



DÍOSPÓIREACHTAÍ PARLAIMINTE
PARLIAMENTARY DEBATES

SEANAD ÉIREANN

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

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SEANAD ÉIREANN

Dé Céadaoin, 10 Deireadh Fómhair 2018

Wednesday, 10 October 2018

Chuaigh an Leas-Chathaoirleach 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 Colm Burke that, on the motion for the Commencement of the House today, he proposes to raise the following matter:

The need for the Minister for Health to address the waiting list and waiting time for cataract procedures and outline how many procedures will be funded in 2018 by the National Treatment Purchase Fund.

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

The need for the Minister for Health to provide an update on the new building for the Holy Angels Day Care Centre in Carlow and the status of Holy Angels Tír na nÓg Respite Services.

I have also received notice from Senator Keith Swanick of the following matter:

The need for the Minister for Health to investigate the feasibility of establishing a pain management clinic in Mayo University Hospital.

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

The need for the Minister for Housing, Planning and Local Government to address the delay in the granting of a foreshore licence to Clare County Council for important coastal protection works.

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

The need for the Minister of State at the Department of Education and Skills with special responsibility for training, skills, innovation, research and development to provide adequate support to transport children living on Sherkin Island to and from school on the mainland.

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The matters raised by the Senators are suitable for discussion. I have selected the matters raised by Senators Colm Burke, Jennifer Murnane O'Connor, Keith Swanick and Martin Conway and they will be taken now. Senator Tim Lombard may give notice on another day of the matter he wishes to raise.

Commencement Matters

Hospital Waiting Lists

An Leas-Chathaoirleach: I welcome the Minister of State at the Department of Health, Deputy Jim Daly.

Senator Colm Burke: I thank the Minister of State for taking the time to deal with this issue. I am concerned about the waiting time in having cataract operations performed and accessing the required expertise to deal with eye problems, particularly for elderly persons. In the past six months I have received many queries about the waiting list and waiting time for cataract operations, particularly in Cork. One of the things I want to find out is how the issue can be dealt with now to make sure patients receive treatment in a timely matter. I ask the question because the greater the delay in receiving treatment the less likely it is that a specialist will be able to solve eye problems. The issue is extremely important because the loss of eyesight leaves a person extremely limited and in need of a lot support from the health service. It is extremely important, therefore, that anyone who has problems with his or her eyes, his or her eyesight in particular, and requires a cataract operation have the procedure carried out at the earliest possible stage. It is in that context that I raise the question. I want to know, in particular, whether services for the people who are waiting can be outsourced and the number who can be accommodated in accessing treatment, particularly in Cork.

Minister of State at the Department of Health (Deputy Jim Daly): I welcome the opportunity to address the House on this issue. The Minister for Health, Deputy Simon Harris, has committed to tackling long waiting lists. It is acknowledged that cataract surgery is among the most common surgical procedures carried out in the ophthalmology speciality. It was with this knowledge, when proposals for the joint HSE-National Treatment Purchase Fund, NTPF, inpatient and day case action plan were under development earlier this year, that the Minister sought a particular focus on waiting times for a number of high volume specialties, including cataract surgery. The action plan allocated one quarter or 5,000 of the 20,000 planned NTPF procedures to cataract treatments. Furthermore, under the action plan, the NTPF commits to offer treatment to all clinically suitable patients who have been waiting more than nine months for a cataract procedure. By the end of August over 4,100 patients had received cataract treatment through NTPF funding. This represents 83% of the target of 5,000 set in the action plan.

The impact of the action plan can be seen in the improvements to waiting lists for cataract procedures which have seen a reduction of over 3,100 in the past 13 months. The August 2018 figures show that there are 6,868 people on the waiting list for cataract procedures compared to over 10,000 in July 2017. However, the reduction in waiting list numbers does not fully reflect the progress made. In January 2018 as many as 8,027 patients were awaiting cataract

surgery. Between January and August, 5,982 patients were added to the waiting list, therefore numbers have more than halved from 14,000 to 6,900 in the eight-month period. In addition, the number of patients waiting longer than nine months for a cataract procedure has gone from over 4,300 in July 2017 to 1,078 in August 2018, with 64% of patients waiting three months or less. Between January and August, the NTPF issued almost 7,300 offers of treatment to patients awaiting cataract surgery who were clinically suitable for outsourcing.

The action plan also recommends that the HSE and the NTPF identify sustainable initiatives to improve waiting times. A dedicated cataract theatre in Nenagh hospital opened in July. Since the service commenced in July, 53 patients have been treated and it is expected that more than 200 cataract procedures will be undertaken by the end of the year. Yesterday's budget announced an allocation to the NTPF of €75 million in 2019 from which the NTPF plans to fund 25,000 inpatient day case treatments. Under these plans, I would expect that the number of cataract procedures to be funded in 2019 will be similar to 2018 levels.

Senator Colm Burke: I thank the Minister of State. I note the figures to which he referred. Unfortunately, the people who have been in contact with me have not benefitted under outsourcing. It is in that context that I raised the question. How are people selected to receive treatment under the NTPF? How are they prioritised? Is it based on the period of time they have been waiting or on decisions made by people within the administrative system? I am a bit concerned as to why some people who have been on the waiting list for quite a long time are not selected. It does not appear to be based on the time one has been waiting but rather on random selection. I am not clear on how it is being dealt with. Could I have some clarification on that?

Deputy Jim Daly: The important thing to note is that the number of patients waiting longer than nine months for a cataract procedure has gone from over 4,300 in July 2017 to 1,078 in August 2018. It is clear that in that 12-month period almost 3,300 people were taken off the list of those waiting in excess of nine months. That is where the focus has been.

If the Senator looks at the earlier figures with regard to the number of patients who have left the list altogether, which states that 83% of the 5,000 person target has been achieved, he will see that the majority of that decrease, 3,000 of more than 4,000 patients, came from the list of those waiting in excess of nine months. The primary focus is on those waiting longer than nine months. They would all be offered treatment. Not everyone would want to accept, but they are the first priority. There would then be a number of exceptions made on clinical grounds and so on. I assume the HSE or a clinical team could make a decision in that regard. The primary focus, however, is on those waiting a long time, as evidenced by the figures which show that 3,300 have left the list of those waiting longer than nine months.

Special Educational Needs Service Provision

Senator Jennifer Murnane O'Connor: I wish the Minister of State a good morning and thank him for coming but, as he can imagine, I was expecting the Minister for Health. While I value the Minister of State's time I feel this issue deserves the attention of the Minister. I will ask my questions, however, because they are important. I will relay them as I would have to the Minister in order that the Minister of State will be able to take my message back in full.

Last month the Taoiseach came to Carlow. I asked him to come to have a meeting and to wish a happy birthday to Holy Angels, a very special facility for children with special needs in

Carlow. I hoped he would see the need and know that it needs help. It would also allow the centre to raise its concerns. He could not come because his schedule was tight but I have serious questions to ask this Government about promises which were made and not kept. I now put these questions to the Minister of State.

The Holy Angels centre in Carlow recently celebrated its 40th birthday with a fundraising night. Families who used the service over the four decades joined in the celebrations and were more than generous, but fundraisers for this incredible facility are a regular occurrence because there is no other help for it. Our community in Carlow is amazing. It digs deeper and deeper again and again, but it is not fair. The centre has been promised capital funding and has been waiting years for it.

The Holy Angels Day Care Centre was established in the basement of Carlow's old district hospital in 1978 because there was a need for day care for children with special needs. There is still that need today but the centre is in urgent need of investment. The centre is now a designated specialised preschool for children aged from 18 months to six years and caters for children with a range of disabilities such as Down's syndrome, cerebral palsy, spina bifida, autism and rare conditions such as Pierre Robin syndrome and Rett syndrome. There are 35 children in the school, which has a waiting list of 20 because it is still waiting for capital funding which was promised more than 11 years ago. An interim amount of €150,000 was given last year. That was urgent. The Minister, Deputy Harris, had to come down because the roof was leaking and the flooring was in a very bad state. As some service users use wheelchairs, all that flooring had to be taken up and new flooring put down.

From a basement to prefabricated accommodation, the staff have had to work in these conditions and they deserve better. The children deserve better, as do the parents of those children left idling on waiting lists. They were given promises and commitments but they have not received their new school. Essential maintenance work was completed but that is just not good enough. They all need a school for Holy Angels that is fit for purpose. The facility has a wonderful hydrotherapy pool for the users of the centre, from which the wider community also benefits. This 21 year old hydrotherapy pool needs to be upgraded. This facility was promised funding for a new school and pool but, again, nothing has happened.

As someone who has been on the board of Holy Angels for the last few years, I would like to say that we have been getting information from the HSE. It is telling us everything but telling us nothing at the same time. We are told there is a site. We have been told that and told it again. We are just waiting on the capital funding because the school's current location is too small to allow for extension. We need a larger site. The HSE has a site in Carlow. It is telling us that it is there. I am looking for full commitment from the Minister of State on that funding.

The second status report I seek is on the overnight accommodation for respite services for parents of children in Carlow. These services were previously provided by Holy Angels in a house in Carlow called Tír na nÓg which closed in December 2015. Arrangements for alternative respite provisions were set up in partnership with the HSE and Holy Angels and extended until a tender process for the provision of respite services in Carlow-Kilkenny was completed. Enable Ireland was the successful tenderer. Since 1 September 2017 Enable Ireland has taken over the provision of respite services to children with complex disabilities in Carlow-Kilkenny. The matter of providing overnight respite services to families in Carlow-Kilkenny has not yet been dealt with. A house, formerly a Patrician Brothers home, was purchased in Tullow and the families were promised that the renovation and setting-up of the house was to be fast-tracked

and that they would see a new service later this summer. That has not happened. The house was supposed to be ideally suited to the needs, and renovations were not expected to cause any delay. When are the children going to be put in this overnight respite service that was promised? It is three years since we had overnight respite in Carlow. It is unacceptable.

The reason I brought this up today is because we spoke about people in need in respect of the budget. We have Holy Angels and a respite service in a house called Tír na nÓg in Carlow. Holy Angels is in prefabricated accommodation. This is 2018 and this has been going on for 40 years. It is unacceptable.

Deputy Jim Daly: On behalf of my colleague, the Minister for Health, Deputy Harris, I am happy to provide an update to this House on the status of the Holy Angels Day Care Centre and its respite service in Carlow. As the Senator may be aware Holy Angels is a designated, specialised preschool for children aged 18 months to six years who have special needs and caters for children with a range of disabilities such as Down's syndrome, cerebral palsy, spina bifida, autism and rarer conditions. Facilities include a hydrotherapy unit, a soft play area, a multisensory room, an outdoor play area, a family room and three classrooms. Holy Angels Day Care Centre is funded by the HSE and almost €580,000 has been allocated for 2018.

Efforts have been ongoing in recent years to secure a new school building. One of the issues that management at the school faced was trying to secure an adequate site for the new school building. This hurdle has now been overcome as the HSE has said that it will make land available at Kelvin Grove for the new school. In the interim, major renovations and a general revamp have been carried out in recent weeks on the Holy Angels building at Strawhall Estate. This included floor replacement and repairs to the roofs of the prefabricated units. The children's toilet has been moved to a different location and new fire doors have been installed.

Historically, respite care was provided by Holy Angels in Carlow and by St. Patrick's Centre in Kilkenny. However, following inspection by HIQA, both of these centres fell short of the necessary standards. The HSE carried out a mapping exercise of the need regarding children's respite for Carlow and Kilkenny and concluded that a single service provider should provide respite services to children in the Carlow-Kilkenny area. Following a tender process Enable Ireland was named as the successful service provider to provide respite care services for children with disability and complex care needs including autism spectrum disorder in the Carlow-Kilkenny area. Enable Ireland has taken on the responsibility of children's respite services in the Carlow-Kilkenny area from September 2017. The matter of providing overnight respite services to families in Carlow-Kilkenny is of key importance to the HSE and Enable Ireland. A property has been identified to provide overnight respite and the process of purchasing this property is under way. Once the purchase is complete, the property will be refurbished in line with Health Information and Quality Authority, HIQA, standards in order that it is an appropriate setting to deliver overnight respite services to children. Until this property is available, Enable Ireland will work with the children and their families from the Carlow-Kilkenny area in order that it can continue to offer alternative respite supports to these families.

Senator Jennifer Murnane O'Connor: I thank the Minister of State. Will he clarify what he meant when he mentioned facilities, including a hydrotherapy unit, a soft play area and a multisensory room? He said that almost €580,000 has been allocated by the HSE? Has this money been allocated to the Holy Angels centre?

The respite services in Tullow went for tender months ago, but we have had no update on

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that. Is there a problem with the funding? We were told the children would have access to overnight respite by early summer, but this has not occurred as we approach the end of the year. It is all about timescale. I need clarification from the Minister of State today on what exactly is happening. The Holy Angels centre needs more than €5 million to build a new school. The HSE has told us we have the site.

Acting Chairman (Senator John O'Mahony): I thank the Senator.

Senator Jennifer Murnane O'Connor: I have raised this issue three times.

Acting Chairman (Senator John O'Mahony): The Senator has made her points clearly.

Senator Jennifer Murnane O'Connor: I am not getting answers. I accept that the Minister of State is just covering for the Minister of Health.

Acting Chairman (Senator John O'Mahony): The Senator should allow the Minister of State to answer her now. As she has put him on the spot, here we go.

Senator Jennifer Murnane O'Connor: It is frustrating that, with the budget process under way, babies and children are in prefabricated buildings 40 years after the Holy Angels organisation was founded. We still have no commitment to a building for Holy Angels. I ask the Minister of State to resolve this issue. I know he will revert to the Minister of Health, but we need an answer on this.

I also need clarification on the €580,000 in funding. On what exactly is that being spent?

Deputy Jim Daly: I have given the Senator answers. I can clarify that the figure of €580,000 is for 2018, not 2019. It has been allocated by the HSE for the Holy Angels centre. The Senator said that not a cent had been given and the centre was relying on fundraising. That is not correct. Some €580,000 was given.

Senator Jennifer Murnane O'Connor: I am on the board and we need to clarify this.

Deputy Jim Daly: I have no problem giving the answers that the Senator seeks if I am allowed to do so. She asked a number of questions about the future. I confirmed that the site had been secured and provided by the HSE, which allows it to progress to the next stage. She also asked about respite and I replied that a review of the services had been carried out. Many counties are well behind Carlow-Kilkenny in that area and their reviews have not taken place. The review has taken place in Carlow-Kilkenny, the outcome has been agreed, a tender process has been carried out, and a successful conclusion to that process has resulted in Enable Ireland getting the contract. There is a building to be procured, the sale of which is going through at the moment. Once it has been procured, there will be additional capacity for Enable Ireland and the HSE to provide additional respite services.

I have given a number of answers now, and I reiterate that the money has been given to the services, there has been a review of the respite services, a site has been chosen and agreed for the brand new school, and a new building is in the process of being purchased for the additional respite provision.

Senator Jennifer Murnane O'Connor: I thank the Minister of State but we need this in writing because the information I have differs slightly from the information he provided.

Health Services Provision

Senator Keith Swanick: I thank the Minister of State for coming to the House to address the issue of chronic pain, which I deal with on a day-to-day basis in my practice. More than 500,000 people in Ireland suffer from chronic pain, which is pain that lasts longer than three months. The prevalence of chronic pain is approximately 35% of the population. As we know, it increases with age and manual labour. Lower back pain is the most common form of chronic pain syndrome. Some 12% of people with chronic pain are unable to work or have reduced working hours. This is not only a public health problem, therefore, but it also has serious economic ramifications.

When people are in debilitating chronic pain, they often phone their general practitioner from bed because they are unable to get up or move. I have taken many of these calls over the years and visited the patients in question. A pain management clinic, led by a consultant anaesthetist who specialises in pain management, is a viable option for these patients. It is not an ideal scenario to have such clinics located more than two hours away from patients. I am not calling for an accident and emergency department in every back garden but for a much-needed facility to be established in County Mayo, where there is a population of 140,000. Patients in the county and also in County Roscommon are forced to travel either to Sligo University Hospital or University Hospital Galway to access a pain management service. These patients are usually maxed out on oral and topical medications and patches, many of which are opioids which are not good. The GP will be at the end of his or her tether because the patient has maxed out all the medications. The patients tend to be elderly and they may be forced to travel on a poor road network or on an inadequate public transport system.

Pain management clinics provide a vital service and we need one in County Mayo. The Sligo pain management model, for example, has consultant orthopaedic surgeons, consultant anaesthetists in pain management, consultant rheumatologists and specialist physiotherapists all working together as a team. There is an excellent orthopaedic service in Mayo University Hospital. Recently, after many years of campaigning, the decision was taken to provide for a visiting rheumatologist from Manorhamilton. The missing cog here is a consultant in pain medicine.

Increased interdisciplinary pain rehabilitation programmes are essential to improve quality of life and they can reduce the economic burden of chronic pain in Ireland. I ask the Minister of State to investigate the possibility and feasibility of opening a pain management clinic in Mayo University Hospital.

Deputy Jim Daly: I welcome the opportunity to provide an update to the House on this issue. Chronic pain is a major problem, which the Senator, who is a practising medic, understands well. He has eloquently outlined the case here for those suffering from the condition. It is important that patients have access to diagnosis and effective pain management programmes as quickly as possible. The delivery of services in the most appropriate environment and location with the required multidisciplinary team expertise is a key element of the Saolta University Healthcare Group's clinical strategy.

Unfortunately, however, there are no immediate plans to commence a pain management service in Mayo University Hospital. The pain management service within Saolta is currently delivered from University Hospital Galway and Sligo University Hospital with a limited service in Letterkenny University Hospital. I acknowledge there are waiting lists for pain relief

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services at University Hospital Galway and Sligo University Hospital. Improving access to hospital treatment is a key priority for Government and yesterday's budget announced an allocation to the National Treatment Purchase Fund, NTPF, of €75 million in 2019, from which the NTPF plans to fund 25,000 inpatient day-case treatments.

The priority of the Department of Health is to maintain a seamless continuation of the considerable progress made this year into next year. The Department is working closely with the NTPF and the HSE to finalise a coherent waiting list action plan for 2019 before the end of this year.

Senator Keith Swanick: It is deeply disappointing to learn there are no plans to open a pain management clinic at Mayo University Hospital. While I acknowledge the Minister of State's comments on the expansion of the NTPF, what will inevitably happen is these people will still have to travel to Sligo or Galway to access the service. It is unfair to people who have chronic pain. There are 140,000 people living in County Mayo. A clinic in Castlebar could also facilitate patients travelling from County Roscommon. This issue needs urgent attention and I ask the Minister of State to look at the matter again.

Also, will the Minister of State give an update on the proposal for the 20 additional acute beds in Mayo University Hospital which were meant to be delivered through the modular building unit? Are there any plans for the redevelopment of Belmullet Community Hospital?

Deputy Jim Daly: The Senator has shone a light on this issue and I welcome the opportunity to comment on it. I understand the Senator's passion, conviction and ability to comment on such issues as someone who practises on the ground. That is what this forum is for and what politics is about. It is people like him who bring that knowledge with them to put the focus on the national organisation that is the HSE through the Department of Health. I certainly will do so for the Senator. I will convey his request and strong belief that it is necessary to provide a pain management clinic at Mayo University Hospital. Obviously, there are waiting lists in other hospitals, but I certainly will support the Senator in his endeavours to have such a clinic provided. I will raise the issue with my colleague, the Minister for Health, and the relevant departmental officials. I will also obtain an update from the Minister on the modular beds provided in Mayo General Hospital and the upgrade of Belmullet Community Hospital. I undertake to come back to the Senator on both issues.

11 o'clock

Senator Keith Swanick: I thank the Minister of State.

Foreshore Licence Applications

Acting Chairman (Senator John O'Mahony): I welcome the Minister of State at the Department of Housing, Planning and Local Government, Deputy Damien English

Senator Martin Conway: I, too, welcome the Minister of State.

There is an interesting backdrop to my Commencement matter. As we all know, applying for a foreshore licence is a long, difficult, slow and tedious process. At 6 a.m. on 4 January 2014 the shoreline in the village of Lahinch, County Clare was destroyed. Millions of euro worth of damage was caused and the incident had a significant impact both on the lives of the community and businesses in the village. To be fair, everyone rallied around and a significant job of work

was done to restore the village. With the support of Clare County Council, the Department of Housing, Planning and Local Government, the Office of Public Works and all other stakeholders, together with business people, the streetscape, promenade and general facilities in Lahinch are superior to what existed pre-2014. Obviously, because of the climatic changes we are experiencing, the difficulties and challenges remain. I refer to the effects the Atlantic Ocean could have if a similar incident was to happen.

The Department has spent several million euro, through Clare County Council, in installing coastal protection features along parts of the promenade in Lahinch. Work still has to be done on a significant part of the promenade, but it has been earmarked and funding is available for it. There is one small problem, that is, the granting of a foreshore licence. I have been advised by officials of Clare County Council that the process has been continuing a long time and that if the foreshore licence was granted, that the coastal protection works would be carried out very quickly. When can we expect the foreshore licence to be granted? What is the timeline? What are the issues which are delaying the granting of the licence? When it is granted, it will facilitate the quick completion of the coastal protection works which are very important. I would like to see the works being carried out before the 2019 tourism season commences next April or May. Perhaps that is an ambitious target, but I have been advised that once the foreshore licence is granted, the works can commence very quickly.

Minister of State at the Department of Housing, Planning and Local Government (Deputy Damien English): I thank the Senator for raising this matter in the Seanad, outlining the background to it and explaining how we have ended up where we are. I also thank him for reminding us about the importance of undertaking coastal protection works and the power of the oceans which, in turn, highlights the importance of the upcoming marine strategy which will look ahead for the next 20 years. It will deal with all of these matters and is a chance to conduct a review. I understand how crucial the coastal protection works are in ensuring the integrity of the pier and other areas in Lahinch. I am also aware of the need to have the works completed in advance of the 2019 Irish Open Golf Championship which is due to be hosted at Lahinch Golf Club in early July. I acknowledge the significant boost the hosting of the event will give to the local economy, as well as to the tourism industry in the region next May, June and July. I, therefore, welcome the opportunity to provide details of this issue to bring clarity to it. I hope we can move on the matter as quickly as we possibly can.

