what we are trying to achieve here and ask all parties to do the same.

6 o'clock

Minister of State at the Department of Justice and Equality (Deputy David Stanton): I will speak to the amendment.

Acting Chairman (Senator Gerry Horkan): As everyone else has, apparently.

Deputy David Stanton: I noticed that.

Senator Máire Devine: Not looking at anyone in particular.

Acting Chairman (Senator Gerry Horkan): I granted quite a lot of latitude but those in question are not coming back in.

Deputy David Stanton: Will I get a chance to come back in later on?

Acting Chairman (Senator Gerry Horkan): Yes, I will let the Minister of State back in.

Deputy David Stanton: The amendment proposes to insert a new subsection (7) into section 32A to provide that a company which employs more than 100 staff and which contravenes the provisions of a gender pay gap information scheme shall have its company title published by the Irish Human Rights and Equality Commission. That is basically what is at issue here. We do not oppose the amendment.

Senator Paul Gavan: The Minister of State does not object?

Deputy David Stanton: No.

Senator Martin Conway: Absolutely not.

Deputy David Stanton: Let me continue.

Acting Chairman (Senator Gerry Horkan): I should have brought the Minister of State in at the outset.

Senator Máire Devine: That is mean.

Deputy David Stanton: However, the general scheme of the Gender Pay Gap Information Bill contains provisions under which contraventions of gender pay gap reporting regulations would be made public. Head 4 of that Bill would permit the Irish Human Rights and Equality Commission to apply to the Circuit Court for an order requiring an employer to comply with the regulations. These proceedings would, of course, be in public. Head 6 would allow an employee who claims that his or her employer is not complying with the regulations to bring a complaint to the Workplace Relations Commission. It also provides that where decisions of the Labour Court are appealed to that body, the relevant publications of decisions and determinations shall include the names of the parties involved. This goes even further than the previous

legislation. The Government proposal contains provisions in respect of publicity, although not in the form envisaged in the amendment. There is not much between us but we are moving along the same lines.

On what Senator Bacik stated earlier about the Bill being published and then having to go to the Joint Committee on Justice and Equality for pre-legislative scrutiny, in fact it is at the committee for pre-legislative scrutiny now. We are waiting for the joint committee to come back with its determination. As soon as that happens, the Government will publish its Bill immediately. The only thing that is delaying the Bill is the very serious work that the joint committee has to do in respect of it. I will speak about that more later if I may.

Acting Chairman (Senator Gerry Horkan): The only person who can come in at this point, if she so wishes, is Senator Devine.

Senator Máire Devine: Given that the Government is not opposing the amendment, I ask the Labour Party and Senator Bacik to support it.

Amendment agreed to.

Bill, as amended, received for final consideration.

Question proposed: "That the Bill do now pass."

Minister of State at the Department of Justice and Equality (Deputy David Stanton): I appreciate the energy and urgency in respect of this concept of the gender pay gap. Senators already alluded to the fact that it is not a simple topic but that matters become quite complex when we start to drill down into it. This is a very important issue and those on all sides are taking it seriously. There is no division in the House on the matter. I caution, however, that we should get this right versus getting it done speedily. We have to get it right.

When I spoke on Committee Stage on 25 October 2017, I indicated that Government was in agreement with the principles behind the Bill but there were issues with the specific approach proposed. Senator Bacik expressed a willingness to consider an alternative approach in which the Irish Human Rights and Equality Commission, IHREC, would not have had the function of making the scheme for gender pay gap reporting, which would instead be the responsibility of the Government. The way we have done it is that IHREC can make a scheme and has discretion on whether it will exercise that power. The Government is saying that the Minister will make regulations and is required to do so. There is a subtle difference there. IHREC is totally independent and we want to respect that as well. We are saying that the Minister shall make regulations, there are no ifs or buts. The Minister is answerable to the Houses every week via parliamentary questions and so forth.

There are other issues as well but we said we would seriously examine the Bill with a view to bringing forth amendments on Report Stage and we did so. That was very sincere at the time but when we really went into it in detail and got advice on it from the Office of the Attorney General and others, it was apparent to the Minister and me that the amendments required would be quite extensive and would extend to the Long and Short Titles of the Bill. One fundamental difference between the Bill and the approach we propose is that the Private Members' Bill would amend the Irish Human Rights and Equality Commission Act 2014, while our proposal in the Gender Pay Gap and Information Bill would mainly amend the Employment Equality Acts 1998 to 2015. The full extent of the differences between the present Bill and the Govern-

ment's proposed approach can be seen by comparing the general scheme of the Gender Pay Gap and Information Bill with this Bill. That was the advice that we received. The principles that we have are identical and we all want to achieve the same result at the end of the day and I welcome the debate in this House on the occasions that I have been here, it has been very useful. We are not opposing the Bill passing through the Seanad. We will present the Gender Pay Gap and Information Bill to the Dáil or the Seanad in due course. As soon as the Joint Committee on Justice and Equality has completed its pre-legislative scrutiny on the heads of the Bill, we will publish it. I do not anticipate that the committee will bring forward any major changes but it may do so. We have to respect that and wait until the committee has completed its work.