Before I address the specific case, I will outline my responsibilities under the Foreshore Act 1933, as amended. I am responsible for regularising the use of the foreshore in accordance with the legislative provisions set out in the Act. I must also ensure proposed developments or activities comply with relevant European legislation such as the environmental impact assessment, EIA, directives, the birds and habitats directives. In addition, I must be satisfied that any consent given under the Act is in the public interest.

The application concerned has yet to be brought before me for a formal decision. However, I can say it was received from Clare County Council in December 2016 for the repair of existing wall structures, the construction of a new rock armour revetment and other ancillary works at Lahinch. When the works are completed, they will protect public infrastructure, public property more generally and private property. They require a number of consents under the Foreshore Act, including a lease and a number of licences. I understand the importance of the project and my Department has progressed the application in the normal way. As applies to all applications of this nature, it has consulted the relevant bodies and sought the views of the public through a public consultation process.

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The application has also undergone a technical examination by the marine licence vetting committee, an *ad hoc* group of experts, that has for many years advised successive Ministers on foreshore related matters. The committee has recommended that a licence, a lease and a temporary licence for a haulage and access route be issued. This addresses most of the areas highlighted in the application for development. In addition, the council indicated in its application that an area of 0.6326 ha was in private ownership. Where work is to be carried out on a privately owned foreshore, a lease or licence under the Foreshore Act is not necessary. However, the owner of the foreshore must still submit plans and other information such as environmental data to my Department for my approval. In addition, any work carried out must be in accordance with the plans as approved. Under the Foreshore Act, this is known as section 10 consent.

As all of the foreshore is assumed to be owned by the State, unless it can be shown otherwise, my Department has sought evidence of title to this area of the property before submitting the case to me for consideration. However, the council has been unable to provide the necessary evidence. It has further advised that the property is unregistered and that there is no legal instrument. Given the complexities this presents, my Department has sought legal advice from the Office of the Chief State Solicitor which has since referred the matter to the Office of the Attorney General. My Department awaits the outcome of their deliberations. While awaiting the advice of the Attorney General, it is actively examining potential solutions, with the support of our legal advisers in the Office of the Chief State Solicitor. Once the issue of the area which is purported to be privately owned has been resolved, my Department hopes to bring the matter to a speedy conclusion. I will certainly stress to everyone the importance of trying to have the matter resolved as quickly as we possibly can.

Senator Martin Conway: The Minister of State has clarified the complexities and difficulties associated with the foreshore licence application. I ask him to have a word with the Attorney General to ensure his opinion is articulated to the Department of Housing, Planning and Local Government as a matter of urgency in order that the matter can be brought to a conclusion. I make my request because the Atlantic Ocean and inclement weather will not await the advice of the Attorney General or the Office of the Chief State Solicitor. The ultimate solution is for the foreshore licence to be granted to enable the coastal protection works to proceed and be completed before the Irish Open Golf Championship is held in Lahinch next July.

I again thank the Minister of State for his intervention and coming into the House to address the matter. I know that, as a result of having raised it in Seanad Éireann, there will be a new impetus to get it over the line as a matter of urgency.

Deputy Damien English: I again thank the Senator for raising the issue which is of local and national importance. I will discuss it with all relevant bodies to try to secure a speedy decision.

Senator Martin Conway: Super.

Deputy Damien English: My Department would like to conclude the matter to enabling the works to be completed.

Senator Martin Conway: I thank the Minister of State.

Sitting suspended at 11.10 a.m. and resumed at 11.30 a.m.

Seanad Éireann
Order of Business

Senator Jerry Buttimer: The Order of Business is No. 1, Health Service Executive (Governance) Bill 2018 - Order for Second Stage and Second Stage, to be taken at 12.45 a.m. and adjourned not later than 2.30 p.m., if not previously concluded, with the contributions of group spokespersons not to exceed eight minutes each and those of all other Senators not to exceed five minutes each; No. 2, Markets in Financial Instruments Bill 2018 - Second Stage, to be taken at 2.30 p.m. and adjourned not later than 3.30 p.m., if not previously concluded, with the contributions of group spokespersons not to exceed eight minutes each and those of all other Senators not to exceed five minutes each; No. 3 Qualifications and Quality Assurance (Education and Training) (Amendment) Bill 2018 - Order for Second Stage and Second Stage, to be taken at 3.30 p.m. and adjourned not later than 5.30 p.m., if not previously concluded, with the contributions of group spokespersons not to exceed eight minutes each and those of all other Senators not to exceed five minutes each; No. 4, Public Health (Alcohol) Bill 2015 [*Seanad Bill amended by the Dáil*] - Report and Final Stages, to be taken at 5.30 p.m.; and No. 5, Private Members' business, Mental Health (Capacity to Consent to Treatment) Bill 2018 - Second Stage, to be taken at the conclusion of No. 4, with the time allocated for the debate not to exceed two hours.

In line with the agreement of the House yesterday, I propose that we stand for a minute's silence to commemorate the centenary of the sinking of the *RMS Leinster*. The Dáil did so earlier this morning and we agreed yesterday that we would do so this morning at 11.30 a.m.

Members rose.

Senator Terry Leyden: I commend the Cathaoirleach and the Leader of the House for organising the minute's silence in memory of those who lost their lives 100 years ago today. It was a terrible tragedy just one month before the end of the First World War, a terrible and tragic war.

I take the opportunity to welcome to the House Mr. Joe Callanan, who was a Deputy from 2002 to 2007. He is from Kilconnell in east County Galway. He spent 21 years as a councillor and was a very active member of the Western Health Board. He is a nephew of Johnny Callanan, who was also a great Deputy. I welcome Joe back to the Oireachtas. He does not come very often, but he is very welcome. I am sure we all join in that welcome.

Senator Jerry Buttimer: Hear, hear.

Senator Terry Leyden: On the Order of Business, I commend the Leader on a very active day today in the House. There is a very commendable amount of work to be done in the House today. Arising from yesterday's budget, I commend Deputies Michael McGrath and Cowen, and indeed the Minister, on negotiating the budget. They put considerable work into it. I commend the leader of Fianna Fáil, Deputy Micheál Martin, on his commitment to the country in supporting the Government in the confidence and supply arrangement. It would be very easy not to get involved and just to stand aside. I commend him on the leadership he has shown.

On the budget and the question of affordable houses and affordable sites, let us call it what it is. We want to build local authority houses in every county, including Dublin, and it can be done. It was done in the 1940s and 1950s. There is no rocket science to building houses. There does not seem to be that commitment with the Minister or Department to implementing a hous-

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ing policy. When I was 26, I built two houses. I got a loan from the county council, £3,250 from the Department and £3,250 from the county council. I was on a very small wage. I repaid the loan in 1999, just before the end of the millennium.

Senator David Norris: Must have built a grand couple of houses.

Senator Terry Leyden: They are excellent houses and they are still there.

Senator Jerry Buttimer: Did Senator Leyden build them himself?

Senator Terry Leyden: I was involved in physically bringing the blocks up to the first floor to put them up.

Senator David Norris: Bravo.

Senator Terry Leyden: My brother Jimmy and another few were the builders. The point I am making is that there is not that approach now to building houses. We are now entering into an agreement for the possibly next year, at least.

An Cathaoirleach: The Senator is running out of time.

Senator Terry Leyden: I want to make a very important and significant point. There should be a national housing bond of approximately €3 billion. People have money saved in banks at 0.2% interest. If one got a 20 year loan from people like that at even 2%, one would raise an enormous amount of money that could be spent on housing and solve this problem once and for all.

I do not have any approval from the party to say this but I will say it anyway. There should be a designated senior civil servant in housing to liaise with our Deputy Darragh O'Brien to see the implementation of the budget which was agreed in the Dáil yesterday. That is the only way of ensuring that our confidence and supply agreement can be implemented. I have no confidence whatsoever that this Minister or the Department will do it without the input from a Fianna Fáil link to the implementation of budget 2019.

Senator Paudie Coffey: Fianna Fáil knows how to blow a bubble all right.

Senator Jerry Buttimer: Just like Charlie McCreevy.

Senator Kieran O'Donnell: Ten years of experience-----

An Cathaoirleach: Before I call Senator Marshall, I welcome my former colleague, Joe Callanan, to the House. As it might indicate that Joe is making a comeback, I wish him well.

Senator Ian Marshall: I welcome the support for agriculture in the budget announced yesterday, with an extra €57 million to support the Department of Agriculture, Food and the Marine. This will support suckler cows and areas of natural constraint, ANC. After speaking outside Leinster House last week to the Irish Farmers Association, IFA, and farmers who were protesting, be under no illusion that the industry still has many challenges. It is welcome that the Minister renewed the stock relief mechanisms and income averaging in an industry which has historically been plagued with extreme volatility. Acknowledgement must also be given to the extension of the stamp duty relief for young farmers. Agriculture presents itself as an industry dogged by businesses being asset rich and cash poor. Individuals often work in isolation, being self-employed in small enterprises. It is important that we defend all of these self-

employed businesses.

I refer to Senator Butler's comments yesterday and commend him on them. He eloquently described the pressures and concerns within self-employed businesses. It is a lonely place when one is self-employed. We must endeavour to protect these people at all times and apply additional mechanisms, especially in times of adversity.

Central Statistics Office, CSO, figures indicate that small and medium enterprises, SMEs, make up 93% of exports to the UK, with over half of them having fewer than ten employees. Therein lies part of the problem with our Brexit discussion. However, as Robert Burns wrote:

The best laid schemes of mice and men

Go often askew...

Brexit is the elephant in the room.

Senator David Norris: Hear, hear.

Senator Ian Marshall: Any budget will present exceptional circumstances and challenges. An air of realism and pragmatism must be applied to this budget. The absence of any really damning headlines this morning probably indicates that even though yesterday's budget will not satisfy all, it goes part of the way to delivering what Ireland needs. To echo the Minister of State, Deputy D'Arcy's, comments yesterday, we will use all of the tools at our disposal in agriculture and other industries, such as genetics and technology, to improve efficiency and ultimately drive behavioural change in business. A Brexit-ready budget is always challenging, especially in the absence of information and clarity on what the future really looks like. Putting the jigsaw together when one does not know the shape of the pieces is not straightforward. The next few weeks and months will be critical for all businesses, big and small, as the Brexit negotiations progress, and for Ireland, the UK and Europe. History will be the judge of the outworking of these negotiations. Ireland's economic success must be commended but complacency must be avoided. An unremarkable budget could risk presenting itself as someone warming his or her feet at the fire while the house burns down around him or her. We do not need headline-grabbing budgets this moment. I give credit to all the authors of this budget for delivering a pragmatic, considered approach to building Ireland for the future.

Senator Rose Conway-Walsh: I find Fianna Fáil's declarations that it is here to save us all eternally amusing. It is here to save us from Fine Gael and ourselves. They declare how they will fix the housing crisis. It is worth taking 30 seconds to look at Fianna Fáil's record in housing. Fianna Fáil caused the collapse because of its collaboration and closeness with the banks, and the light regulation, not only for banks but for the construction industry too. In the 14 years under Fianna Fáil, the social housing waiting list increased by 258%. It is a proud record indeed. Fianna Fáil's average build of social houses was 5,523 a year and, by 2011, the council waiting list was 98,318 and there were 113,000 people on the rental accommodation scheme, RAS. It followed a pattern of privatising the rental sector. We saw that again in yesterday's budget with the tax breaks for landlords, no taxing for vulture funds and so on. For Fianna Fáil to tell us all that it will come along to fix the housing crisis is incredible. There is much more I could say about it.

Today is World Mental Health Day, which should focus on the services and supports that we provide for citizens who experience mental health difficulties. The theme for today is young

people and mental health in a changing world. At the end of last year, the national youth mental health task force published its report on youth mental health. It would be fitting for the Leader to give an update on the implementation of that report. One aspect of the report will be addressed directly this evening by the legislation being brought forward by Sinn Féin. Our capacity to consent to mental health treatment deals directly with recommendation 9 of that report. It would be symbolic for this House to progress this important work on this World Mental Health Day dedicated to young people. Mental health services are in a dire crisis, not only this year and last year but for decades. Some €84 million was announced yesterday but we know that when we dig down through those figures, even initially, that will be €55 million because much of that has already been taken up by needed pay increases. There is dire urgency to reform our mental health sector. Some €55 million will not do that. We need a full debate again here and we need continual debates about mental health in this House and how we can work together to solve the crisis in mental health.

Senator David Norris: The most astonishing thing about the budget announced yesterday is that there was no change to the carbon tax regime, despite that Ireland is among the world's worst polluters *per capita*. It looks to me like the Government, like Nero, is fiddling while not just Rome but the planet is burning. There is a sense of the imminent possibility of catastrophe. Small oceanic island communities are threatened with disappearance and complete submergence under the waters of the ocean.

Former President Mary Robinson spoke very powerfully on RTÉ radio yesterday and she warned that we could be into a catastrophic spiral, where things get completely out of control and nothing can be done. We have, roughly, a ten-year window of opportunity to do something and governments all over the world, including in Ireland, need to be responsible and take the appropriate measures. As Mary Robinson said, it will be for the children - not mine because I do not have any, but others' - and for humanity.

I am very glad the Leader called for a minute's silence in memory of the tragedy of the *RMS Leinster*, one of the worst maritime tragedies of the First World War. It was appropriate that Seanad Éireann commemorated this in the dignified way it did. I believe Senator Boyhan took a particular interest in this matter and raised it yesterday on the Order of Business.

Senator Tim Lombard: I acknowledge the contributions of Senators who referred to the fact that today is World Mental Health Day, which we have been acknowledging for six years. As a State, a Parliament and a society we need to have a conversation about this issue. In the budget yesterday there was a significant increase of €84 million for mental health but we need to have a conversation about it in this House. Indeed, conversations need to happen in businesses, communities and schools. People must feel at ease about having a conversation on mental health and that it is a normal part of one's daily routine.

I draw attention to a very important meeting in Kinsale tomorrow, organised by a wonderful organisation called Kinsale Youth Support Services, known locally as KYSS. A former governor of Mountjoy Prison, John Lonergan, is coming to speak at Actons Hotel. I have heard him speak before and he is very passionate about how we should change our society. He truly believes what he is saying and is a very humane person. Mental health is the big theme of the meeting and I encourage a big attendance because such interactions are what we need to promote.

The issue of carbon tax was raised by Members. The Oireachtas has a special Committee

on Climate Action, which was set up a few months ago and has 22 members from all parties.

Senator David Norris: Committees are great but actions are better.

Senator Tim Lombard: The Citizens' Assembly, the chairperson of which is Ms Justice Mary Laffoy, will publish a report on 15 January which will give us a greater understanding of what the Government and the State needs to do to sort out the carbon issue.

Senator Jennifer Murnane O'Connor: Yesterday we listened to the budget speech and many of us are still poring over it to see what it all means. What does it really matter when one thinks of two things that have happened in our broken-down health system in recent days? The brave and honest Emma Mhic Mhathúna died on Sunday. Her mass in Kerry took place as the Minister for Finance gave his budget speech. Her remains passed the doors of this House to remind us all how she was failed. She did not need to die on Sunday but she did die because she was failed.

Last week, despite promises made to me that it would not happen again, another brave person, namely, a ten year old boy from Carlow, Brandon Bolger, was also failed. His chemotherapy was delayed because there was no bed for him, the third time in a few weeks he had had no bed, delaying his chemotherapy. Other children are in the same position. I put forward a Commencement matter and the Minister apologised, but the same thing happened two days ago. What is wrong with our society when we allow women to die unnecessarily and when we keep vital treatment from sick children? Real people matter, not numbers, and my thoughts and prayers go to Emma's five children in Kerry today as they lay their mother to rest. She fought very hard to ensure women's lives mattered in this country and she inspired us all.

I call for action on promises made yesterday. I want someone to tell me that Brandon Bolger will not be made to wait for cancer treatment again. His life matters too, and I am calling on this Government to stop breaking its promises and failing the people.

Senator Keith Swanick: I also wish to comment on World Mental Health Day. This year's theme is young people and mental health in a changing world. Half of all mental illness begins by the age of 14, but most cases go undetected and untreated. As I have seen in my own practice, parents often chalk mental health issues down to puberty or hormones, but if left untreated and without supports, those who experience mental distress can quickly spiral downwards. Suicide is the second leading cause of death among 15 to 29 year olds worldwide. We all have a duty to help young people to build mental resilience from the earliest ages so that they can cope with the challenges of today's world.

Promoting and protecting adolescent health brings benefits, not just to them but to economies and to society, with healthy young adults able to make greater contributions to the workforce, their families and communities as a whole. Parents and teachers can help build the life skills of children and adolescents to help them cope with everyday challenges at home and at school, but we can all play a role. We should use any opportunity we can to encourage young people and help them to be motivated, whether it is a transition year student on work experience in the office or one's own child. We should help them to develop and stick to routines and to focus on the task rather than on just the results. We should inspire them by telling them our own stories. Prevention begins with being aware of, and understanding, the early warning signs and symptoms of mental illness. If one sees a young person struggling, the sooner one addresses it the sooner he or she can get help. Do not assume that young person will grow out of it or take

the first step in seeking help. We need to take the first step.

Senator Jerry Buttimer: Well said.

Senator Kevin Humphreys: Yesterday, more with anger than any other feeling, I raised the issue of climate change and how the budget ignored it. The Leader's response was to claim that I was for taxation. I am for taxation, and we have to bring in a carbon tax. The Citizens' Assembly said it-----

Senator David Norris: Mary Robinson said it.

Senator Kevin Humphreys: -----and yes, Mary Robinson said it. Our own climate change advisory council has also recommended a carbon tax. John FitzGerald of the ESRI came out again yesterday evening to say there was a need for a carbon tax. The Leader is very good at criticising Fianna Fáil for the disaster they left us with our economy but this issue is all on Fine Gael. Fine Gael talks the talk but is not prepared to walk the walk. We are going to leave fines amounting to hundreds of millions of euro to later decades and inflict huge damage on the Third World in the shape of climate change. The Taoiseach said we were laggards but we have taken no action. We are the second worst EU state for tackling climate change and we see no action on it in this budget in the form of a carbon tax. That is totally regressive.

Senator David Norris: Hear, hear.

Senator Kevin Humphreys: The previous Government had to be dragged into having a climate change advisory council and the then Minister, Phil Hogan, resisted it at every turn, something the people on the committee will be able to tell the Leader. We need action and not words and we do not need the Taoiseach to tell us we are laggards. The action that was expected from the Citizens' Assembly and the climate change advisory committee, from Mary Robinson and John FitzGerald, was some progress on a carbon tax in this budget, but we have seen no such progress. Some people have been running around the country saying they saved rural Ireland from tax on diesel and petrol, but rural Ireland is suffering from climate change, with effects such as floods and fodder crises, and the Government is going to do sweet FA. I find that totally unacceptable. It is totally regressive and leaves future generations to pay for our folly.

12 o'clock

Senator David Norris: Hear, hear.

Senator Kevin Humphreys: That is down to Fine Gael. I will not stand idly by. The Government will have to step up to the mark. No longer can it talk the talk. It must walk the walk. However, it has refused to do that for the past two years.

An Cathaoirleach: While I know the Senator is angry about the issue, he should be careful about the use of language.

Senator Kevin Humphreys: I apologise. However, the response I got from the Leader yesterday was disgraceful.

Senator David Norris: A Chathaoirligh, FA means Fanny Adams. There is nothing in the lexicon that prevents anyone mentioning Fanny Adams, a most distinguished lady.

An Cathaoirleach: People can interpret it differently.

Senator David Norris: We cannot account for corrupt minds.

An Cathaoirleach: They do not have to be corrupt. I do not think I have a corrupt mind but I was concerned about it.

Senator Terry Leyden: He is sweet now.

Senator Jerry Buttimer: I am not sure whether I am in the Abbey Theatre, the Gate Theatre or pantomime season.

Senator David Norris: He is in the back end of a pantomime horse.

Senator Jerry Buttimer: I thank the eight Members for their contributions on the Order of Business.

As Senator Norris said, it is important that we commemorate the crew and passengers of *RMS Leinster*. On this day 100 years ago, 564 members of the ship's crew, civilian passengers, postal sorters and military medical personnel lost their lives in the worst maritime disaster in the Irish Sea. It is important, as Senator Norris said, the House remembers those who died. This morning in Dún Laoghaire, there was an official commemoration of the event.

Equally this morning we remember, as Senator Murnane O'Connor said, Emma Mhic Mhathúna. Yesterday, Members paused for a minute's silence to remember Emma Mhic Mhathúna and the other women who lost their lives in similar circumstances. It is a tragedy and should not have happened. There will be no obfuscation on the Government's part in terms of the implementation of the Scally report's recommendations. Today, we remember those who lost their lives on board *RMS Leinster*, as well as Emma Mhic Mhathúna as she is being laid to her eternal reward.

I join with Senator Leyden in welcoming former Deputy, Joe Callanan, to the House and thank him for his service. Senator Leyden made an interesting contribution to the Order of Business. Funding for housing is not the issue, it is supply. Supply must be ratcheted up. It is important we have a combined approach to the housing issue. Senator Leyden referred to his party's contribution to the budget. I acknowledge the role played by Fianna Fáil Members in the formation of the budget. That is what confidence and supply is. Having said that, what we must put in place now must be sustainable. That is why in yesterday's budget, the Government committed €2.4 billion to building social and affordable housing, the most significant amount of money invested in housing by any Government in a single year. It will allow us to put in place a model of delivery where men, women, children, husbands, wives and partners can live and have a roof over their heads.

Senator Conway-Walsh gave us the Sinn Féin briefing document on Fianna Fáil. She might share that rebuttal with us. We would love to have it. It was an impressive list she read out.

Senator Rose Conway-Walsh: I will.

Senator Jerry Buttimer: I was almost going to say "Hear, hear".

Senator David Norris: The Leader laughed.

Senator Jennifer Murnane O'Connor: Fine Gael must show accountability now after seven years. Sinn Féin is constantly bringing up the same matters but would not go into a con-

fidence and supply agreement.

An Cathaoirleach: Will Senator Murnane O'Connor allow the Leader to respond without interruption?

Senator Jerry Buttimer: I loved the figure Senator Conway-Walsh shared with us about a 258% increase in the numbers on housing waiting lists over 14 years under Fianna Fáil's watch.

Senator Jennifer Murnane O'Connor: The Government has not promised the 25,000 housing units needed. I can give many figures.

An Cathaoirleach: Please, Senator Murnane O'Connor. Will the Leader try not to antagonise Members who are easily antagonised?

Senator Jerry Buttimer: Are you including me in that, a Chathaoirligh?

Senator Jennifer Murnane O'Connor: The truth has to be said.

Senator Terry Leyden: We have a future real housing Minister here with Senator Murnane O'Connor.

Senator Jerry Buttimer: I am disappointed Senator Murnane O'Connor did not congratulate her constituency colleague, Deputy Deering, on bringing the National Ploughing Championships to Carlow. It was a wonderful news story for Carlow.

Senator Jennifer Murnane O'Connor: I was delighted to welcome it to Carlow.

Senator Terry Leyden: The Leader should remember he might be congratulating the Senator when she is housing Minister.

Senator Jerry Buttimer: The issue of housing should not be politicised. It is one on which we all collectively must put forward solutions and ideas in order to build more houses and give people a roof over their heads. That is why the Government committed €2.4 billion on housing spend in the budget. Up to €146 million will be spent on homelessness and €310 million on affordable housing provision.

Today is World Mental Health Day. I commend the Cathaoirleach and the Ceann Comhairle for hosting an important meeting this morning on mindfulness. Senator Swanick spoke about resilience. He is correct that it is about giving people the tools and empowering them to be able to deal with issues which affect their lives. In this regard, this morning's meeting with Chris Ruane MP was important. I thank Deputy Catherine Martin, the Ceann Comhairle and the Cathaoirleach for organising it.

Mental health is an important issue. The Central Statistics Office, CSO, published figures last week which showed men accounted for the majority of the 392 deaths from suicide in 2017. Thankfully, it is a downward trajectory. While we have the tenth lowest rate of the 33 European countries, one person who dies from suicide is one too many. The extra money found in the budget must be put in place not to pay for the rising cost of wages but to put in place mental health services for young and older people. The €1 billion for the mental health budget is a significant amount of money. As the Minister of State, Deputy Jim Daly, said yesterday, it is no longer the Cinderella of the health service. There is a compendium of parts to the jigsaw which we must all put in place to ensure the issue of mental health is not stigmatised or forgotten.

Members must show leadership. I hope today's mindfulness seminar will be the beginning of a new programme in this House. Yesterday's announcement by the Minister of State, Deputy Jim Daly, is significant. I hope we will see spend continuing on the mental health budget.

Senator Marshall made a fine contribution on the issue of the loneliness of the self-employed and the importance of taking care of this sector. That is why the Government announced measures to deal with this in yesterday's budget. Agriculture, particularly in a Brexit scenario, is critical. Senator Marshall welcomed the increase of €56 million in funding to agriculture and the restoration of ANCs. It is important to welcome in the context of climate change the €20 million funding for the new beef environmental efficiency pilot scheme which is on the way. This will have a significant role to play.

I know Senator Humphreys can feign his-----

Senator Kevin Humphreys: Up to 2.1 million tonnes of extra carbon will go into the atmosphere on the Government's watch.

Senator Paddy Burke: What about retrofitting houses?

Senator Jerry Buttimer: Senators Norris, Lombard and my good friend Humphreys raised the issue of carbon tax and climate change. Nobody is in denial about the importance of the need to have our country take its climate change responsibilities seriously. The Government is committed to that. I will cast the Senator's mind back to the Minister's speech yesterday. I replied to the matter on yesterday's Order of Business. The Senator can protest all he wants. I know he has to do what he has to do. However, one has to be fair about what the Government has done and is committed to doing. As the Senator understands, Ireland has, compared with other EU countries, a very broad carbon tax. It is pitched at €20 per tonne.

Senator Kevin Humphreys: We are the second worst in Europe.

Senator David Norris: The Leader said compared with other European countries.

Senator Jerry Buttimer: Regardless of whether people like it, ours is a tax on diesel, petrol, coal, home heating oil and other fossil fuels. The Government is encouraging people to change their behaviour and move towards cleaner alternatives rather than penalising those who have no option but to use their cars at a time when the price of diesel has risen by 20 cent per litre. It is okay for Senators Humphreys and Norris, both of whom live in the middle of Dublin city. Perhaps they will listen to what I have to say.

Senator David Norris: I am listening to the Leader.

Senator Jerry Buttimer: What the Government has done in the budget is place a 1% VRT surcharge on new and imported diesel cars, invest €30 million in supports for electric vehicles and extended tax reliefs for hybrid and electric cars. This year, the Minister for Transport, Tourism and Sport, Deputy Ross, who is criticised in this House almost weekly, will spend more than €780 million on public transport infrastructure and services. In addition, we will agree a price for carbon in 2030 and a pathway to achieve it in the next decade-----

Senator Kevin Humphreys: By 2030.

Senator Jerry Buttimer: -----which will link us to what is envisaged by the Climate Change Advisory Council, a matter to which Senator Humphreys referred. Under Project Ire-

land 2040, €22 billion will be invested to tackle the issue of climate action. This is in addition to the €8.6 billion being put in place for climate sustainability in terms of mobility.

What does that mean in simple terms? It means that the Government is investing. We are also upgrading the public transport system. Dublin Bus and Bus Éireann will have low-emission vehicles. We will also ensure that, by 2030, all new cars will release zero emissions, which is one of the most ambitious projects or plans in Europe. The Senator dismissed my comments on Moneypoint yesterday. We have said that no more coal will be burned by 2025----

Senator Kevin Humphreys: That is what I said on yesterday's Order of Business.

Senator Jerry Buttimer: -----and that peat will no longer be used by 2030. We are investing in renewable heating and deep retrofitting of public buildings and homes. We have already put in place schemes and supports aimed at creating that model of delivery in housing. I accept that we have a journey to travel, but it requires partnership not an adversarial approach or point scoring. I ask the Senator to cast his mind back to what the Minister said yesterday regarding the commitments he has given in respect of the Paris Agreement. I will be happy to have the debate, as the Senator knows, on climate change at his request. I hope the Order of Business will be agreed to.

Senator Jennifer Murnane O'Connor: My apologies, the Leader never answered my question.

Senator Jerry Buttimer: Tá súil agam go ngabhfaidh an Seanadóir Murnane O'Connor mo leithscéal. Can I just make the point-----

An Cathaoirleach: The Leader should not overlook Senator Murnane O'Connor.

Senator Jennifer Murnane O'Connor: Exactly.

Senator Jerry Buttimer: I do apologise. I did not mean to forget the Senator; how could I have?

Senator David Norris: The Leader did, however.

Senator Jerry Buttimer: The issue in respect of Brandon Bolger is absolutely inexcusable. The Senator cannot blame the Government for an appointment being cancelled. That is a matter for the hospital, the physician, the oncologist or whatever facility the young boy is attending. As somebody who is deeply aware of the effects of cancer, I know it is important that the young boy in question should receive timely treatment and intervention. If the Senator tabled a Commencement matter yesterday - I did not know she had-----

Senator Jennifer Murnane O'Connor: It was a few days ago.

Senator Jerry Buttimer: -----then an assurance needs to be given that it will not happen again. However, as the Senator knows, sometimes procedures and appointments are cancelled for a variety of reasons. It is not always because of issues relating to funding, staffing or resourcing. It is upsetting to the young boy and his family that it has been cancelled more than once.

Senator Jennifer Murnane O'Connor: It has been cancelled three times. I received a commitment to the effect that it would not happen again and an apology from the Minister.

Senator Jerry Buttimer: It should not happen.

Senator Jennifer Murnane O'Connor: It happened again yesterday.

Senator Jerry Buttimer: It should not happen. Nobody on this side of the House - or anybody else - would condone the cancellation of an appointment but it is important to recognise that €17 billion is being invested in the health budget, the highest amount ever.

Senator Jennifer Murnane O'Connor: It has to be put to good use. We need beds and staff.

Senator Jerry Buttimer: That is my point. The Health Service Executive (Governance) Bill 2018 will be debated in the House later. The HSE was created by the Senator's party leader when he was Minister for Health and Children. He created this mammoth institution.

Senator Jennifer Murnane O'Connor: I know that mistakes were made, but we are seven years on.

Senator Jerry Buttimer: The Senator is very good at giving it out, but she will not listen.

Senator Jennifer Murnane O'Connor: I listen to everything.

Senator Jerry Buttimer: I am happy to conclude on that point.

Order of Business agreed to.

Sitting suspended at 12.15 p.m. and resumed at 12.45 p.m.

Health Service Executive (Governance) Bill 2018: Order for Second Stage

Bill entitled an Act to amend the Health Act 2004 to provide that the Health Service Executive shall be governed by a board and not a directorate and that the Executive shall have a chief executive officer accountable to that board; to provide for the amendment of certain other enactments; and to provide for related matters.

Senator Colm Burke: I move: "That Second Stage be taken now."

Question put and agreed to.

Health Service Executive (Governance) Bill 2018: Second Stage

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

Minister for Health (Deputy Simon Harris): I begin by sending my deepest sympathy to the family of Emma Mhic Mhathúna and especially her children. Ar dheis Dé go raibh a h-anam dílis. Emma was a woman who strongly advocated for a better health service and shone such a bright light on why that was required in areas such as oversight, governance and accountability that clearly need so much improvement. We think of Emma today, her family and community and we all pledge to build a better health service in her memory.

I am pleased to have the opportunity to introduce the Health Service Executive (Gover-

nance) Bill 2018 to the Seanad. It is important to say that this legislation is directly relevant to Dr. Gabriel Scally's scoping inquiry report and our overall response to his recommendations, which we are determined to implement in full. The focus of the Government now is on working to try to eradicate cervical cancer ensuring we have a screening and vaccination programme worthy of women like Emma.

The Bill before us is an important step on a long journey of reform, as committed to by the Government in A Programme for a Partnership Government, and the delivery of a world-class health and social care service for Ireland as envisaged in the Sláintecare report of the Oireachtas Committee on the Future of Healthcare. With a budget of €17 billion, as of yesterday, and a significant workforce, the HSE is our largest State agency and one of our most important. It has a range of functions under legislation and provides essential services across the health and social care spectrum to citizens in every city, town and village in the country. It plays a vital role in each of our lives, often when we are at our most vulnerable or in times of crisis. Therefore, it is essential that we ensure good governance, accountability and transparency across all layers of the HSE. This Bill, as introduced to Senators here today, plays an essential role in the reform process by providing for independent board oversight of the HSE.

The Health Service Executive (Governance) Act 2013 established the directorate governance system. This system was of its time and allowed for intensive co-ordination between senior management teams in the Department of Health and the HSE. However, by its very nature and design, and by intent, it was always envisaged as an interim measure. Therefore, the core objectives of this Bill are to establish an independent board governance structure for the HSE and to dismantle the current directorate governance system. This board will be the governing body of the HSE and will be accountable to me as Minister for the performance of its functions. All board members must maintain high standards of integrity and probity and develop clear expectations concerning culture, values and behaviours and ensure personal and corporate compliance with any relevant legislation. The new governance structure will set the tone for the culture of the organisation and how the HSE must operate in the future. Therefore, it is essential that the implementation of this new structure is based on some key fundamental principles.

The first is independence. A board as the governing body supports transparency and accountability of actions in order that people can have confidence in the decision-making and management processes in the HSE. The board must ensure that it challenges the management, and itself, to demonstrate value achieved for the very significant public funds provided to health and instill an organisational culture of continuous improvement.

The second is inclusiveness. The board will act in the collective good at all times, ensuring all stakeholders' perspectives are taken into account, be they patients, the taxpayer or staff. The HSE must welcome and take on board differences of opinion, while ultimately taking decisions based on the public good.

The third is compassion. I think none of us here was not moved by recent events, or do not have our own personal experiences, perhaps good or bad, which have highlighted the need for compassion to underpin all layers of the health service and everything that happens with it. That only strengthens my resolve to ensure the HSE core values of care, including compassion, are embedded throughout our services and evident every day for every patient. As we establish a new board we must make very clear that independence, inclusiveness and compassion must underpin all of the board's work.

I expect the board to introduce and operate effective board governance processes, to play a central role in the direction, leadership and corporate and clinical governance of the HSE, to foster a positive relationship with the CEO of the HSE and the HSE executive team in order to facilitate the conduct of good governance, and challenge and support them to deliver priorities and improvements while holding them to account in doing so. I also expect the board to support and challenge the CEO and the HSE executive team in establishing an effective performance management and accountability system in the HSE, to promote a culture of accountability, and ensure that the HSE demonstrates value achieved for the very significant public funds provided. I further expect the board to develop constructive relationships, including with the Minister for Health, the Department of Health and the Government, and to drive and oversee a significant programme of reform in a challenging environment.

The board will have a membership of highly skilled people with strong competencies across key areas. I think it is important to have a competency-based board, which will provide the leadership to guide, challenge and support the CEO and the HSE executive team to deliver major organisational transformation and reconfiguration within the health service. Members of the board will be expected to have experience and expertise in one or more of the following areas: corporate governance, patient advocacy, clinical governance, quality assurance and patient safety, strategic planning and change management, strategic human resource management, and public communications.

Last month, after a demanding Public Appointments Service, PAS, process, I was pleased to announce that Mr. Ciarán Devane is the chair-designate of the new HSE board. I am delighted with the outcome of this appointment process and the range of skills, experience and leadership that Ciarán will bring to this role. I cannot underline more strenuously the importance I place on this role as a key enabler of change and transformation in our services. I will work closely with the new chair-designate in this regard, and I have high expectations of what we can deliver together for the citizens of this country.

The PAS process for the other board members has now begun, and I look forward to the outcome of this process and appointing the full board. With the Seanad's and the Dáil's support, I hope to be able to do this before the end of the year in order that this new governance structure in our health service can take office at the beginning of 2019.

I would also like to make clear on the record of this House that I have accepted in full Dr. Scally's recommendations that there should be at least two patient advocates on the new board of the HSE. I commit today to fulfilling that recommendation in order that we can embed the voice of the patient at the most senior level of the HSE.

I wish to bring the Seanad through the main provisions of this Bill. Part 1 contains a number of standard provisions, including the Short Title and collective citation of the Bill. It also provides for the repeal of Part 3A of the Health Act 2004, which instituted the directorate governance structure.

Part 2 allows for the required changes in the Act to reflect the structural changes proposed in the Bill, which in essence are the establishment of an independent board and the appointment of a chief executive officer, CEO, of the HSE, and the values, principles and conditions which underpin this structure. Section 7 proposes to insert a new Part 3B, sections 16N to 16U, inclusive, in the 2004 Act to contain provisions for the membership and role of the new HSE board. Section 16N(1) provides for a board of management for the HSE comprising a chairperson, a

deputy chairperson and seven ordinary members, all of whom will be appointed by the Minister for Health.

The appointments and functions of the CEO of the HSE are covered by the insertion of a new Part 4A, sections 21A to 21G, inclusive, in the 2004 Act. As Senators will be aware, we are in the process of recruiting a new director general for the HSE. The successful applicant, under this legislation, will become the new CEO of this important national State body and will be a pivotal appointment in improving the management, performance and quality of our health and social care services. The legislation also sets the accountability structure between the CEO and Oireachtas committees. Under the new section 21E, the CEO of the HSE is required to attend Oireachtas committees to give an account of the general administration of the HSE. The requirement for the CEO to appear before the Committee of Public Accounts is covered in the amendments in section 17. Sections 9 to 29, inclusive provide for other amendments to the 2004 Act, mainly consequential to the new board and CEO structure, and to take account of the move to a board and CEO structure from the directorate governance structure.

Part 3 comprises sections 30 to 34, inclusive, which amend references to the director general in primary and secondary legislation.

The establishment of an independent board and the appointment of a CEO are crucial components of a strengthened governance framework and new leadership for our health service. We must now look further and more deeply at how this new leadership can transform the accountability, culture and performance management of the HSE at all levels. Dialogue is ongoing between my Department and the HSE in this regard, and I am anxious for this work to continue in parallel with the passage of this Bill through the Houses. I will ensure that any amendments required as a result of this dialogue will be brought before the Houses as early as possible in the process.

The Sláintecare committee and the Sláintecare report concluded that an independent board for the HSE needs to be put in place. Therefore, this Bill meets a key recommendation of the Sláintecare report and constitutes one part of a broader package of measures that are intended to strengthen and improve governance, leadership and accountability within the health service. The revised governance architecture proposed in this Bill, however, is not an end in itself but rather a means to an end. The end that we all strive for is the real transformation of our health service to deliver, to the best of our ability, timely, effective and safe health services for the people. We are moving towards this with the implementation of Sláintecare. An executive director has been appointed, a programme office has been established, a new Sláintecare advisory group chaired by Dr. Tom Keane, who did amazing work on reforming our cancer services, is in place, and a detailed action plan will be published at the end of this year setting out the priorities for 2019.

As Senators will have seen in the budget yesterday, a huge priority has been attached to delivering on Sláintecare in the coming year. The establishment of the HSE board is only part of a broader package of recommendations in the Sláintecare report to revise our health structures. The geographic alignment of the community healthcare organisations, CHOs, and the hospital groups is also significant. This will allow for the creation of regional integrated care organisations which will provide for integrated care. I do not think anyone in this House, regardless of his or her political persuasion, thinks the current construct of the HSE is fit for purpose. The way the HSE was designed is inappropriate. It is too large, too bureaucratic and needs to be reformed, which is not just my view but also the view of the former director general of the HSE,

Mr. Tony O'Brien, who referred to the HSE as an "amorphous blob". The HSE needs to be reformed. It is too big in its current guise.

What we want to do under the Sláintecare report is devolve more to the regions, remove layers of bureaucracy, and create regional integrated structures where the community structure and the hospital structure are not at odds but rather form one structure delivering the full continuum of care for our patients. What we are doing today with the HSE's board structure is putting a better governance structure in place for what will ultimately be a leaner, more efficient national centre, which will still be called the Health Service Executive.

I look forward to moving ahead with these reforms as quickly as possible. As the Senators know, a public consultation on the geographic alignment of hospital groups and CHOs has been completed, and I intend to make a number of announcements on that by the end of this year. I recognise that the publication of this Bill and its passage through the Houses of the Oireachtas is only the beginning of the journey that we have all signed up to as part of Sláintecare. It is a significant milestone, however, which is crucial to moving from talking about transformational change in our health services to delivering this goal.

I commend this Bill to the House. With the assistance of Senators and Deputies, I hope we see its speedy passage in order that we can put this new structure in place.

Senator Keith Swanick: I welcome the Minister. Fianna Fáil supports this Bill, which restores the HSE board. The 2012 decision to abolish the board was a clear mistake which was contrary to good corporate governance. The establishment of a board was also recommended in the Sláintecare report, which pointed out that good leadership and governance are critical functions of any health system.

The committee strongly stated there is a requirement for clearer clinical and managerial accountability and governance throughout the whole system. This includes clarity at all levels, from the Minister of Health and his Department to the HSE and all health providers. Sláintecare proposes that the HSE be reformed into a more strategic national centre with an independent board and fewer directorates. Recognising the international evidence on the negative impact of system re-organisation or merger, Sláintecare recommends that structural change should be as simple as possible, with only what is needed to meet the requirements of integrated care. An explicit recommendation of Sláintecare is that an independent board and chair should be appointed to the HSE at the earliest opportunity by the Minister following a selection process through the PAS. Board membership should reflect the skills required to provide oversight and governance to the largest public service in the State. The chair of the health service board will be accountable to the Minister, and the health service director general will be accountable to the board.

I would like to echo some of the sentiments of various commentators following the budget yesterday that the implementation of Sláintecare lacked a certain urgency. I was disappointed the funding for the Sláintecare reform programme was not specifically identified in yesterday's budget, but I take on board the Minister's comments at last week's Committee on Health that progress will be made in the coming weeks, which I welcome. The recent Scally report on the CervicalCheck screening, which we discussed this morning at the health committee, noted how changes to the overall governance of the HSE itself had a significant impact on the CervicalCheck service. The report states: "It is difficult to see who, under this configuration, was representing the patient and the public interest." That is a fundamental, impactful statement.

I hope the implementation of this Bill will not only deal with the recommendations of the Sláintecare report but also address the anomalies set out in the Scally inquiry. One of the most important recommendations that I heard from the Scally inquiry was the establishment of the national screening committee to advise on any new programmes that may be required and, probably more importantly, to advise on any modifications of existing programmes. I welcome the establishment of that committee, and we support this Bill.

Senator Victor Boyhan: I welcome the Minister for Health and acknowledge his simple but comprehensive and clearly laid out report. As we know, the Oireachtas Committee on the Future of Healthcare concluded that we needed an independent board for the HSE and this also ties in with Sláintecare. I welcome this positive legislation. The Library and Research Service has produced a comprehensive digest, which I recommend to all Members as it sets out the position very clearly. It also places great emphasis on transparency, accountability, integrity, the participation of stakeholders in the broadest sense and also policy capacity. These are the key issues that the Minister has already outlined.

In 2011, the soon to be Minister, Senator James Reilly, stated that under his watch the existing “monster of the HSE” would be abolished. At the end of April 2011, the then Minister stated that the HSE board and its sub-committees were established by his predecessor to “put distance between the minister and their responsibilities.” He added that he would shorten “that chain of command with this new change”. This, he said, would be “for the betterment of the patients”.