The heads of the Bill were approved by the Government on 26 June 2018 - no time was lost - and were subsequently published on www.genderequality.ie and immediately forwarded to the Joint Committee on Justice and Equality. The committee will conduct pre-legislative scrutiny on the general scheme in late November and I look forward to that. Drafting of the Bill is at a very advanced stage and I look forward to its presentation as soon as possible after the pre-legislative scrutiny is completed. The advice that we received is that it would be easier to bring forward a new, more straightforward Bill than to amend this Bill but the thrust and the philosophy behind both of them are exactly the same. We all wish to achieve the same thing. This is a very interesting, challenging and complex area when we drill down into it. We have done much work and carried out much consultation in this area and all those I have engaged with on this - employers, trade unions, workers and big and small businesses - want to get it right.

The Government is approaching this from the point of view of fame rather than shame and many companies want to be on the right side of it. I thank colleagues here for their sincerity and co-operation in respect of this matter. Prior to Christmas - Senator Humphreys mentioned Christmas on a few occasions, and it is getting close - when pre-legislative scrutiny has been completed, I hope to be in a position to bring the Bill before the House in order that we might discuss it in detail.

Senator Ivana Bacik: I thank the Minister of State for clarifying his intentions on the Government Bill and, as he stated, we are seeking to be constructive. Everybody is in agreement on where we wish to be. We all wish to see pay transparency legislation introduced and to tackle the ongoing gender pay gap. However, it has been nearly a year since the Bill before the House passed Committee Stage. The Minister of State clarified that the scheme of the Government's Bill is with the Joint Committee on Justice and Equality and that the latter will hopefully commence pre-legislative scrutiny in late November, but I still say that it would have been speedier to have simply amended this Bill. There is a record of the Government extensively amending Private Members' Bills in this House. I refer, for example, to the Competition (Amendment) Act 2017, which, with extensive amendment by Government, was passed by the Houses in the aftermath of collaboration between the Labour Party and officials in the relevant Department. The same could have been done in this instance.

That said, I am grateful to the Minister of State for his engagement on this. I met with him and his officials during the summer months. At that point, he spoke to me about the proposal to use the Workplace Relations Commission and not to have IHREC as the body collecting the data and we were in agreement with him on accepting amendments to that effect. I appreciate that IHREC would have required significant extra resources to be in a position to collect the data. It probably would not have been appropriate and I accepted that. I still have a slight concern about the scheme as proposed by Government in terms of enforcement. I expressed that concern to the Minister of State and his officials. The Minister of State's Bill proposes

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to amend the employment equality legislation and would not give power of enforcement to IHREC. Given the commission has powers to conduct equality reviews and audits under the existing legislation, it would be a missed opportunity not to give it similar powers in respect of gender pay gaps. It seems strange not to give those powers to the commission in this case. It is uncontroversial, of course, as the EU Commission and many other bodies are seeking gender pay gap legislation. It is important that this be done. It would have been nice to have it done in the year of Vótáil 100 and the centenary of women's suffrage, to which Senator Ó Ríordáin referred. It is a pity because this could have been done more swiftly. There has been extensive consultation. The Minister of State's Department engaged in extensive consultation with stakeholders. All of this needs to be said. Having said all of this, if the Minister of State's Bill is introduced before this legislation proceeds through the Dáil, I hope it will be introduced in the Seanad given we have had extensive debates. Many colleagues on both sides of the House-----

Acting Chairman (Senator Gerry Horkan): There is a lot of expertise here, to be fair.

Senator Ivana Bacik: There is lots of expertise here and we have had many debates on the issue so it would be appropriate to introduce it here.

I welcome our guests in the Gallery. As they will be well aware, it has been estimated that despite changes in gender equality generally and progressive change for women's rights in Ireland over the past 11 years, the gender pay gap has narrowed only four percentage points. At current rates, the National Women's Council estimates it will take up to 170 years before it fully closes. Clearly, we cannot wait that long. It would have been nice to have addressed it in the centenary year of 2018. I thank colleagues on all sides of the House and my colleagues in the Labour Party, Senators Nash, Ó Ríordáin and Humphreys, for all of their work on this. I also thank the Minister of State and his colleagues.

Question put and agreed to.

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

Senator Martin Conway: Ar 10.30 maidin amárach.

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

The Seanad adjourned at 8.15 p.m. until 10.30 a.m on Thursday, 4 October 2018.