I o'clock Senator Reilly is not here today and I fully understand if he is on other business. He made these remarks following the voluntary resignation of the board of the HSE, a decision which was largely driven by his rhetoric. The board was replaced by an interim board. It was not until the Health Service Executive (Governance) Act 2013 commenced on 25 July 2013 that the Minister formally abolished the board of the HSE. Speaking in the Seanad in September 2012, the then Minister stated the purpose of the Bill was “to make the HSE more directly accountable to the Minister for Health, who in turn is accountable to the people through the Oireachtas”. Seven years after the forced resignation of the HSE board and five years after it was legally abandoned, we are re-establishing the board. That is an important point to make. I have no problem with people doing U-turns. The reality is that the main element in the current Administration has been in power for the past seven years.

One of the consequences of the reckless governance structures in our health service for the past seven years was made plain in the recent report by Dr. Gabriel Scally. It states:

In 2013, legislation changed the nature of the governance of the HSE entirely, replacing the Board structure with a Directorate consisting of a Director General and no fewer than two, and no more than eight, Directors all of whom were HSE staff. The Director General and Directors were all effectively appointed to the Directorate by the Minister for Health. It is recognised that this was a step along the intended path of abolition of the HSE.

The following is important. The report continues:

The net effect was to remove external, independent input into the running of the HSE at its highest level... This change from the accepted good practice of having independent Board members in an oversight role, and involved in a committee structure beneath the Board, was a major move away from the established norms of good governance of public bodies. It is difficult to see who, under this configuration, was representing the patient and public interest.

I could go on, but there is no point in doing so.

I express my deepest sympathy to the family of Emma Mhic Mhathúna. It is poignant and appropriate that her cortege, according to her wishes, should pass some Government Buildings and proceed to Áras an Uachtaráin. Ms Mhic Mhathúna made a courageous decision. Her death is only one of many and, sadly, in the weeks and months ahead, we will speak in the House about a number of other people who are due to pass away.

I commend the Minister on what he is trying to do. It makes sense to have new governance for the HSE. I am particularly impressed with the importance placed on the qualifications and expertise of members of the new board. I hope it will not be a political board but one based on merit, capacity and ability.

I repeatedly raise issues in the House and I do not intend to rehash them here today. I hope we will meet the Minister soon. We receive political feedback through parliamentary questions and in responses to Commencement matters in which we are told the issues we have raised are matters for the HSE. When we raise them with the Minister, we are told he cannot do anything about them. I accept that he has a lot of work to do in his extensive brief and has many responsibilities on his shoulders. His task is not easy. The sooner this legislation is enacted and the sooner we have an independent board that has the confidence of the people and, more important, the confidence of its users as well as the practitioners and clinicians involved in the delivery of a broad range of health services, the better. I wish the Minister well.

Senator Colm Burke: I welcome the Minister. The legislation is a welcome development. I disagreed with the abolition of the board some years ago because I believed it was not the best way forward. I am delighted that the board will be re-established.

I served on the board of the Port of Cork for ten years and found it to be a great experience. The board was comprised of people from various backgrounds and my background was in local government and the law. Likewise, when setting up a board like this one it is important to draw in people with expertise in management and good governance. It is extremely important that the structure of the board is properly established. I congratulate the Minister on choosing the person he has appointed chair of the board. He has made a very good appointment as the person has considerable experience.

The need for a board was highlighted when the Minister announced that €17 billion will be allocated to health in 2019. It is important that this large budget is managed appropriately and that we get good value in the management of that money so that we can deliver services.

One of the concerns that I have had in the past three to four years is about recruitment within the HSE. The number of people employed in the HSE has increased from 99,000 at the end of 2014 to more than 111,000 now. This means more than 12,000 people have been recruited to work in the HSE since December 2014. This exceeds the entire workforce of the Irish Army. A large number of people have been taken on and it is not clear that a strategy was set out to prioritise the areas where we need to employ people. One of the things a board can do is set out a clear strategy for priority areas and ensure value for money is achieved when delivering a service, thus ensuring that the maximum number of people benefit from the service that is being delivered.

This morning, at a meeting of the Oireachtas Joint Committee on Health, a colleague raised the important issue of ensuring patient advocates on boards are adequately remunerated for

their time and efforts. Patient advocates normally have other commitments. It is important, therefore, to ensure they are adequately remunerated on boards or sub-committees they serve on. That is one of the issues raised at the committee meeting this morning.

Dr. Scally appeared before the Joint Committee on Health this morning. The implementation of reports is an important issue. It is great that Dr. Scally, supported by the Minister, is committed to remaining here to implement his recommendations. One of the reports that was referred to this morning was the Madden report, which was published in July 2008. Some of its recommendations have still not been implemented. While it is fine to produce reports, and we have produced a large number of reports on the health service in recent years, the issue is the need to have a clear structure in place to implement their recommendations. It is important that the new board of directors of the HSE is clear on how to move forward in the context of reports that have already been produced. Rather than undertaking new reports, the focus must be on implementing the recommendations contained in existing reports.

I have raised on numerous occasions my concern about the moving of the deck chairs within the HSE, whereby people in particular positions move on to other positions within a very short period. I am concerned about the lack of continuity in the rolling out of particular services. Recently, for example, 12 people in the HSE were to meet to deal with a decision relating to an individual but that meeting was cancelled because one of those involved had moved on to another job. The issue to which I refer has been going around the houses within the HSE for 18 months but, as yet, no decision has been made in respect of it. The culture that has developed within the HSE during the past 15 to 20 years is such that people are afraid to make decisions because of the possible consequences of doing so. We need to change that culture. We all make decisions and sometimes we regret those decisions but that does not mean that we should be hung, drawn and quartered, which seems to be why people are afraid to make decisions. I have seen issues within the HSE starting off at one level of management but going through three or four different stages before a final decision is reached, which delays the entire process. This can relate to decisions on purchasing new equipment, undertaking refurbishment work, opening additional beds and so on. People always complain about a lack of accountability but my biggest concern regarding the HSE is its failure to make decisions in a timely manner. I hope that a new board will be able to generate a new culture in that regard.

The other issue of concern relates to appointments within the HSE. I am still a little concerned about the internal appointment processes in the HSE. I have issues with the way posts are advertised internally and the way in which interviews are conducted. It is not clear that the people in the HSE who are conducting interviews have adequate training. There are extremely good people in the HSE working in the administrative, medical, nursing, caring, cleaning and catering areas. We must work with them to reassure them that their work is appreciated. There is a lot of negativity surrounding the HSE which some people are taking very personally. Morale within the hospital system is low and that is something which must be improved.

We must also work on the issue of staff numbers in certain areas and, for example, on the ratio of nurses to patients versus care assistants to patients. Nurses who are highly skilled and highly trained are often doing work that care assistants could easily undertake. Furthermore, nurses could do a lot of the work that junior doctors are currently required to undertake. We need to look at that area more closely as it may be possible to deliver a better service while also appreciating the work that people are doing.

Senator Máire Devine: I welcome the Minister. Last year the Government decided to re-

introduce a board to oversee the operations of the HSE. I commend Senator Boyhan on quoting the Scally report, which makes clear and common sense. Its recommendations are not couched in political speak to confound us all, leaving us guessing the words and what they mean. The Government's decision followed a number of high-profile scandals within the health service, which were mainly due to failures within the HSE at corporate level.

The new board will be a slimmed down, nine-person version of the former HSE board. Six years ago, the Fine Gael-led Government removed the then ten-person version of the board. Sinn Féin opposed the legislation which sought to dissolve the board not because we thought the board was working well but because the legislation bestowed too much additional power on the Minister and did not give the Dáil additional powers of scrutiny or make the Minister further answerable to the Dáil. It is welcome, therefore, that the Government has seen fit to reverse the decision of six years ago. There was talk that the board would include a patient advocate, which is something Sinn Féin is determined to achieve in the wake of the Cervical Check scandal. Our determination predates this scandal, however. Senators know that I am passionate about this issue, as evidenced by the motion I tabled during the previous session in respect of parent advocates on the steering committee for children with complex needs. It is welcome that there will be a minimum of two patient advocates on the board but I am interested to know how they will be selected. How will that process work? I am pleased that patient advocates will no longer be sidelined, ignored or considered a nuisance.

The Government claims that the new board will restore public confidence in the HSE through a series of actions to strengthen the management, governance and accountability of the organisation. These are grand claims but they are the same as those made when the board was dissolved. Only greater oversight and proper accountability of the board by the Minister of the day will ensure better governance, accountability and delivery of our health services. It is a pity that we did not have that view six years ago. Instead, the Minister of the day decided to remove what can be seen as the checks and balances of good governance that applied to the HSE. We welcome the reintroduction of the HSE board because it is standard practice for public bodies to have an independent board which operates at arm's length from Government and provides independent oversight, particularly in the context of the spending of public money and accountability to the taxpayer. It was a sad state of affairs for the former Minister to do away with the necessary and important checks and balances.

When the HSE board was dissolved in 2012, there was an opportunity to progressively reform the organisation in order to achieve the highest level of corporate governance. This was not done and amendments to strengthen the legislation at the time were not facilitated. We did not support the dissolution legislation for that reason. Indeed, we have the same concerns regarding the Bill before the House. We would like to see provisions strengthened to make the Minister for Health and the new board more accountable to the Dáil. The board must also be able to robustly hold the Minister to account and the Oireachtas must be able to hold the chairman of the board to account. The re-establishment of the board cannot give the Minister the opportunity to hide behind or push aside the HSE when it suits.

The HSE has been described as a growing monster. Most Members of the Oireachtas, including the Minister, get so frustrated with the lack of answers from the HSE and with its use of political speak that clarifies nothing. One often feels that one is banging one's head off a brick wall. In many cases, one only gets a response ten months after submitting a query.

There must be public competition when it comes to membership of the board. There must

be patient advocates on the board. The board in its entirety must be committed to the full implementation of the Sláintecare report. Sinn Féin welcomes the key fundamental principles, as outlined by the Minister, of independence, inclusiveness and compassion. Many in the HSE are experiencing compassion fatigue. Indeed, I attended an event on mental health earlier today in Dublin 12 and the constant message from the workshop discussions was around compassion and the lack thereof.

We will be submitting amendments on Committee Stage and I look forward to working with the Minister to strengthen the Bill. I wish the new HSE board well and ask its members to ensure that all decisions are guided by the three fundamental principles of independence, inclusiveness and compassion.

Senator Anthony Lawlor: I welcome the Minister following his tough negotiations with the Minister for Finance to secure extra funding for the HSE, in particular in the light of the fact that it required €700 million for this year. It is a sizeable sum of money. I hope it does not all go on administration. The money should be for patients rather than administration. As part of his role, the Minister is determined that should be the case and that money should follow patients.

I have a couple of queries about the HSE board. I am always nervous about the independence of boards and, in particular, their ability to question an executive. We have had too many boards around the country. I hark back to one of the major causes of the financial crash which was the boards of banks consisting of wine-guzzling, cheese-chaffing individuals who did not take their roles seriously. It was a very important role, however. Sadly, the boards acted not for their shareholders, the ordinary citizens who bought shares, but for the bankers themselves. They followed like little sheep the lead ram, namely, the chief executive of the bank, through the gap.

Senator Máire Devine: Was the champagne and caviar for them?

Senator Anthony Lawlor: I will not go any further. The role of a board is to provide oversight. It is to ensure the functions of the board and the executive are carried out. It is the same as the role local authority members fulfil around the country. They are like board directors. I would like to see the Minister legislate for who he wants as members. He mentioned patient advocates. That should be put in writing. It might be a view the current Minister has, but a subsequent Minister might decide it is unnecessary. We are going through the Judicial Appointments Commission Bill now and the Minister for Justice and Equality has practically no say in who he can appoint to the commission because it is written and defined in the legislation. Another key issue is the Minister's role in relation to sub-committees, which are equally important. The audit committee is extremely important as it has to be sure about where money is allocated. Health funding will exceed €17 billion this year and that money should be spent on patients.

I ask the Minister about regional boards, which also play an important role. What connection will they have and how will they feed into the main board? Perhaps a main board member should sit on a regional board to ensure there is a direct line of communication from board to board rather than having the executive passing to regional boards hearsay as to what was said at a board meeting. That is important. Accountability is extremely important. While there is accountability to the Minister, board members should come before the health committee, not with the chief executive who sometimes prods and leads board members, but as the board itself, namely, in the persons of the chairman and a couple of members. Perhaps we can do something

on that.

I will get a little parochial. The Minister got a great deal of money yesterday and I would love to see some of it go to home care packages in my area. There are many people in hospital today who would be moved to their homes if home care packages were allocated. There are up to 700 people in my local CHO 7 waiting for packages. I ask for something to be done on that. I would like this money spent on home care, where it goes to the patient, rather than on the hiring of more staff. Senator Colm Burke referred to the taking on of 12,000 staff and noted that it might stun us if the percentage of those who were administrators was released.

This is a sound and robust Bill. If the matters I raise could be included, it would be even stronger. I thank the Minister and wish him the best of luck going forward with this.

An Leas-Chathaoirleach: I thank the Senator. He was never shy in coming forward. Well done.

Senator Jerry Buttimer: I welcome the Minister and commend him on the budgetary achievement yesterday. To be fair, it is a significant health budget. If I am honest, notwithstanding the good work of the Minister, and Ministers of State, Deputies Jim Daly and Catherine Byrne, I have never been as disillusioned about the governance of our health system. I say that as a former chairman of the health committee and as someone who sat on the HSE's southern health forum. I am disillusioned for a number of reasons. We have no accountability. The only person who is accountable is the Minister or another politician. Senator Lawlor referred to accountability and regional boards. A silo mentality is operating in the health system and, from what I can see now, there is precious little coming together. We can have all the talk we want of Sláintecare and reform, which is badly needed, but unless the patient is at the heart of our health system, we might as well take the Bill and put it up against the Sunbeam wall in Cork.

The Minister's intentions are noble and correct. We talk about good governance and accountability and to be fair to the Library and Research Service, it has produced a wonderful document for the Houses for this debate. However, I am disillusioned because I would like to know who will be accountable in the executive. We talk about transparency, accountability, participation and integrity but where are they? We have gone full circle in the wrong direction regarding the role of politicians in health. I have become a firm advocate now, having changed my mind on this, of the old health boards and the eight regions where we had politicians sitting with clinicians and other interest groups at a public forum. We should forget these meetings in Kilmainham and have public meetings with full disclosure to facilitate full openness. We are accountable as politicians. We can get voted in or out. The Minister can attend the Dáil or the health committee and be questioned. I hope we go back to that, although I know that the Minister will not do so.

It is welcome that we are dismantling the current system. I am a firm advocate of the hospital group model and of money following the patient. I admire Senator Colm Burke's tenacity in tabling questions around recruitment and the filling of vacant positions. We are lucky to have a Minister who is committed to implementing a new model. I hate to use the word "reform" because we have had so many reports on it that it is old news. The Minister's legacy in the Department will be for people who want a health system which meets their need for access to treatment, acute hospital beds, timely outpatient appointments and emergency departments in which they do not have to wait an inordinate amount of time to be seen. Some of this is not about reform but about better management of resources. We have all been in emergency departments

where people have had to wait not because of the queue but because of the process. I commend the nurses, doctors and other front-line staff in hospitals because they do Trojan work. I was in a hospital last Sunday and saw the work they were doing.

We must go back to reality. As I know that the Minister wants to go, I will finish on this point. I sat in the health forum when I was a member of Cork City Council. It was the greatest waste of time ever because there was no accountability or ability to get answers. It was a farce. The executive was laughing at us. We had to submit a question in advance and then we would get a written answer but - God help us - we could not go in and ask about A, B or C. I am not giving out to the Minister, and I hope he knows that, but in response to parliamentary questions, we are told the matter raised is one for the HSE and the Department cannot answer it or else we are taken from here to the Red Cow roundabout and back.

Senator Máire Devine: It is farcical.

Senator Jerry Buttimer: Yes, it is. I support-----

An Leas-Chathaoirleach: I love this meeting of minds.

Senator Jerry Buttimer: The Leas-Chathaoirleach is a businessman. We have €17 billion in funding for the Department of Health. For the second year in a row, the Department has received its highest allocation ever. What will happen? I will conclude on this matter because it is important. Senator Lawlor referred to respite care and home helps. If we want a health system that delivers for people, it has to be about the people who need it and not the suits. I have become seriously disillusioned with the suits because there is no accountability. I would love if the Minister appointed politicians to his board so that they can go in and get answers because this needs to be done publicly, not in a room with no coverage of proceedings.

I wish the Minister well. He has done a good job thus far. I hope he gets the support he requires to deliver gargantuan change. Senator James Reilly initiated it after the failures of his predecessors, Deputy Micheál Martin and Mary Harney. I wish he had been Minister when money was available. This Minister has another opportunity and I that know he will deliver. I am sorry for being cross, but this is an important issue.

An Leas-Chathaoirleach: I think the Minister and I understood the Senator was not cross with us.

Minister for Health (Deputy Simon Harris): I thank Senators for their contributions. There were many similarities in the themes being raised, many of which I can relate to and support. I will try to respond to a couple of them. The very issue Senator Buttimer outlined in raising the challenges public representatives feel - this is not about public representatives - on behalf of citizens is one of the reasons we need to reform the health service. I, too, chaired a regional health forum before I was a Member of the Oireachtas. I do not mean to be in any way disrespectful to the councillors up and down the country who go to these forums and do fine work, but they do not have enough powers or teeth to get the answers they want on behalf of their constituents. We will set up regional entities which will have boards. I will consider how public representatives can have an input and play a role in that regard.

I do not mean to be disrespectful to any colleague here or in the other House, but it is bizarre that, in a national parliament, the Minister for Health can be before an Oireachtas committee or in the Dáil or Seanad answering questions on very local issues. I do not mean that rudely or dis-

respectfully. I am happy to answer questions all day long and I know the reason Members find they have to raise these issues in the Houses is that they often cannot get an answer at a local or regional level. When such issues have to be raised here it is a sign that something somewhere else in the chain is not working well. We have a chance now, as we develop these new structures, to get the governance right at a national level. We need a national entity. While we can do a great deal in the regions, we would not have delivered a national cancer strategy, a national maternity strategy or many other things if we did not have a national entity. A national health service is needed, but we also need to be able to devolve more functions, as appropriate, to the regions in what is a relatively small country. For this reason, we intend setting up integrated regional entities in order that the silos can be broken down and we can avoid a scenario whereby community health has a budget and management structure in one location, the hospital group has a budget and management structure in another and the two never meet.

The good news is that this is not just my view but one to which every political party and grouping in both Houses of the Oireachtas has signed up through the Sláintecare plan. Sláintecare is a ten-year plan, which we will not be able to implement overnight. That is not what we need to do in health. What we need to do is to keep working away at a vision regardless of who the Minister is or who is in government because we have all signed up to the same policy direction in a bipartisan fashion.

Yesterday was a very important day for Sláintecare because we now have more than €200 million to start making the plan a reality. We have a €20 million integration fund and, on the capital side, €6.6 billion of health capital funding will be directed towards Sláintecare over the next ten years. We reduced prescription charges and the threshold for the drug payments scheme and we provided for more people to access free GP care, all of which were Sláintecare recommendations. Today - probably as I speak - representatives of a doctors' organisation are in my Department seeking to recommence talks on a GP contract in order that we can make general practice sustainable, something which I know is very close and dear to Senator Keith Swanick's heart and which he raises and advocates for in this House.

We have the policy and resources but we need to have the proper structures, as all of the Senators have said, to make sure that those resources and policies get to where we all want them to get to. We want staff on the front line and patients - citizens - using our health service. It is clear to me that the distance, as Senator Colm Burke eloquently alluded to, between the decision-making process and the citizen is often far too big. We need to look at how we can address that.

I will now answer a couple of specific questions. In respect of how people are selected for the board, we will use the Public Appointments Service. I issued a statement today noting that this process is under way. We also selected the chair-designate of the board through that process. The chair-designate is available to go before the Oireachtas Joint Committee on Health. I am sure he would welcome that. I would welcome the chance for the Oireachtas Joint Committee on Health to meet him as well. Senator Lawlor made a number of interesting points on how we could improve the legislation, as did Senator Devine and others.

Senator Máire Devine: Is the chairperson designate a him or a her? Has a definitive decision been made on who will assume that role?

Deputy Simon Harris: As Ciarán Devane is the chairperson designate, it is a him. Senator Lawlor made a number of suggestions about how we can improve the legislation. I particularly

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like his idea of making sure there are always patient advocates. He also asked whether that provision should be strengthened or if it should feature in legislation. I will reflect on that before Committee Stage. I will also reflect on a number of the Senator's other suggestions in respect of how the board will interact with the Oireachtas Joint Committee on Health, the regional board structures and sub-committees.

On the issue of home care packages, I expect we will be in a position to increase the number of home care packages again in 2019 and, I hope, through the winter period. I am aware of the issue the Senator has brought to my attention regarding demand exceeding supply in community healthcare organisation, CHO, 7. I am also well aware that there is a national issue in this respect and I hope we can make some progress as a result of the extra funding we have received both for the winter and for 2019. The Minister of State, Deputy Jim Daly, is working hard on trying to develop a statutory home care scheme. This is the big prize which we all work for. Every single one of us will say we want people to be able to grow old with care and dignity in their own homes and communities, yet the only statutory scheme today is the fair deal scheme, which is a scheme to send people to nursing homes. Home care is an *ad hoc* non-statutory scheme that varies between counties and constituencies. I will support the Minister of State very much in this regard. If we can get to the point where we have a statutory scheme in the coming years, that will be a game-changer in terms of the provision of healthcare.

To return to the legislation, this Bill is a very important step, albeit only a step, in putting in place the appropriate governance structures for the HSE to deliver and oversee the implementation of Sláintecare and the creation of a world class health service. It is also an important step in telling all of the people of Ireland, particularly women, that we are acting upon Dr. Scally's recommendations. One of his key recommendations related to governance, oversight and accountability. We need a competency-based board to achieve this. That is why I am very pleased to commend the Bill to the House.

Question put and agreed to.

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

Senator Colm Burke: Next Tuesday.

An Leas-Chathaoirleach: Is that agreed? Agreed.

Committee Stage ordered for Tuesday, 16 October 2018.

Sitting suspended at 1.40 p.m. and resumed at 2.30 p.m.

Markets in Financial Instruments Bill 2018: Second Stage

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

Minister of State at the Department of Finance (Deputy Michael D'Arcy): The Markets in Financial Instruments Directive II, known as MiFID II, is the cornerstone of European Union financial markets legislation, covering the regulation of investment services providers. It is changing how markets operate for the better, ensuring safer and more transparent markets across the EU. MiFID II represents a major piece of financial markets reform and is ambitious in its scope. It seeks to make financial markets more efficient, resilient and transparent in a

number of ways, namely: by the introduction of rules to keep pace with technical developments such as algorithmic trading - I got that term right, having had serious a row with its pronunciation during the debate on the Bill in the Dáil - which has the potential to cause systemic risks; by involving transparency and oversight of financial markets and, for the first time, establishing the principle of transparency for non-equity instruments such as bonds and derivatives; by introducing measures to deal with excessive volatility; by improving conditions for competition in the trading and clearing of financial instruments; and by building and strengthening investor protection rules.

The directive was transposed into Irish law by way of statutory instrument in August of 2017 and entered into application on 3 January. However, it is necessary to provide for criminal sanctions and penalties in respect of infringements outlined in MiFID II via primary legislation, hence the need for this Bill. It provides that a person guilty of an offence under certain provisions of the MiFID II regulations, such as operating without authorisation, is liable on conviction on indictment to a maximum penalty of €10 million and-or imprisonment for ten years. This is a continuation of the criminal sanctions regime that existed in Irish law under our MiFID I regime.

While the main part of this Bill is the introduction of criminal sanctions under MiFID II, the Bill also contains amendments to definitions in the Credit Reporting Act 2013 and the Financial Services and Pensions Ombudsman Act 2017. The Credit Reporting Act provides that the Central Bank of Ireland shall establish, maintain and operate a database of specified personal and credit information known as the central credit register. The purpose of the register is to ensure that credit providers will have access to the most accurate and up to date information regarding a borrower's total debt exposure when considering an application for credit, or when an existing loan is in arrears or being restructured. It has been advised by the Office of the Attorney General that the definition of "credit" included in the Act, which was intended to exclude trade credit from the scope of the central credit register, would also unintentionally exclude hire purchase and similar credit agreements. The amendment to the Act included in this Bill remedies the issue.

The Bill also makes an amendment to the definition of "long-term contract" in the Financial Services and Pensions Ombudsman Act 2017, which refers to the European Communities Life Assurance Framework Regulations 1994. The policy intent was to capture life assurance contracts of all durations, including open-ended products. It subsequently emerged that the European Union (Insurance and Reinsurance) Regulations 2015 implementing the Solvency II directive superseded the 1994 regulations for many insurance undertakings. This Bill amends the definition to ensure that products to which the 2015 regulations apply are also included in the definition. The purpose of this amendment is to grant access, on a statutory footing, to the Financial Services and Pensions Ombudsman for consumers wishing to make a complaint about these products.

Subsequent to the publication of the Bill, a further issue emerged regarding paragraph (a) of the definition. Where a product was understood by the consumer to be expected to last for more than five years and one month but did not have a fixed term, the Financial Services and Pensions Ombudsman decided that such a product would not be a long-term financial service because it did not have a fixed term as required by definition. There was no policy intent to exclude these products so it was agreed on Committee Stage that a further amendment would be made to the definition to include longer-term services whose term was not actually fixed. This arose particularly in the context of whole-of-life policies and the revised definition will allow

the Ombudsman to investigate complaints about them where he considers that it is appropriate for him to do so. Specifically, he has the discretion under section 51(2)(iii) to investigate cases within “such longer period as the Ombudsman may allow where it appears to him or her that there are reasonable grounds for requiring a longer period and that it would be just and equitable, in all the circumstances, to so extend the period”. The revised definition in the Bill will mean that whole-of-life policies come within the definition of “long-term financial service” and, therefore, the Ombudsman will have the necessary power to investigate these cases.

I will now provide a short outline of the Bill. Sections 1 and 2 contain the Short Title of the Act and a provision dealing with expenses incurred in the administration of the Act. Sections 3 and 4 repeal the criminal sanctions and penalties contained in the Markets in Financial Instruments and Miscellaneous Provisions Act 2007 and provide for further definitions. Section 5 provides for the definitions and details of fines and penalties that I have already outlined in relation to infringements of MiFID II. Section 6 allows the Central Bank to charge fees in relation to its functions under MiFID 2. Section 7 contains an amendment to Schedule 2 to the Central Bank Act of 1942. Section 8 amends the Credit Reporting Act 2013, as I have already outlined. Section 9 contains an amendment to the Financial Services and Pensions Ombudsman Act 2017.

I thank Senators for the opportunity to address the House on the Bill. I look forward to debating the measures it contains and I commend it to the House.

Senator Gerry Horkan: I thank the Minister of State for his contribution. It was comprehensive and outlined much of what is needed in the context of this particular legislation. As he pointed out, the directive has already been transposed into Irish law by means of statutory instrument. However, the Bill before us is necessary in order to provide for the criminal sanctions and penalties for infringements outlined in MiFID II. The Minister of State also highlighted the changes that will come about in the long term. At the relevant joint committee, the Minister of State and I discussed the regulation of long-term policies and how far people could go back in order to investigate. I welcome the reference to that in the Bill.

I will not go on about the various sections because the Minister of State covered them well. Fianna Fáil will be supporting this important Bill. It is noteworthy that the Bill provides for significant penalties in respect of conviction on indictment. There are technical issues to do with the Credit Reporting Act and the Financial Services and Pensions Ombudsman Act 2017 that were discussed previously. It is important to have criminal sanctions for people who misbehave and it is important there is sufficient supervision to ensure that people are doing what they are supposed to be doing. I welcome the progress of the Bill, which will protect investors and those involved with these products.

Senator Kieran O’Donnell: I thank the Minister of State for coming before the House and welcome this amending legislation.

The Minister of State referred to whole-of-life policies and the fact that the ombudsman will be able to investigate complaints relating to them. Prior to becoming Minister of State, Deputy D’Arcy was a pioneer in this area. I know a man who contributed to a whole-of-life policy and who, coming into his 80s, was told he had put more money into the policy than the actual value of the policy. He was also informed that if he did not continue to pay exorbitant premiums, the policy would go. That needs to be looked at and it is welcome that the individual to whom I refer can now go to the Financial Services and Pensions Ombudsman.

The Minister of State also referred to improving transparency for the financial markets and establishing the principle of transparency for non-equity instruments such as bonds and derivatives. Prior to the crash, financial stability reports published by the Central Bank referred to products being invested in derivatives. In many cases, those derivatives were sub-prime bonds, loans and mortgages invested in the UK and, in particular, in the US that were bundled. I welcome this transparency for which provision is made in the Bill.

Could the Minister of State indicate which financial institutions will be required to make information available for inclusion on the central credit register? The latter falls into the same bracket as the insurance register in the context of examining claims and so forth. Who will be responsible for maintaining the database relating to the central credit register? Who will own it? Who will have access to it? How long before it will be put in place? Will it include details on all financial instruments? Will it be accessible to members of the public? This is a great innovation but I would like information on the practicalities involved.

The main thrust of the Bill relates to criminal sanctions. Those sanctions are welcome. The Bill is a further step in tackling the kind of white-collar crime which, to date, has been overlooked. There is a massive contradiction in someone who steals a loaf of bread from a supermarket being deemed to be guilty of more criminal intent than an individual who steals from the pension funds of hard-pressed people. The first person may be stealing the loaf of bread to feed his or her family. In terms of scale, the individual stealing from the pension fund could not be accused of doing likewise. I always look for equity. If someone steals something, regardless of whether it is a large or small item, he or she should be held accountable. However, in the context of scale, there has clearly been a need to take action in respect of white-collar crime. I welcome the further strengthening of the measures which are already in place and which were introduced by this Government and that which preceded it.

I again thank the Minister of State for attending and commend the Bill to the House.

Senator Rose Conway-Walsh: I welcome the Bill which Sinn Féin will be supporting. The Bill is quite technical in nature and is the first step in a process for which Sinn Féin has been calling for a long time. My colleague, Deputy Pearse Doherty, attempted to have the definition of whole-of-life policies amended because companies were still using the lack of clarity to avoid legislative provisions and Sinn Féin supported the Government amendments on Committee Stage in the Dáil. I will examine what the Minister of State said in terms of shoring up the definition.

The most important aspect of the Bill relates to the requirement that a customer must be informed if, for example, a provider of mortgages has a share interest of over 25% in an insurance company it recommends to that customer. This practice was recently found to be illegal in the context of a case that was eventually settled out of court. Relatively little is known about the case because it was settled out of court. The Central Bank cannot tell us any details about its investigations into the individual financial institutions even after the individual involved had made a disclosure to it. People will find that difficult to believe. A financial institution that broke the law by not informing a customer that it had a stake in a product it was recommending was taken to the High Court, lost the case and launched an appeal. The appeal was withdrawn and an out-of-court settlement, with a gagging order attached, was arrived at. People are asking why all of this is happening behind closed doors.

Out of this long process, there is nothing to dissuade the financial institution from repeating

the same trick. Hundreds of people made disclosures to the Central Bank on this issue, but no one knows about this because the bank cannot provide updates on its investigations into the disclosures. The Minister and my colleagues will be aware of that on foot of what has been stated by officials from the Central Bank who appeared before the Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach. It is astounding that we cannot be told the identities of these institutions. It is also astounding that there is a collective in place and that there is protection in respect of the type of behaviour to which I refer. Where is the protection for consumers? If consumers knew of the behaviour of a particular institution, they would be much better placed when making their choice of financial product provider.

The Bill seeks to shed light on the many financial transactions that take place every day and to attach clear financial and custodial penalties. In this country we are still not comfortable with the idea that a banker in a suit can do time in prison for taking part in a practice that “everyone was up to”, which seemingly makes it okay.

This culture needs to change. With an increasing amount of primary legislation pertaining to consumer protection, especially regarding financial products, is there now a need for a consolidated Act? The Companies Act 2014 consolidated all previous Companies Acts. While it runs to thousands of pages, it is the go-to unitary legislation for anyone involved in corporate governance. The legislation is needed to attach criminal sanctions to crimes listed in the Markets in Financial Instruments Directive II or MiFID II. If the Government can specify criminal sanction for a financial crime, does it intend to apply this to other criminal actions in the financial and banking sector? My colleague, Deputy Pearse Doherty, has a Bill on the Order Paper which would make it a criminal offence to lie to the Central Bank. After many sessions in the finance committee trying to get to the bottom of ever-increasing insurance costs and resolving the tracker mortgage scandal, people will want to know that those who break the law face sanctions such as the penalty of up to ten years in prison and-or a fine of up to €10 million provided for in the Act.

Recently, the finance committee considered a large report from the Central Bank into the problems of the culture and management in the pillar banks that led to many of these scandals. The Central Bank told us that it is waiting for legislative changes to take place before it can pursue individuals for their actions in scandals such as the tracker mortgage issue. For this reason, I ask that as well as ensuring that this legislation progresses, we look at the many other changes that need to be put in place. We also need to see legislation on class actions progressed. My colleagues, Deputies Pearse Doherty and Donnchadh Ó Laoghaire, have drafted this legislation and are seeking support for its progression through the Oireachtas as soon as possible. Today’s Bill is welcome but should only form a small part of the change of culture which is backed up by sanction and investigation.

Minister of State at the Department of Finance (Deputy Michael D’Arcy): I thank Senators for progressing the Bill in the manner in which they are doing. I will stay with the Bill. Senator Conway-Walsh asked several questions about other legislation. As I do not have the relevant information available to me, I do not propose to comment on the matters raised. The Bill makes it an offence to intentionally mislead the Central Bank. It is, therefore, very important legislation. While the MiFID legislation has been transposed, what has not been transposed is the criminal sanction, which is a fine of up to €10 million and-or jail time. Without this, the other legislation is much less powerful. While MiFID is concluded, finished and operational, it is also important that we progress this Bill through the Houses.

Approximately 500 lenders and creditors are included in the credit register. In the future they will provide data regarding the outstanding credit agreements. These are banks, credit unions, firms that have acquired loan books from Irish institutions in recent years, licensed moneylenders, local authorities and the National Asset Management Agency, NAMA. If the proposed amendment is enacted, higher purchase companies, those that provide personal contract plans, PCPs, and financial leasing companies will also be required to provide data to the central credit register, CCR.

Who can access the data? Credit information subjects are in a position to access their data on the CCR and to obtain their own credit reports. This is similar to the way it used to be with the credit bureau. One can request one's own information to be made available. The Act provides that the first report each year would be provided free of charge. The Central Bank has indicated that, subject to a fair usage limitation, individuals may access their credit report at any time free of charge. Lenders will be required to, or may in certain circumstances, access the credit register when an individual or other credit information subject applies for a new loan, has an existing loan restructured or has arrears on an existing loan. Apart from a lender in the above circumstances, no other party, such as an employer, landlord or any other person or entity, can access the individual's credit data.

Who owns the information? The Central Bank owns the information on its central credit register and is responsible for the protection and processing of the data held on the CCR. What type of loans credit does the CCR hold information on? It collects loans information on most types of loan and credit agreements of €500 or more. This includes mortgages, personal loans, credit card overdrafts, business loans, moneylender loans and the like, so that involves most of what we are providing for.

I want to touch on the issue Senator Kieran O'Donnell raised about whole-of-life policies. I think it was when we were finishing up the legislation on the Financial Services and Pensions Ombudsman that the issue of whole-of-life policies was raised. There was an issue as to whether they were covered. They are covered. We are strengthening the definition now. Even previously, though, I have been pretty strong in my views on this.

Were products mis-sold? It is for the Financial Services and Pensions Ombudsman now to investigate this in the context of whole-of-life policies. One issue of which I was unaware is that there is no such thing as a whole-of-life policy. It is reviewed every five years. On the basis of that review, the premia increase. I must admit that I found it disturbing that some elderly people were finding it was so expensive to keep the pot alive that effectively the financial institution was consuming the whole pot. This is particularly unfair - that is a personal view - but it is for the Financial Services and Pensions Ombudsman to consider these matters. The ombudsman has considered three cases to date and did not choose to go ahead with any investigation. Again, it is neither for me nor this House to instruct the Financial Services and Pensions Ombudsman as it is his or her decision to investigate or not. The legislation, however, is absolutely clear that the ombudsman has the authority to do so.

Question put and agreed to.

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

Senator Kieran O'Donnell: Next Tuesday.

An Cathaoirleach: Is that agreed? Agreed.

10 October 2018

Committee Stage ordered for Tuesday, 16 October 2018.

Sitting suspended at 3 p.m. and resumed at 3.30 p.m.

Qualifications and Quality Assurance (Education and Training) (Amendment) Bill 2018: Order for Second Stage

Bill entitled an Act to amend and extend the Qualifications and Quality Assurance (Education and Training) Act 2012; for that purpose to make fresh provision concerning the means by which an award's status, with reference to the National Framework of Qualifications, may be established and, to that end, to provide for the establishment of a category of awarding bodies, exclusive of the Qualifications and Quality Assurance Authority of Ireland or certain other persons, which shall be known as "listed awarding bodies"; to provide, as a condition precedent for provisions of that Act to be invoked by a relevant provider (or an intending relevant provider), for a requirement that criteria specified in regulations, to be made by the Minister for Education and Skills, must be met, including criteria for the purpose of affording a reasonable assurance to the foregoing Authority that a foregoing provider has the capacity and capability to provide programmes of education and training consistent with the requirements of that Act; to provide for the establishment of a fund which shall be known as "Protection of Enrolled Learners Fund", into which an annual charge by certain providers must be paid and from which moneys may, in cases of default in delivery of certain programmes, be paid so to enable enrolled learners complete the programme concerned or so as to be used for certain other purposes; to make further provision regarding authorisation to use the international education mark; and to provide for related matters.

Senator Maria Byrne: I move: "That Second Stage be taken now."

Question put and agreed to.

Qualifications and Quality Assurance (Education and Training) (Amendment) Bill 2018: Second Stage

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

Minister of State at the Department of Education and Skills (Deputy Mary Mitchell O'Connor): I am pleased to bring the Qualifications and Quality Assurance (Education and Training) (Amendment) Bill 2018 before the Seanad. The Bill proposes to amend the Qualifications and Quality Assurance (Education and Training) Act 2012 which established Quality and Qualifications Ireland, QQI, as the national agency responsible for external quality assurance and qualification across the further and higher education sectors. The main purpose of the Bill is to further empower QQI as a regulator of quality and strengthen the agency's role in ensuring high standards across Ireland's education system. This important legislation will enable QQI to realise its potential, facilitate the introduction of deferred policies and clarify, strengthen and make more efficient the operation of existing policies.

I highlight for the House six key provisions of the Bill. The first relates to the listing of awarded bodies. The Bill will enable the expansion of the range of awards included in the national framework of qualifications, NFQ, by giving QQI explicit authority to list awarding bod-

ies and include their qualifications in the framework. Qualifications such as those awarded by professional and international awarding bodies are offered by providers in Ireland, but currently they are unable to access the NFQ. The Bill addresses this issue by establishing a pathway for awarding bodies and their associated providers to engage with QQI to have their awards included in the framework, while also ensuring the quality standards of the NFQ are upheld.

The second key provision relates to the examination of the bona fides and financial capacity of providers. As part of strengthening QQI's quality assurance procedures, the Bill seeks to provide a legal basis for QQI to examine the bona fides and financial capacity of the providers with which it engages. This will enable it to assess a provider's capacity to provide programmes of education and training consistent with the quality assurance processes and procedures required by the 2012 Act. To conduct this assessment, QQI will be further empowered by means of statutory instrument to establish criteria addressing key issues such as legal personality, ownership and the corporate governance arrangements of providers. In addition, it will be empowered to examine whether adequate financial resources are in place to ensure the viability of these businesses.

The third key provision relates to the international education mark, IEM, which will be introduced on the enactment of the Bill. The IEM forms part of Ireland's international education strategy which aims to foster and strengthen Ireland's reputation as a destination of choice for international students. The IEM will serve as a crucial tool for Ireland's educational providers in underpinning the quality of our educational offerings. To obtain the IEM, providers will have to demonstrate compliance with key criteria and practices covering protections for enrolled learners, recruitment and admission, information provision, student welfare, cultural awareness and academic support provisions. Once it is in place, only providers authorised to use the IEM will be eligible to recruit international students. The Bill provides for variants of the IEM to reflect and respond to the demands of different types of educational provision. At the outset, there will be two initial forms of the IEM, one of which will apply to the higher education sector and other to the English language education sector.

The fourth key provision relates to the protection of enrolled learners. The Bill aims to provide for a more robust national scheme for the protection of enrolled learners, PEL. PEL will come into effect in circumstances where a provider ceases to offer a programme or trade. It is intended to ensure learners who commence a programme can be confident that they will be facilitated to complete the programme or, as a lesser alternative, receive a refund of fees paid should such an event occur. The current arrangements for PEL as required under the 2012 Act have fallen short of their objective and are no longer fit for purpose. The Bill proposes to replace the existing measures with the establishment of a learner protection fund. The fund will provide QQI with the necessary resources to manage PEL events. Should a provider cease to provide a programme, where necessary, the fund will be used by QQI to fund the teaching out of the original programme where possible; fund the payment of fees for the transfer of an enrolled learner to a similar programme of another provider, or, where circumstances dictate, provide for a refund of fees to the learner. Those providers, the programmes of which are covered by the fund, would be required to pay an annual charge to QQI for PEL. The fund will be fully resourced by these charges. The level of the fee is intended to be as affordable as possible to avoid any undue imposition on providers and students, while also avoiding any risk transfer to the Exchequer. The precise details of the fund will be agreed following further consultation with stakeholders.

The fifth key provision of the Bill relates to the prosecution of cheating services. The Bill

will provide QQI with powers to prosecute the provision or advertising of essay mills and other forms of academic cheating. Essay mills are services which supply to learners, in whole or in part, assignments which are required to be completed as part of a programme of education and training. These services are principally advertised online and have been a growing phenomenon in recent years. Such services present a challenge to the academic integrity of programmes and awards within the remit of QQI. The creation of offences for the provision and advertisement of these services will serve to prohibit the practice and make the services more difficult to access.

The sixth key provision relates to the awarding powers of institutes of technology. Currently, all institutes of technology, with the exception of the Dublin Institute of Technology, have delegated authority from QQI to make awards from level 6 to level 9 of the national framework of qualifications. By contrast, the universities, the Dublin Institute of Technology, DIT, and the Royal College of Surgeons in Ireland, RCSI, are designated awarding bodies, which means that they are self-awarding bodies. There is, therefore, a legislative difference in the relationship between QQI and the universities and the institutes of technology, respectively. The Bill addresses the legislative difference by providing for amendments to the Regional Technical Colleges Act 1992 to grant award-making powers, with the exception of doctoral awards, to all institutes of technology. This will put the institutes of technology on an equal footing with the designated awarding bodies with which they are expected to establish regional and thematic clusters, as per the goals of the National Strategy for Higher Education to 2030. It will create a single, coherent quality assurance and qualifications space among public higher education institutions.

Having set out the policy context underpinning the development of the Bill, I will now turn to its contents. It comprises 36 sections divided into three Parts. Part 1 comprises sections 1 and 2 which contain standard provisions on the Short Title and commencement and provide a definition for use in the Act.

Part 2 comprises sections 3 to 34, inclusive, which address amendments to the Qualifications and Quality Assurance (Education and Training) Act 2012. Section 3 provides for amendments to section 2 of the principal Act which introduce new definitions and revise existing definitions under the 2012 Act. Section 4 amends the functions of Quality and Qualifications Ireland and includes specific statutory functions for the inclusion of awards within the national framework of qualifications and the listing of awarding bodies. Section 5 provides for the specific legislative function for QQI to share relevant information with other State bodies including the Higher Education Authority and SOLAS. Section 6 amends section 27 of the principal Act to provide for the periodic review and updating by QQI of quality assurance guidelines and for the issuance of different guidelines for different types of programmes, including for the new category of listed awarding bodies. Section 7 amends section 28 of the principal Act and contains provisions to clarify the scope of quality assurance procedures established by providers having regard to the guidelines issued by QQI. Section 8, as I have outlined, provides QQI with statutory powers to evaluate the bona fides and financial capacity of providers. Section 9 contains provisions to allow QQI to impose certain conditions on an education and training provider the quality assurance procedures of which it has approved.

Sections 10, 12 and 23 require QQI to consult SOLAS when conducting reviews of further education and training procedures. This runs parallel to existing provisions in the 2012 Act for consultation with the Higher Education Authority in respect of higher education institutions. Sections 11 and 17 provide for certain occasions when QQI can withdraw approval of quality assurance procedures and programme validation without conducting a review. Section 13

amends section 43 of the principal Act to provide a legal basis for the inclusion of awards made by designated awarding bodies, namely, the seven universities, Dublin Institute of Technology and the Royal College of Surgeons in Ireland, in the national framework of qualifications. It further provides for QQI to establish policies and criteria for awards to be included within the framework and for the establishment of different policies and criteria for different awards and different awarding bodies. Section 14 provides QQI with powers to prosecute the provision or advertising of essay mills and other forms of academic cheating.

Section 15 provides necessary amendments to facilitate the extension of the awarding powers of institutes of technology to include awards up to level 9 on the national framework of qualifications. As a result, institutes of technology will be required to apply for QQI validation for doctoral degree level awards only. Sections 16 and 34 amend sections 45 and 84 of the principal Act, respectively, to provide that QQI validation for all education and training programmes is time limited. Sections 18 and 22 contain provisions to authorise QQI to list awarding bodies and to include their qualifications in the national framework of qualifications. Section 18 provides for a transitional period of five years to facilitate existing arrangements between certain providers, such as institutes of technology and education and training boards, and awarding bodies other than QQI. Section 19 provides a technical clarification that learners seeking access to recognition of prior learning processes should apply in the first instance to an education and training provider rather than to QQI.

Section 20 provides for QQI to examine the suitability of a provider's quality assurance procedures in the context of determining a provider's request for delegated authority. It also provides for QQI to define a class of programmes for the purposes of delegating authority to enable a more focused approach to delegating authority where it is warranted. Section 21 amends section 53 of the principal Act to reflect the revisions to the national scheme for the protection of enrolled learners. Sections 24 to 26, inclusive, contain provisions to facilitate the introduction of the international education mark. Sections 27 to 30, inclusive, provide for the introduction of a new national scheme for the protection of enrolled learners, the related regulations, and for the establishment, governance and operation by QQI of the protection of enrolled learners fund.

Section 31 amends the obligations on a provider to inform enrolled learners of recognition of the award within the national framework of qualifications to refer instead to inclusion in the framework. This would allow for an associated provider of a listed awarding body to align with these statutory obligations. Section 32 provides for an exemption for the listing of junior certificate, leaving certificate and other post-primary programmes and awards from QQI's database of awards. It was not the intention when making provisions for this database in the 2012 Act that those awards would be included. Section 33 amends section 80 of the principal Act to provide a legal basis for QQI to charge fees for certain existing services such as periodic quality reviews and for new functions contained in the Bill such as the assessment of applications to become a listed awarding body.

Part 3 comprises sections 35 and 36 which address amendments to other Acts. Section 35 amends the Regional Technical Colleges Act 1992 to provide for the granting of award-making powers, with the exception of doctoral awards, to all institutes of technology. Provisions are also included to strengthen the independent control of the academic councils of the institutes of technology to bring them into line with those of the designated awarding bodies. The autonomy of the academic decision making of the academic council and its independence from the governing authority is necessary to support its awarding powers. Section 36 provides for references to awards recognised within the national framework of qualifications in other Acts

to be construed as awards included in the framework.

The Bill is an important step to underpin the quality agenda in Irish higher and further education.

The amendments that are being proposed will make QQI a stronger and more responsive regulator and will facilitate the introduction of key policy measures such as the international education mark and the learner protection fund. I hope Senators will agree that this is an important Bill. I look forward to listening to their views today and to debating this Bill further as it progresses through the Oireachtas. I commend it to the House.

Senator Michael McDowell: I welcome the Minister of State and commend her on this overdue legislation, which I am sure will be worked on closely by Members. I am grateful to Senator Gallagher for permitting me to make a short contribution out of sequence. I propose to raise on Committee Stage the question of designating the Royal College of Surgeons in Ireland as a university of medicine and life sciences or health sciences, notwithstanding the provisions of the Universities Acts. The Royal College of Surgeons in Ireland has an important role to play as one of our flagship international third level education providers. It is held back by the fact that it cannot in any sense signal to the world at large its status as a university. I intend to raise this matter on Committee Stage. I hope we can have a debate on that subject at that time.

Senator Robbie Gallagher: The Minister of State is very welcome to discuss this important issue. Like all Senators, the Fianna Fáil Members of the House are committed to maintaining the highest standards in education and to improving those standards where possible. In line with that, we broadly support the measures that are being introduced in this Bill. As Senators will be aware, most of the measures arise from a 2015 High Court case and are largely technical in nature. The measures in the Bill relate to the listing of awarding bodies, to statutory powers to evaluate providers and to the international education mark.

4 o'clock

The Bill makes a number of positive contributions, for example, by improving protections for English language students, providing greater powers to tackle cheating, introducing new powers to recognise private colleges and giving institutes of technology the power to confer degrees. We are concerned that the proposed supports under the learner protection fund, LPF, would see the State step in to act as an insurer for private language schools. It is possible that this could lead to potential costs for the State. Fianna Fáil believes that any potential funding which might come to be required should be subject to public scrutiny. While we will support the Bill on Second Stage, we believe the LPF measures might need to be amended at a later stage. Perhaps the Minister of State will take that on board. As I said, we are all committed to maintaining and, where possible, improving the highest standards in education. For that reason, I broadly welcome the Bill. Fianna Fáil will support it fully.

Senator Maria Byrne: I welcome the Minister of State to discuss this important issue. I compliment QQI on the work it has done to date. It has engaged in consultation and has highlighted some parts of the Bill that need to be improved. I know the Minister of State is bringing a number of proposals before us today on foot of that consultation. I worked closely with a number of colleges when I was going through the Bill. I would like to raise an issue that relates to section 65(6) of the Bill. I propose that this section should refer to Mary Immaculate College and Marino Institute of Education. They did not get to make submissions because they missed the date. They are not mentioned in this Bill even though other universities are. I ask the Minister of State to take this on board when she brings the Bill back to this House. Other than that, I think it is a very positive Bill. I understand the concept behind its introduction. I

know the third level institutes we are discussing have been working very hard. I have been monitoring some of the work they have been doing. As a result of the decision to bring everything together, students are able to apply to a single body for their qualifications. This service is being monitored. As far as I can see, it has been provided in a very effective and efficient manner to date. The maintenance of the national framework of qualifications is also important. It has been highlighted that the Bill needs to be strengthened and that changes need to be made to it. I compliment and support that proposal.

Senator Pádraig Mac Lochlainn: I welcome the important legislation before the House. Sinn Féin intends to work with the Minister of State and all Members of the House to improve it. This Bill stems from the current lack of regulation in the English language school sector, which is worth €1.58 billion per annum to the economy. The vast majority of the approximately 120 private English language schools in the State make a profit each year. Student fees range from €2,000 to €4,500 for six-month part-time courses. Our schools are so highly regarded that civil servants from other EU member states are being sent to Ireland to learn English here. The Department of Education and Skills is well aware of the potential growth of this sector, which it has identified as a key sector in its international education strategy. It is aiming for 25% growth in the sector in the next four years, potentially making it worth €2 billion by 2020. We welcome the Department's focus on this sector and the production of a Bill that attempts to regulate this industry. However, we are disappointed that at this early stage in proceedings, the Bill has a distinct lack of focus on regulating employment practices in this sector. This industry has lacked serious regulation for many years. Bad employment practices have practically become the norm. We need to reverse this trend. The Bill gives us an opportunity to do just that.

Approximately 1,200 teachers are employed in this sector all year round. This number doubles during the summer season. Unfortunately, this sector has largely been characterised by precarious employment and poor workers' rights. The Unite union, which has been active in this sector for many years, is well aware of serious abuses of workers' rights, such as the overuse and misuse of fixed-term contracts. Teachers are often released before Christmas and rehired in January so that the payment of holiday pay can be avoided. Zero-hour contracts are rife in this sector. Every one of the 40 teachers in one school is on a zero-hour contract. Bogus self-employment is a very worrying development in this sector. Teachers are being asked to provide schools with invoices for their services, rather than being paid a wage. There are vast disparities in pay. Non-native teachers are paid lower rates than native speakers. Teachers are not paid for non-contract hours, which means they are not paid for time spent preparing and correcting lessons. Unite has found that this means teachers in this sector are doing an average of eight hours of unpaid work each week. Teachers in this sector have no entitlement to sick pay.

That is the reality for workers in the English language school sector. The introduction of this Bill means that this is the time and the place to correct these wrongs. While we welcome many aspects of the Bill, we emphasise that it needs to go further. For example, section 27 proposes the establishment of a learner protection fund. We absolutely agree with the principle underpinning this fund and we welcome its introduction. In recent years, we have seen numerous rogue businesses coming to Ireland and taking money from students, before fleeing the country or going into insolvency, thereby leaving students high and dry. An example of such a scenario occurred last March, when a school in Limerick suddenly closed. Just to highlight the lack of regulation that currently exists in the sector, the owner of that school had actually bought it for just €100 the previous year. He had no idea how to run a business and, as such, had failed to put the school into insolvency before he left. The students were left without their money and

without the service. If a similar scenario were to occur again, I imagine the learner protection fund would kick in and the students would be compensated. Sinn Féin, however, also wants the Bill to include a “staff protection fund”. When these schools go bust or flee the country, they also leave the workers high and dry. In Limerick, when that school went bust, the teachers were left with one month’s unpaid wages, which meant families could not pay their rent or put food on the table. We need to ensure there is a safety net for workers, as well as students.

Section 25 of the proposed legislation includes provision for an international education mark, IEM. This mark would regulate the ownership and management of these schools. Sinn Féin welcomes this proposal. We would, however, also like to see this section go further and introduce a fair employment mark, FEM. If the Department is serious about regulating this industry, it must also regulate workers’ rights in the sector. A fair employment mark would ensure that employers adhere to basic employment standards for teachers and administration staff in the sector. Under the international education mark, if a school contravened health and safety regulations, the business would be sanctioned. We want the same sanctions to be handed out for the contravention of employment regulations. A fair employment mark could include provisions such as: a limit on the number of fixed-term contracts a school can issue at any one time; a requirement for employers to give a worker a legal, written statement of terms and conditions; a ban on zero-hour contracts; pay for non-contact hours; and equality of pay for non-native speakers. A worker should also have the right to be represented in his or her workplace by the union of his or her choice.

These are basic rights to which a worker in the sector should be entitled, and the Department must take responsibility for regulating adherence to them. It is not good enough for the Minister and this Bill to look the other way and leave it all up to the Workplace Relations Commission. Workers on three-month or six-month fixed-term contracts will not take cases to the WRC over any of these issues because if they do, they will not have their contracts renewed. If the Department is serious about regulating this sector, it also needs to get serious about protecting workers in the industry. The Department has the authority to introduce such a fair employment mark and to exclude bad employers from the IEM if they breach such basic conditions. We have an opportunity with this Bill to regulate the sector. Let us do it right away and do it the right way. We all want this sector to be a success, but it needs to work for its workers. We welcome the Bill and will support its passage through Second Stage, but it is vital that progress on workers’ rights is made on Committee Stage.

Senator Lynn Ruane: I thank the Minister of State for her time. I start by welcoming the legislation before the House. It is a good Bill overall, with the principal aim of strengthening and clarifying the legal and regulatory standing of Quality and Qualifications Ireland and ensuring that it is able to achieve its aim as a regulator of quality assurance in further and higher education in the State. I wish to point out, however, that the Oireachtas education committee, of which I am a member, is engaged in a stakeholder consultation process with the industry, NGOs, unions and representative groups involved in this area. Why is the Bill being progressed through the Oireachtas when this process is still ongoing? We are now in a position where I have had a chance to read all the submissions made on the Bill to our committee but most others in the House have not. How can the Bill be evaluated comprehensively when Members present are not aware of what the actors in the sector have to say about it? I ask the Minister and the Leader not to bring the Bill back for Committee Stage and potential amendment until the education committee has completed our work on it.

In addition to the clarification of the role of the QQI, the Bill seeks to bring forward a num-

ber of welcome reforms. I welcome the proposed creation of the offence for the provision or advertising of cheating services or so-called “essay mills”. I welcome the proposed creation of the protection of enrolled learners fund to provide for both academic and financial bonding for students in the case of a programme or school closure. These are unfortunate circumstances for any student, and it is to be welcomed that the State is willing to take responsibility for the administration of a financial instrument that will serve students well in a crisis. I also lend my support to what Senator Mac Lochlainn said about protections for staff who would be affected.

I welcome the proposed creation of the international education mark and the focus on high-quality service provision for students of the English language. It is a great development that Ireland is becoming a global destination for excellence in this area. I also welcome the expansion of award-making powers to institutes of technology. This is welcome at a time of change and reform in the institute of technology sector.

However, I do have a couple of concerns about the Bill that have arisen through the public consultation process on the education committee and on which I hope we can work together between now and Committee Stage. These concerns really underline the importance of delaying the Bill’s progression until the consultation is complete.

First, I am concerned about the impact of the new learner protection fund on smaller community education projects and organisations. They do not appear to have been communicated with and they are unsure where they will stand in terms of their quality assurance obligations and financial liabilities on contributions to the fund. While for-profit providers are able to charge fees to cover the cost of QQI re-engagement and programme validation costs, independent providers do not have the same financial flexibility. Section 28 sets out the providers who shall be exempt from contributing to the learner protection fund. I ask the Minister to consider including not-for-profit community education organisations in that same list in light of their not-for-profit role and the financial burden such a liability would represent.

Another area where the Bill is in need of further work, consultation and amendment is the regulation of the English language teacher sector. I welcome the growth of this sector in recent years and the role played by the Government in its growth. I also welcome the targets set out in An International Education Strategy for Ireland 2016-2020, which aims to increase the number of English-language students by 25% from 106,000 in 2014 to 132,500 in 2020. It is, however, deeply unfair and just wrong to talk about growing this industry by a quarter and increasing standards for students without acknowledging the often terrible conditions under which English language teachers in the sector are working. This is a sector which our own Oireachtas Library and Research Service estimates to be worth €1.58 billion to the Irish economy, an astronomical figure which is only set to grow and further increase the profits of providers while teachers work in extraordinarily precarious conditions. The money is there in this sector. However, providers are deliberately excluding their teachers from benefitting and the State needs to intervene. We can all agree that it will be impossible to improve the learner experience if we do not improve conditions for the teachers providing the service to them. In submissions to the education committee, we heard about a range of employment law violations which are happening every day in English-language schools across the country. We have received accounts of teachers receiving no contract for their work despite working for the same provider for years, and abuse of single and short-term contracts whereby teachers are effectively fired over the holidays in order that providers are not liable for basic holiday entitlements.

Zero and low-hour contracts are the norm in the industry, as is widespread bogus self-

employment, whereby providers demand teachers send them invoices rather than pay teachers a wage and to avoid the associated employer obligations. There are vast disparities in pay and remuneration in the sector and even within the same school, with very few teachers even making the living wage in Dublin price terms. Teachers receive no remuneration or accommodation for non-contact hours, that is, work outside the classroom, despite the many hours that go into preparation for a single class. There is no entitlement to sick pay, holiday pay or maternity or paternity leave for teachers, and shocking accounts exist of teachers' contracts not being renewed following requests for parental leave. There is also the extraordinary practice of non-native teachers often being automatically paid less than native speakers. This is apparently a widespread phenomenon. What could possibly be the justification for this? It is simply not acceptable that we would seek to legislate for high and stringent standards for the provision of education to English-language students but do nothing to improve the situation for the teachers instructing them. This Bill has high regulatory standards at its core. It recognises that programmes and providers need oversight by the State to ensure students are getting a fair deal. We need to apply the exact same principle to the employment conditions of staff in these schools. This sector is growing well and is highly profitable. It is not unreasonable to provide for stronger protections for teachers in this Bill.

I am aware that this is education legislation and not employment law, but we do not have to write new statutory labour protections into this Bill. All we need to say is that if a provider wishes to be accredited with the International Education Mark, IEM, they must be able to demonstrate that they are in full compliance with existing employment law and some smaller additional, industry-specific provisions. I would be happy to work with the Minister of State on this before Committee Stage, where I plan to table amendments on this issue. I look forward to hearing her views.

Senator James Reilly: I welcome the Minister of State and the Bill. I am very much in support of the legislation in what it sets out to do to regulate foreign language schools, in particular, and the many other aspects of the Bill that have been touched on. I share the view that this is not just about protecting students who we have all seen being exploited and victimised in the most awful way by unscrupulous operators of these schools. They could not be called anything other than cowboys because they do not have the interests of the students at heart and they are just there to turn a quick buck. There have also been stories indicating a use of this as a ruse to get around visa rules.

I share in the comments made by others about the terms and working conditions of people who work in these schools and the lack of certainty and security around their terms and conditions. The Bill is also about protecting Ireland's international reputation as a safe place to come to a college that is, on the face of it, supported by Government, in a country that is part of the EU and has laws and regulations that people should feel would protect their loved ones when they send them so far afield for an education. English language schools are a huge international market. I spoke to the ambassador from India who told me that, at the time, there were more than 100,000 Indian students in the UK learning English but only 1,000 in Ireland, and that this was a massive market that Ireland had not fully explored or exploited. Ireland's EU colleagues, the Spanish in particular, certainly know the value of learning the English language in Ireland and the positive experiences those students have had.

While I want to use this opportunity to touch on an issue, I am aware that from her previous role as the Minister for Jobs, Enterprise and Innovation, the Minister of State would be very concerned about the working conditions of people and workers. I know that I am pushing an

open door when I speak to that end and when I speak on Committee Stage of the opportunities this Bill might present.

I emphasise a problem that I believe is grossly unfair, as it was explained to me, and would like to gain a full understanding of why this situation pertains. I put my hand up to say I am a graduate of the Royal College of Surgeons in Ireland, RCSI, as was my mother before me and my son after me. The RCSI has been adjudicated in *The Irish Times* higher education tables as second only to Trinity College Dublin as an education facility in Ireland. That includes all of the other universities, but I will not mention or upset them. The RCSI has been around for a few centuries and, indeed, UCD students got their medical degrees from the RCSI all those years back. Then the tables flipped and now I am one of those qualified doctors who has degrees from both colleges. The RCSI has a huge international reputation and has campuses in four countries. The college is seen as the greatest and largest western supporter of surgical training in sub-Saharan east Africa. The college has been held out by *The Lancet* as an exemplar for its work there. The college has graduates throughout the world and has huge influence. Despite this, it is only in this country, in the Twenty-six Counties, that it is not allowed to call itself a university. It is considered a university everywhere else. I do not understand the rationale for this. I am aware there is resistance to this in the Department. I would love that individual or individuals with those views to come before an Oireachtas committee to explain why they would single out the Royal College of Surgeons in Ireland and exclude it from calling itself a university in this jurisdiction. This has a very detrimental effect on the college. I travelled to China when I was a Minister and promoted the idea of education, among other things, as we improve our trade links with that great nation. They said to me it was not a university. They take these things very literally.

In this Bill I hope the opportunity will be taken to have the Royal College of Surgeons in Ireland considered a university in Ireland. I certainly intend to bring an amendment on Committee Stage in that regard. The RCSI has educated tens of thousands of doctors for Ireland and across the world. Those connections come back to us in spades. When I visited the Mayo Clinic, I found that the two gentlemen who set it up - the Mayo brothers - had received an honorary degree from this college. I make an impassioned plea on this matter because it seems to be in no one's interest to allow this situation to pertain.

Senator Aodhán Ó Ríordáin: I welcome the Minister of State. Much of what I was going to contribute to the conversation has been raised by my colleagues, Senators Mac Lochlainn and Ruane. I will make my contribution relatively short.

As Senator Ruane has said, there is no huge rush to get this done if we are not going to get it done correctly and properly. The Unite trade union, with which I hope the Minister of State will engage, has a very impressive document that details not just its concerns on the Bill but also the opportunities. As Senator Mac Lochlainn said, the Bill is a vehicle that affords us an opportunity to do more in a sector, especially around the English language teaching sector, which as we all know has been hugely problematic and rife with a number of problems. Unite has stated it has been dealing with cases that illustrate a range of abuses relating to contracts and wages and issues of discrimination where a non-native English speaker is treated differently from a native English speaker when it comes to wage rates. The sector is known for having precarious employment practices and variable pay rates. We have spoken about the issue of zero-hour contracts.

Unite has made two particular proposals which I believe are viable and decent and the La-

bour Party supports these proposals. The Labour Party will bring forward amendments, as I know other parties will also do. It is interesting that my colleagues who represent the left in this Chamber, such as Sinn Féin, the Labour Party and like-minded Independents, are focusing on the vulnerable workers in the sector, whereas other speakers have been very short in their contributions and have perhaps focused on those who do not necessarily need the same protections.

We suggest section 25 be amended to establish a fair employment mark as part of the IEM. This is the way that employment practices have to work. We have to ensure that workplaces and employers are treating their employees fairly and that this should be known to anyone who comes into contact with whatever institution they engage.

We also advocate for teacher protection funds. Again, given the precarious nature of these schools, the way they open and close and the way they can collapse overnight and not be seen again, the people working in this sector deserve much more protection.

These proposals are positive and proactive. They work within the vehicles provided for us by the Minister of State. We are in the position where we want to welcome this Bill but we want to improve it for those who are most vulnerable within the sector. I hope the Minister agrees that the proposals make sense. As Senator Ruane said, let us get this right and, if we can, use the process to its utmost at the various stages. Let us ensure the protections needed for workers within the sector are put in place. If I was to advise anybody to use the services of an English language school, it would be of great comfort to me to know that an individual school had a fair employment mark. It would let me know in my heart of hearts that everyone was being treated fairly. The teacher protection fund, which has been outlined, makes sense.

I advise the Minister of State not to be adversarial. Let us work together to ensure that, whatever her officials say about our contributions or if they wish to critique what we have said, we can somehow meet between the two positions. The proposals as outlined make sense. We all want to have a sector of which we can be proud and over which we can stand.

With those remarks, I join Senators Ruane and Mac Lochlainn in hoping we can work constructively on this issue which we will discuss again on the next Stage.

Minister of State at the Department of Education and Skills (Deputy Mary Mitchell O'Connor): I am glad to be here and delighted to bring the Bill to Committee Stage. I appreciate the consideration and have taken on board who has said what. I will try to answer some questions but there are other aspects where I will have to revert to my officials and work through what has been brought up today. I apologise, therefore, for not addressing the speakers in the order in which they spoke but rather by theme.

On the point about the RCSI raised by Senators McDowell and Reilly, the RCSI wrote to me requesting that the Bill contain a provision that would allow the RCSI to describe itself both in Ireland and overseas as a university of medicine and health sciences. I will return to this matter on Committee Stage. As many Senators know, the RCSI also made this request to the Oireachtas Joint Committee on Education and Skills.

Senator Ruane raised the issue of the joint committee meeting stakeholders and said that we should not wait until after that happens before we proceed to Committee Stage. This is priority legislation that we need to progress. The IEM, for example, was promised five years ago and we do not want to delay it further. Committee Stage of this Bill is expected in November. I understand the joint committee is meeting the stakeholders in the next two weeks, which will

allow it to conclude its consultation process before November.

Senators Mac Lochlainn, Ruane, Reilly and Ó Ríordáin mentioned conditions of employment. I note their concerns about the employment practices in the English language education sector. While the IEM and the associated code of practice for this sector will greatly help to improve standards, there are a number of other regulatory activities that are outside the remit of the QQI's intended functions. The majority of the English language schools in Ireland are privately run and do not come under the remit of my Department. They are typically registered for business purposes as private limited companies. Consequently, the terms and conditions of individuals who are employed as teachers by these companies are a matter for their employers.

Given the extensive range of legislation in Ireland on unfair dismissals, payment of wages and related matters to protect the employment rights of workers, including English language teachers in fixed-term work, it would not be appropriate to duplicate or undermine these statutory schemes through affording QQI powers to regulate *ultra vires*. It is proposed, however, that a code of practice for the IEM will ensure providers authorised to use the IEM will be compliant with their statutory obligations, such as employment law. The Bill will also provide QQI with the powers to examine the robustness of a provider's bona fides in its governance practices, ownership and financial sustainability. This will ensure providers which are awarded IEM are regarded by QQI as legitimate providers which operate in accordance with good corporate governance practices.

Senator Ruane also referred to the impact of the learner protection fund on smaller community education organisations.

Senator Lynn Ruane: My point was they would not have the capacity to pay into the sinking fund and that they would not benefit in the long run as, although they are not-for-profit, they are not listed as being excluded from it.

Deputy Mary Mitchell O'Connor: I will look at that issue. I know that we are aware of it. I note the Senator's concern, especially as a result of the cost of providers operating in the community and voluntary sector. The relevant powers to waive fees that the Senator discussed are provided for under section 80 of the 2012 Act. Therefore, the question she raised relates exclusively to the implementation of the current Act rather than the introduction of new amendments to this Bill. I have taken note of the matter and know that the Senator will raise it again on Committee Stage.

I also note Senator Byrne's comments on Mary Immaculate College and Marino College.

Question put and agreed to.

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

Senator Maria Byrne: Next Tuesday.

An Leas-Chathaoirleach: Is that agreed? Agreed.

Committee Stage ordered for Tuesday, 16 October 2018.

Sitting suspended at 4.40 p.m. and resumed at 5.30 p.m.

Public Health (Alcohol) Bill 2015: [Seanad Bill amended by the Dáil] Report and Final Stages

Acting Chairman (Senator Diarmuid Wilson): 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 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 amendments made by the Dáil. This is looked upon as the report of the Dáil amendments to the Seanad. The only matters, therefore, which may be discussed are the amendments made by the Dáil. For Senators’ convenience, the Cathaoirleach has arranged for the printing and circulation of the amendments. The Minister will deal separately with the subject matter of each related group of amendments. The Cathaoirleach has also circulated the proposed groupings. A Senator may contribute once on each grouping. I remind Senators that the only matters that may be discussed are the amendments made by the Dáil.

There is a typographical error on the cream list of amendments circulated on 8 October. Amendment No. 6 should read as follows: “In page 15, between lines 38 and 39”, not between lines 37 and 38 as shown.

I welcome the Minister for Health, Deputy Simon Harris, and ask him to speak to the subject matter of the amendments in group 1.

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

Minister for Health (Deputy Simon Harris): I am very pleased to be back in the Seanad for what is the concluding stage of the most important piece of public health legislation that will be enacted this year. I welcome the opportunity to take Senators through the amendments made in the Dáil. Obviously, that is all we are doing at this stage because the Bill has been passed by both Seanad Éireann and Dáil Éireann. We are simply back in the Seanad today to seek its approval for the amendments made in the Dáil, rather than reinitiating the entire debate about this landmark legislation.

Amendment No. 1 concerns health data to be considered when amending the minimum price per gram of alcohol. Section 11(3) provides that the Minister for Health of the day may make an order to increase the minimum unit price per gram for the purposes of the Bill. Sub-section (5) provides that the Minister for Health of the day may take into account relevant data as part of these considerations. The amendment tabled by Deputy Louise O’Reilly, for which I thank her, is sensible and a good addition to the Bill. It proposes that data from health services and alcohol related presentations at health facilities also be taken into account when determining changes to minimum unit pricing and that these data be included in the list of considerations in the section. As we know, alcohol and alcohol related disease constitute a massive burden on the health service. About 1,500 hospital beds are taken up each and every night as a result of alcohol related conditions. Much more importantly, it is a massive burden on families and communities across the country. This amendment is beneficial and I was pleased to be in a position to accept it in the Dáil. Consideration of such data could only assist the Minister of the day in making an informed decision in that regard.

Senator David Norris: I welcome the Minister and congratulate him on the passage of the Bill. It has been a number of years in progress and is very welcome. The Minister showed extraordinary goodwill in meeting objections, reservations and amendments and the lobbying,

but, to a large degree, he stood firm and the Bill is a useful addition. However, I am a little confused because it is stated on the list of amendments that the page and line references are to the text of the Bill as passed by Seanad Éireann. What we have been provided with is the text of the Bill as passed by Dáil Éireann, or at least that was the version of the Bill available in the anteroom. It is not a problem and I have been able to work out where the amendments are to be made.

The amendment seems to be perfectly straightforward and reasonable. The more data that are available the better. This is a very important matter as it is not just legislation but attitudes in Ireland that need to change. It is absolutely outrageous that we are prepared to accept the equivalence of Irishness and drunkenness; it is one of our jolly little habits. One hears people on the wireless say they come to Ireland - if Members will excuse the vulgarity - to get "as pissed as newts." They think it is great and people makes jokes about it and think it is terribly funny, but I do not think it is funny at all. I find it is really unpleasant to see people drunk in public. Not only that, I scarcely take the slightest drop of alcohol nowadays since I had a liver transplant. I am very grateful that I was able to have one. The need for it was not related to alcohol, but in a situation where one is not drinking such as at a cocktail party or a reception I can say people become boring, monotonous, repetitive and self-obsessed after only a couple of drinks. I am like that without drink, but others seem to be encouraged by it.

Senator Catherine Noone: What is the Senator's excuse?

Senator David Norris: My excuse is extreme old age. I welcome the Minister and the Bill. I do not think there will be too many objections to the amendments made in the Dáil. I have a few technical queries.

Senator Michael McDowell: As the Minister is aware, I am probably in a minority in this House in that I have not been an enthusiastic supporter of most of the legislation, only parts of it. There are parts that I still think are misguided, inoperable and a waste of time and that come from an attitude which is a little intolerant. Senator David Norris complains-----

Senator David Norris: The Senator is reflecting the Bar in every sense of the word.

Senator Michael McDowell: -----that he goes to parties where people consume alcohol and become boring, monotonous and self-obsessed. Some start like that at parties. I will not put it any further. There has been a good deal of public rhetoric about the Bill which I have found annoying in this respect. A load of Members have said lobbyists and lobby group have been lobbying Senators and Members of Dáil Éireann to support a particular point of view. First, there is nothing wrong with lobbying.

Senator David Norris: As long as it is not in the open.

Senator Michael McDowell: Second, the drinks industry in Ireland, taken at its broadest, is an important economic activity. It would be very strange if it did not organise to lobby for its interests. Third - this is the point I wish to make most strongly - the lobbying the other way by State-sponsored bodies which are fully funded by the taxpayer has been much more intense. I can say with certainty that the number of emails, the literature and the pressure on Members of this House to support the Bill have been much more intense and it has been paid for mostly from the Exchequer indirectly. Various groups that receive grants from the Department of Health have been hammering away at this issue and screaming protests that others are lobbyists. I do not accept that proposition. There is something very strange about the fact that a load of people

who are paid from the Exchequer to lobby us scream when it is suggested they-----

Senator David Norris: On the amendment, please.

Senator Michael McDowell: There are a few other remarks I want to make, but I want to be orderly and speak to the amendment. Today I was listening to Radio 4 and looking at *The Times*, English edition. It is interesting to note that the number of people under the age of 25 in England who say they are non-drinkers has grown from one in five to one in three. Social attitudes to drink change. It is not just an uncontrolled mess.

Senator David Norris: England is not Ireland.

Senator Michael McDowell: People are making up their own minds. I presume there probably is a lag between Irish behaviour and English behaviour in some respects, but I do think that there is room to be optimistic that the worst days of binge drinking are over and that people are-----

Senator Catherine Noone: It is because of this Bill.

Senator Michael McDowell: It is not because of this Bill. The Bill is not law yet and large portions of it may never be commenced, so let us remember that.

I am concerned about the labelling of alcohol products. I did express my views before on this matter.

Acting Chairman (Senator Diarmuid Wilson): That is a matter for group 2.

Senator Michael McDowell: I will wait until the next group then.

Senator Frances Black: I welcome the Minister with open arms today. I have been looking forward to this day for a very long time but I will adhere to the rules.

I welcome the amendment. A key aspect of the legislation is the introduction of minimum unit pricing for alcohol products. The Bill instructs the Minister for Health to review the effectiveness of this measure three years after commencement and outlines a number of factors that should be accounted for in the review such as patterns of consumption. That is important as the impact of any policy proposed by these Houses must be closely monitored and measured. We have now added alcohol related presentations at health facilities to the list of factors that the Minister should consider. It is a very positive addition to the Bill and it will ensure that we keep up-to-date, accurate information on the scale of alcohol harm in society as well as the impact on health services. That will provide an important backdrop to our assessment of the Public Health (Alcohol) Bill as a whole. This amendment was first introduced in the Seanad by Senator Devine and me almost two years ago and I am delighted it was finally agreed in the Dáil. I thank Deputy Louise O'Reilly for pursuing the issue in the Lower House. I especially thank the Minister for agreeing to it and Members of both Houses for giving it their support. I hope Members will stick to the amendments today as best they can.

Senator Tim Lombard: Senator Black took a crack at me even before I stood up. I will speak on group 1 amendments which relate to minimum unit pricing, which is a very important part of the legislation. The Minister has taken due consideration of the information he has received from the Department and what was originally proposed by other Senators. We need clarity on the issue and the Minister might endeavour to provide it to the Chamber here today.

Minimum unit pricing is one of the key pieces in this legislation. It is one of the key tools and teeth the Minister has to ensure-----

Senator David Norris: It cannot come in until the Northern Ireland Executive is there.

Senator Tim Lombard: It would be lovely if I could finish.

Senator David Norris: It would be lovely, but it is not likely.

Senator Tim Lombard: I seek clarity on when the implementation of minimum unit pricing will come into play. There was much talk that this could not happen until the Northern Ireland Executive would be reconvened. It now holds the record for the longest period for a Government not to sit. That is a significant issue. There are cross-Border implications for having minimum unit pricing on one side of the Border and not having it on the other side. How does the Minister propose to deal with the issue? The measure should be implemented.

If the Minister is not going to implement it, would he consider amending the groceries order? What happened in that regard should not have been allowed to happen when the then Minister, Deputy Micheál Martin, did it many years ago. Alcohol should never have been included in the groceries order. The day the then Minister, Deputy Micheál Martin, included it in the groceries order, it became a means for supermarkets to attract people into their stores, and that has been a big problem. If the Minister cannot introduce minimum unit pricing next week when the legislation is signed by the President, will he examine the groceries order and retail legislation? Will he ask the Cabinet to ensure we deal with the issue from that perspective because if we have to wait until a Northern Ireland Executive is set up or Brexit or whatever else, this important element of the legislation will never be implemented?

That is one of the biggest issues we must address. My view is that we must re-examine what the then Minister, Deputy Micheál Martin, did when he had responsibility for that area. Alcohol should never have been a part of the legislation. It made no sense. Alcohol became a loss leader for supermarkets and we have very much paid the price for that. Now we have an opportunity to do something about it. If the Minister cannot introduce minimum unit pricing next week, the following week or before Christmas, he should revert and look for major changes elsewhere.

Senator Catherine Noone: On a point of order, it is 1,000 days since the Bill came into this House. We have an hour to discuss this Stage. I hope we will get the Bill through in that time. I implore colleagues to be mindful of that. This legislation is long overdue going through this House.

Senator David Norris: I wish to make a point of order also. As there are two amendments, Nos. 1 and 6, that are exactly the same, I do not know why they are not grouped together.

Deputy Simon Harris: They refer to different parts of the Bill, but their effect is the same.

Senator David Norris: They are the same amendments.

Acting Chairman (Senator Diarmuid Wilson): Senator Norris will appreciate that I indicated that the amendments were grouped by the Cathaoirleach and that information has been circulated to Members. We are discussing group 1 which concerns health related data; therefore, there is limited scope.

Senator David Norris: Amendment No. 1 is the same as No. 6.

Acting Chairman (Senator Diarmuid Wilson): I have allowed speakers to digress slightly but I will tighten up in a moment when we come to the other groups.

Senator David Norris: That is good.

Senator Máire Devine: We have spent 1,000 days and 1,000 nights waiting for this legislation. I will speak to the amendment. I am delighted the Minister sees fit to accept the amendment. It is prudent and makes sense. There is an impact on hospitals given that is where alcohol problems and the resulting ill health end up. The data are available so let us use them. Let us inform the Houses and citizens. Let us also inform the health service when we come to review and reassess treatment and care. I welcome the amendment.

Senator Billy Lawless: As a former publican and a former president of the Vintners Federation of Ireland, I compliment Senator Black on bringing this Bill through today. I am in total support of it. I was with a bunch of publicans last night in Galway, old friends from around the country, and all of them are 100% in support of the Bill the Senator has brought forward. There are many restrictions on pub owners as well. I thank the Minister for bringing the Bill forward.

I will speak very briefly about minimum unit pricing. One of my colleagues in Galway is a taxi driver and a former mayor of Galway city and was a neighbour of mine. He has told me that on Friday and Saturday nights he brings young people into discos and pubs in Galway city and that they are out of it from the time they leave home. That is because of under-cost selling and cheap bottles of vodka. We must cut that out.

Senator David Norris: Hear, hear.

Senator Billy Lawless: I am also very much in support of stopping advertising. We must stop children from binge drinking. We must also stop the big companies from targeting children at a young age, which to be straight about it is what they are doing. I have been a publican for the past 41 years and I am still in the business in the United States, and I very much welcome the Bill. I thank Senator Black for it. I am in full support of the Bill.

Senator Catherine Noone: On a point of clarification, this Bill was presented by Senator Maurice Cummins on behalf of the Minister for Health in December 2015. We have all had a lot of input into the Bill. It is important to make that clarification.

Senator Billy Lawless: Of course. I respect that.

Acting Chairman (Senator Diarmuid Wilson): I thank Senator Noone. That was a point of clarification.

Senator Colm Burke: I welcome the Bill which has now gone through the Lower House. I thank the Minister for staying with it.

One of the health issues that has been highlighted is that up to 30% of those attending any accident and emergency department on any night are there because of excessive use or abuse of alcohol. One of the problems that we must face up to is that while we are very quick to criticise the health services, we are not as quick to highlight the issue that 30% of admissions and of those requiring treatment are related, in one way or another, to alcohol. As we speak on this matter, 2,000 people are occupying hospital beds as a direct result of alcohol use, in many cases

over a long number of years, and this is something of which we need to be mindful. We need to send out a message that while alcohol can be enjoyed, it must also be realised that excessive use causes problems for long-term healthcare.

I thank the Minister again for sticking with this and ensuring we are now seeing it in its final Stages.

Acting Chairman (Senator Diarmuid Wilson): We will deal now with amendments in group 2, which are amendments Nos. 2, 3, 6, and 7, relating to labelling.

Deputy Simon Harris: This is not related to the issue of labelling but only to the amendments that the Dáil made on labelling.

Amendments Nos. 2 and 3 propose that the health warnings and information required on notices in licensed premises and on websites where alcohol products are sold online should be both in Irish and in English. The health warnings and information required in section 12, which deals with the labelling of alcohol products and notices in licensed premises, provide a unique opportunity to communicate health promotion messages directly to consumers. I accept the importance of ensuring that the information, where possible and where it can benefit public health, should be communicated in both Irish and English. These appear to be two sensible amendments from Deputy Donnelly in the Dáil that I was happy to accept. The simple idea is that if the health notice and website are already agreed in the Bill, they should also be in Irish, which is a sensible thing to do.

Amendment No. 6 proposes that data from the health services and alcohol related presentations at health facilities should be taken into account when making regulations on the health warnings and information on labels. As Senator Norris has pointed out, this is the exact same policy point but it just refers this time to the label. Should we take into consideration the impact on our hospital beds and our health service when deciding what information should be on labels? It sounded to me like a sensible thing to do and we accepted that in the Dáil.

Amendment No. 7 is a change. It proposes to exempt alcohol products in tax-free shops and airports from the product labelling requirement. It also provides that the same health warnings and information should be on notices in duty free shops, which means they will have to have those notices, and that the additional information on each product should also be available on a document for the consumer. The purpose of this amendment is to ensure that there is a level playing field for Irish alcohol products that are leaving the country and other products that might be for sale in duty free shops and that they will be treated in a similar way to export products. That is sensible. It is duty free, they are likely to be leaving the country, and we should treat them the same as the way we treat the rest of export products in this Bill.

Senator David Norris: Amendments Nos. 2 and 3 are fairly obvious in the light of the fact that according to the Constitution, the Irish language is the first national language. Constitutional measures have to be assessed in terms of the Irish language version in any kind of court case. They are obviously a very good idea.

Amendment No. 6 is the same, as we have agreed, as the amendment we have discussed.

Amendment No. 7 defines a tax free shop and exempts it from certain measures but says they have to put up a notice, and that notice specifies the quantity in grams of alcohol, the energy value and so on. That is unexceptional. I accept the Minister's argument that we do not want

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to put Irish products at a disadvantage with regard to products from other parts of the world.

I am happy to support all of these amendments.

Senator Michael McDowell: I have no particular objection to the amendments that are being made. I believe I was the person who pointed out the English and Irish language issue.

Deputy Simon Harris: I thank the Senator.

Senator David Norris: Maith an buachaill.

Senator Michael McDowell: I thank the Minister-----

Senator Catherine Noone: Maith an fear.

Senator Michael McDowell: -----for upholding the status of the Irish language in this legislation.

One thing that is possibly a little bit tangential to what we are talking about is that I notice the power to make a regulation under the Bill can apply to different types of container. This amendment does not apply to this. If one sells wine by the case, will the case have to be broken open? Is that the intention or will a label-----

Senator David Norris: To see if it is labelled correctly?

Senator Michael McDowell: -----on the outside of the case be enough? If a person buys six or 12 bottles of wine in a container which some people, including me, do on occasion, will the person in the off-licence have to open up the container and start sticking labels on everything inside it, or will it be sufficient to put the label on the outside of the case?

Senator Máire Devine: They will all be labelled.

Senator Gerald Nash: They will all be labelled.

Deputy Simon Harris: Each bottle in the box will be labelled.

Senator Máire Devine: I am conscious of the time and accept the amendments which are prudent. The tax free shop amendment might help some exports but the overall impetus of this Bill is to reduce consumption, and to make people aware of what they are drinking and what it can do to their physical and mental health.

Acting Chairman (Senator Diarmuid Wilson): Does the Minister wish to comment?

Deputy Simon Harris: While this is not related to any of the amendments, but to address the point Senator McDowell made, in recognition of his help with the Irish language piece earlier, my understanding is that each bottle as opposed to just the box will need to be labelled. That will be a matter for environmental health officers.

Senator Michael McDowell: Quite a lot of bottles are sold in boxes or novelty boxes. Is it going to be important that the box will have to be opened up to put the label on the bottle?

Deputy Simon Harris: It is like who put the fig in the fig roll. The bottles are labelled before they are put into the box.

Senator James Reilly: I commend the Minister on the Bill and all of those who supported it. On this issue, of course every bottle has to be labelled. They have to be.

Senator Máire Devine: No, the Senator does not understand.

Acting Chairman (Senator Diarmuid Wilson): The Minister has given an answer.

Senator James Reilly: This is about them being sold as individual bottles.

Senator Máire Devine: No.

Acting Chairman (Senator Diarmuid Wilson): Please, colleagues.

Senator Catherine Noone: I do not believe this is relevant to the Bill.

Acting Chairman (Senator Diarmuid Wilson): I thank colleagues for their assistance and advice on whether something is relevant, but if they will please listen to me, we will get through this a lot more quickly. I thank the Members.

We are moving to group 3 which includes amendment No. 5 which concerns the size of labelling; therefore, we might be clear on this point.

Deputy Simon Harris: It relates only to size. Amendment No. 5 removes the requirement for evidence-based and health-based warnings to take up at least one third of the size of printed material on alcohol bottles. This was something that the Seanad debated and decided it would like the label to be like this. This requirement was an amendment to the Bill that was accepted on Report Stage in this House and I acknowledge that fact.

Following the inclusion of this requirement in the Bill, it was notified to and assessed by the European Commission which advised that this requirement was not proportionate. The European Commission advised that the objective of the protection of health through providing health warnings on alcohol products could be met by a lesser restriction such as requiring that the health warnings be of a smaller yet visible size. Not wanting to delay the passage of this Bill following the advice of the European Commission, I believe it was prudent to remove that requirement, and that is what this amendment is doing.

Senator David Norris: That is a bit of nitpicking by the European Commission.

Acting Chairman (Senator Diarmuid Wilson): As the Minister does not wish to add anything at this point, we will move on to the subject matter of amendments in group 4, amendments No. 4 and Nos. 8 to 14, inclusive. They are technical amendments relating to publications and result from the insertion of the cancer warnings.

Deputy Simon Harris: They are all entirely technical consequential amendments which arise from the insertion of the warning on the link between alcohol and fatal cancers. Therefore, the amendments do not relate to that debate which was settled in this House and revisited in the other House.

We had a debate on how best to address the matter and whether it should be done by regulations or primary legislation. Senators had clear views on this. Senators Nash and Black, among others, showed leadership and introduced amendments to the Bill on Committee and Report Stages that were accepted. We debated the matter again in the Dáil. That link remains in the

primary legislation. As a result, several technical amendments are necessary. The amendments ensure that the warnings are included with other labelling warnings on health and the environment.

Amendment No. 4 inserted a reference to the warnings in section 12(10)(a) and this allows the Minister of Health to make regulations specifying the form of the warnings. Amendments Nos. 8 and 9, which moved the word “and” from section 13(2)(b) to section 13(2)(c), are genuinely technical. Amendments Nos. 10 to 12, inclusive, inserted a reference to the warning into sections 13(4) and 13(5). These provisions relate to the powers of the Minister for Health to make regulations. Amendment No. 13 inserted a reference to the warnings into section 13(7). Amendment No. 14 amends section 18(6) to correct numbering errors and to align the subsection with the policy intention behind it.

Senator David Norris: These amendments are completely acceptable, as they are technical, but I wish to comment on the wording of three of them. Amendment No. 4 states:

In page 15, line 13, “paragraphs (i) and (ii)” deleted and “paragraphs (i), (ii) and (iii)” substituted.

Would it not have been much neater to have added in paragraph (iii)? Why do we have to delete the whole bloody thing and then put in “paragraphs (i), (ii) and (iii)”? It is the same with amendments Nos. 10 and 11. Amendment No. 10 states:

In page 17, line 20, “paragraphs (a) and (b)” deleted and “paragraphs (a), (b) and (c)” substituted.

It would have been much easier to simply add paragraph (c).

Deputy Simon Harris: That is a point for the drafters, but it is a fair point.

Question put and agreed to.

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

Acting Chairman (Senator Diarmuid Wilson): I will allow Senators a number of seconds to make a brief comment, but these are not to be Second Stage speeches. I will allow the Minister in if he wishes at the end. Senator Swanick is first.

Senator Keith Swanick: I will be brief. I welcome the passage of this landmark legislation. I congratulate the Minister. I have no problems with any of the amendments brought forward tonight. I compliment Senator Black on her steadfastness through the whole process. The Minister confirmed a point to my colleague on 3 October in the Dáil regarding section 22. He gave a commitment to liaise with retailers on entry and exit of the segregated areas and to reconsider the exemption to a liberalised definition of stand-alone off licences as against the current narrow definition. Will the Minister and his officials give a commitment in this regard and meet the retailers during the transition period?

Senator Colm Burke: I thank the Minister, his staff and the Department for staying with this matter. The Bill was introduced in the Seanad on 11 December 2015. The third anniversary of its introduction is approaching and there has been a long series of debates in both Houses. The legislation is welcome but I accept what my colleague, Senator Lombard, said about Northern Ireland and the important point of co-ordination on minimum unit pricing. We need to be

aware of the risks of introducing minimum unit pricing and it is important the issue is worked on together with Northern Ireland.

We have a great deal of work to do on the education of young people. We still need to ensure we get the message out at an early stage. This is welcome legislation. Obviously, regulation will be introduced over a period and the Minister will introduce regulations when the time is right. I thank the Minister, his staff and all the parties involved, including all the political parties, the Independent Senators and Deputies and Members from the various political parties in both Houses.

Senator Gerald Nash: Heaven knows that public representatives of all descriptions can sometimes be accused validly of hyperbole and exaggeration, but it is no exaggeration to say that today is momentous and historic. I first engaged on this issue as chairperson of an informal cross-party Oireachtas group on alcohol misuse in 2012. That was one year after the Labour Party and Fine Gael ensured a programme for Government commitment to deal once and for all with alcohol misuse and use in this country in the context of public health. On that note, it would be remiss of me and the House not to acknowledge the contribution made by successive Ministers. The former Minister for Health, Senator James Reilly, led the charge on this in the first instance and stuck with it. The then Minister of State, Deputy Róisín Shortall, worked on this for a period, followed by her successor, Alex White. I engaged closely with him on this legislation and he showed considerable commitment to it. He is no longer in either House but his commitment should be recognised and acknowledged. The Minister for Health from 2014 to 2016 was the Taoiseach and I thank him and the current Minister for ensuring the job has been completed.

Many of us have been criticised for introducing the provisions on labelling. We need to acknowledge that we have an important role as legislators to protect the interest of everyone in the country. We need to protect the health of everyone and to use every weapon and tool available to us in our armoury to protect the health of the people. That is what the labelling provision is about.

It is true that we have all been lobbied. I agree with Senator McDowell in that regard. We live in a democracy and I have no difficulty whatsoever being lobbied by anyone who is trying to persuade me of the merits of his or her argument. We are all mature sensible and responsible individuals and legislators. We weigh up and balance the arguments made from both sides and we come down on either side. We make an informed decision. Thankfully, in this country lobbying is regulated and is supposed to happen behind a pane of glass. It is transparent and accountable, as it should be. Everyone is entitled to lobby even if we do not agree with the position. I have no difficulty with that in this democracy.

I thank the Minister and his officials for their steadfast effort and Trojan work in sticking with this over a period of seven or eight years. Today we can say with some certainty that we have acted to save people's lives.

Senator Máire Devine: I am delighted that we have got to this stage. It is great when we come to something final and it is agreeable. It is also great that we are all being pleasant to each other.

This legislation is a no-brainer. If something hurts or does damage we need to tell people what it is. That is our job as legislators. Chemical harm can result from alcohol and abuse of

alcohol. The harm can be physical and mental. It is our duty to inform our families, individuals and society. Then I hope they will be able to inform themselves about their choices.

This Bill will help with the labelling and the data from hospitals. It will help to inform us about our policies and whether they are working or whether some anomalies arise and we need to treat the matter differently. I am delighted the Bill came back to the Seanad. I was thrilled to co-sign it with Senator Frances Black. I thank everyone who has been a Trojan supporter. I have been a little snarly at times, but we reached an agreement. This is an example of the House at its best.

Senator James Reilly: I heard the Acting Chairman's comment and will not make a Second Stage speech or repeat all the known harm that alcohol causes when it is abused. This is a good day for public health. I commend the Minister and all those who participated. I commend Senator Ged Nash and all those he mentioned who have gone before. I imagine it was only an oversight but I wish to mention Deputy Marcella Corcoran Kennedy, who carried out major work on the Bill as well.

Senator Gerald Nash: Absolutely.

Senator James Reilly: That shows how difficult some public health legislation can be, yet, as I have stated previously, good public health legislation will save many more lives over many years than any hospital wing, computed tomography scan or other politically attractive action that gives immediate gratification. Long after those facilities have waned and gone, health policy stays on. I look forward to protecting our young people from alcohol and informing the adult population of its dangers. They are aware of some of the dangers but many would not have accepted that alcohol is a carcinogen, as defined by the World Health Organization, in the same way as tobacco and that it kills people. Well done to the Minister and well done to the Seanad.

Senator Catherine Noone: I want to voice my delight that this Bill has passed all Stages. As I said earlier, it is 1,000 days since the Bill was first presented to this House by former Senator Maurice Cummins. I join others in acknowledging those who worked on this in the past. The passage of this legislation illustrates how things move on in politics given the number of people who have been mentioned but who are no longer in the Oireachtas. In particular, I wish to acknowledge the work of Deputy Marcella Corcoran Kennedy on the Bill. Many of us have received much criticism and the full armoury of the libertarians and contrarians has been unleashed on us in the past few years. I am very proud to be part of a Government that has stood its ground. I compliment the Minister for Health for standing his ground, especially in respect of some of the more difficult issues, such as Senator Black's amendment on cancer warnings. It is really important that we stood up to the vested interests and I am really proud that we did so. As a legislator, it is great when one gets to have an input into something that will really affect people's lives. A lot of financial legislation goes through this House and it is all very important. However, this legislation will actually protect our children and their vitality and protect adults. We talk about the fiscal space but it will be a lot larger if we sort out our very dangerous relationship with alcohol. We are not trying to make those who drink alcohol pariahs. Alcohol can be enjoyed and people are free to indulge and enjoy their lives. This Bill will have a hugely positive effect on people's lives and I compliment all of those involved with its passage. As Senator Devine stated, this is the Seanad at its best, when we can all stand up at the conclusion of a Bill and acknowledge that, whether by hook or by crook, we got there.

Senator Frances Black: I will try to be brief but it is so important to mark the passage of

this vital, life-saving legislation. I feel very emotional, mainly because I was so emotionally involved in the working through of this Bill. My heart and soul was in this. I came into this House to work on this legislation and it has been my passion for the past two and a half years. Apologies for the confusion but I know that this is the Minister's day. This Bill has been a huge priority for me, both as a legislator and as someone who works at the coal face. I work with the RISE Foundation. I receive letters from families constantly and would love to show some of them to the Minister and to some of my colleagues, including Senator Noone, who have worked so hard on the legislation. To receive letters from people who are living in circumstances where alcohol is a problem in their families is very rewarding.

I thank the departmental officials who worked relentlessly on this Bill. I receive the letters to which I refer; I see the benefit to families and I know that this legislation will be life-changing and life-saving. I am so proud to have played a part in securing its passage, despite the efforts of the lobbyists. I agree with Senator Nash that we live in a democracy but I was surprised, if not shocked, by the amount of lobbying. That surprise may be because I was not involved in politics previously. I am so grateful to those on the other side of the alcohol lobby, including the amazing team of health specialists, community leaders and public health advocates who worked tirelessly to get this Bill through.

I really want to thank the Minister and his officials for their fantastic work and determination. I also thank Deputy Marcella Corcoran Kennedy who brought this legislation into the Seanad in 2016 and who fought so hard for it when it really was not the popular thing to do. She had to fight tooth and nail. She was and still is incredible. I also want to thank Deputy Róisín Shortall who did fantastic work in the Department of Health to develop and promote an evidence-based, impactful Bill. I also want to mention former Senator Jillian van Turnhout, who is in the House today and who advocated so strongly for this Bill in the previous Seanad. She was a huge help to me when I was first elected and did not have a clue how the whole process works. I have been proud to work with the health spokespeople from the various political parties, particularly Deputy Louise O'Reilly from Sinn Féin, Deputy Stephen Donnelly from Fianna Fáil. They both showed great courage in standing up to industry lobbying in the last few weeks. I also thank my own group, the Civil Engagement group, who have supported me. Special thanks are due to Conor O'Neill and Emma Quearney who work with me in my office and who have put their heart and soul into this legislation.

I thank the incredible groups and individuals across civil society who mobilised behind the Bill and refused to let industry profit come before public health. I refer to Eunan McKinney, Susan Costello, Catherine Keane and Conor Cullen from Alcohol Action Ireland, all of whom are in the Public Gallery. This is a very special day for them too. I also thank Professor Frank Murray and Ms Siobhán Creighton from the Royal College of Physicians and Professor Joe Barry from Trinity College Dublin. I also thank the huge number of organisations that made up the Alcohol Health Alliance. It was testament to the broad level of support for this Bill that such a variety of groups, including the Irish Cancer Society, the National Women's Council of Ireland, the Union of Students in Ireland and Mental Health Reform, backed it. I also thank the GPs, doctors and emergency service personnel who brought their expertise and experience to the Bill, particularly those in Cork University Hospital who were hugely supportive of an event I ran down there. We cannot forget the drug and alcohol task forces around the country who do amazing work where it is most needed and who really rallied behind this legislation. In particular, I thank Hugh Greaves and Maria Lawless in Ballymun as well as David Lane, Kate Gibney, Joe Kirby and all of the gang in Cork who were a real inspiration. I also say a very

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special thank you to John and Ann Higgins who tragically lost their beautiful son to alcohol. They showed incredible courage and bravery in pushing for change and advocating for public health in his memory. If they are listening, I want to tell them that they are both an inspiration.

Ireland has a harmful relationship with alcohol, but I firmly believe this is the beginning of change. If we are dedicated and committed in our communities and in this Parliament, we can break the cycle of alcohol harm. We can change and save many lives and this Bill is an historic step in doing that. I am so happy to see this day. I never thought I would see it and am so grateful to the Minister for Health. I swear to God, this is an amazing day. I feel so happy and thank the Minister from the bottom of my heart. Go raibh míle maith agat.

Acting Chairman (Senator Diarmuid Wilson): Just before I call on the Minister to wrap up, I take the opportunity to welcome our former colleague, Jillian van Turnhout, to the House. She is very welcome. I understand she is only taking a short respite. I hope to see her back on official duty, not too soon but certainly in the next year or two.

Minister for Health (Deputy Simon Harris): This is a very special day. People in these Houses work very hard on a daily basis but every now and then we reach a moment in time when a huge body of work comes to finalisation and today is one of those days. Senator Black has raised the question as to whose day this is; this is a day for the next generation of citizens, for the young people growing up in Ireland today. They will grow up in a country with public health legislation that will, over time, change our behaviour, attitudes and culture when it comes to our relationship with drink. That is really what this legislation is about. There is no magic wand or silver bullet. This is about putting in place a number of measures for the first time ever, from a public health perspective, to try to change the corrosive alcohol culture that we have in Ireland.

The Seanad and the Lower House have done some really good work, on a bipartisan basis, for young boys and girls growing up in the country. That is really what today is about. People have been at this for such a long time. I have the honour of the being Minister for Health when this comes to fruition. We have had a difficult enough battle to get to this point ourselves, but people have been working on this since 2009. The chief medical officer, Dr. Tony Holohan, has done huge work and shown huge leadership in working on this. My officials, including Claire Gordon, Denise Keogh and Siobhán McNamara, have worked on this tirelessly for so long. I thank them for their dedication and patience. They have seen the political system in operation and experienced the frustrations which accompany that from time to time.

I thank all of my predecessors in the Department of Health who have worked on this issue, both Ministers and Ministers of State. They have all been named by Senator Nash. I share that view absolutely. I hope the House will forgive me if I pay particular tribute to Senator Reilly who is with us today. His tenure in the Department of Health will be remembered for his leadership on public health issues in respect of tobacco, alcohol, obesity, etc. It does save lives; therefore, I thank him for his work on this. I pay particular tribute to my friend and colleague, Deputy Marcella Corcoran-Kennedy, who got a very hard time and was treated very unfairly when she tried to push the Bill in this House. She was the subject of very intense criticism which I felt was often unwarranted. She worked extraordinarily hard. We are also doing this for Deputy Corcoran-Kennedy out of respect for the legacy she brought in the role she played.

Senator Black mentioned John and Ann Higgins. I have never met them, but I feel I know them. Only today I got a chance to watch their video on Alcohol Action Ireland's Twitter feed.

I thank them for sharing with us intimate moments of their own lives in respect of the passing of their son and highlighting to us the importance of passing this legislation. I thank Senator Black. She has been a pleasure to work with. I am sure I have driven her crazy at times as we have tried to get the legislation to this point. She has been a champion and I really want to thank her for it. I thank colleagues on all sides of the House - all of the health spokespersons and all of the Senators who have taken a particular interest in this - for the way we have worked together in a bipartisan fashion.

This Bill has had very lengthy consideration in the Seanad and the Lower House. While that can be frustrating at times, it is perhaps not unexpected because this is the first time we have ever had public health legislation in this area. Up to this point, the only time the Dáil or Seanad discussed alcohol has been in the context of deciding excise rates. We have now used a very successful tool, public health legislation, in respect of alcohol. That was always going to be a problem because groundbreaking measures are difficult.

I thank the civil society groups including Alcohol Action Ireland. I would say this if Senator McDowell were here, I am not just saying it because he is not here, but I fundamentally disagree with his point. The people who have been lobbying in favour of this Bill have done this country a huge service in my view.

Senator Catherine Noone: Hear, hear.

Deputy Simon Harris: Many of them have given of their time and professional and medical expertise in order to benefit and inform us. They are not lobbyists, they are advocates and patriots. They have made a real difference and I thank them for their leadership. Anybody in this country has a right to lobby on any side of any argument. I do not think we would have gotten to this point were it not for the support we have had from public health advocates, some of whom are joining us today and many of whom have soldiered on on this Bill for quite a period.

I inform the Seanad and the people of what I intend to do now. The Bill will now be brought to the President to be signed into law. Once that happens, I intend to move very quickly - in fact, immediately - to commence a number of its provisions. On enactment, I intend to immediately propose commencement of section 14 on the prohibition of advertising in certain places, section 17 on children's clothing, section 20 on advertising in cinemas and section 22 on separation and visibility of alcohol products and advertising for alcohol products in specified licensed premises. To reply to Senator Swanick, I will have officials engaged with retailers on the practicalities of that in order that they can be prepared. I also intend to immediately commence section 15 on advertising during events and section 16 on sponsorship. I also intend to commence the regulation-making power in section 12 on labelling and section 13 on the content of advertising immediately. This will enable the necessary regulations for these sections to be drafted and notified at an EU level. While some of the provisions have lead-in times, I intend to commence them immediately in order that the clock will start to tick.

On the issue of minimum unit pricing, Government approval was originally given for this on the basis that it would be introduced simultaneously in Northern Ireland. Great progress has been made in Northern Ireland in that regard. Obviously, we do not currently have an Northern Ireland Executive with which to interact. As a result, I intend to return to Government to seek approval for this measure. I do not believe we can wait for ever in respect of this issue. I know that Wales is introducing this next year. One would generally go to the Government on such issues and introduce a starting date. I intend to do that shortly.

Alcohol damages our health and communities and hurts many families. The measures included in the Bill are designed to change that relationship. I look forward to the measures in the Bill leading to a lasting improvement in the health and well-being of our families and friends and the country. I thank all Senators and Deputies for their contribution to the debate and their constructive engagement. It is a great pleasure for me to see the Bill finally passing through the Oireachtas.

Question put and agreed to.

Mental Health (Capacity To Consent To Treatment) Bill 2018: Second Stage

Senator Máire Devine: I move: “That the Bill be now read a Second Time.”

I cannot think of a more fitting day to bring this legislation before the House than today. Not only is it World Mental Health Day, but the theme this year is young people and mental health in a changing world. I am sure that throughout the debate this evening we will see that we, as legislators, must react to the changing world of our youth. This Bill certainly does that. This is my first opportunity to lay a Bill before this House. It is also fitting that this is a progressive mental health Bill that acknowledges and supports our youth.

This work began more than a year ago during a meeting with a representative of St. Patrick’s Mental Health Services and the youth advisory panel, representatives of which are in the Gallery today. Fair dues to them. I thank them their tireless work, including their raising of this issue of an anomaly in Irish law around the age of consent for mental health treatment and for sharing it with us. After conducting much research, it appears that under Irish law adolescents aged 16 and 17 years can currently consent to physical and dental health treatment but do not have the explicit right to consent to mental health treatment. We should look back a couple of weeks to the recent findings and ruling in the High Court which stated that the involuntary detention of patients without regular recourse to a mental health tribunal was unlawful. We should take that as a caution to us all here that the division of health and dental health consent and mental health consent could well be found to be unlawful if tested. Let us just amend the Act rather than wait for it to happen. The problem being addressed has several facets. In section 23 of the Non-Fatal Offences Against the Person Act 1997, persons over the age of 16 years can give consent for medical, surgical and dental procedures. The Child Care Act 1991, the Children Act 2001 and the Mental Health Act defines a child as a service user under the age of 18 years, other than a service user who is or has been married.

Section 25 of the Mental Health Act deals the involuntary admission of children. According to the Childrens Mental Health Coalition, a child of 16 years may consent or refuse to consent to medical treatment without parental input as if they were of full age. However, the Mental Health Act 2001 appears to remove this right for children under the age of 18 years who have been involuntarily detained. This legislation aims to correct this. There have been several other calls for this legislative change. The recent report by the national youth mental health task force called for it by the third quarter of this year. We are making a start in the House tonight in the hope for success and getting it through on Second Stage. The Law Reform Commission recommended this change in 2011, seven years ago. The HSE called for this anomaly to be addressed in its national consent policy. In 2017 the Children Mental Health Coalition stated:

The Act gives little voice to children to have a say in their administration or treatment.

Consent is given or withheld by the parent in the case of all children up to the age of 18 years.

The 2015 report of the expert group on the review of the Mental Health Act recommended this problem be addressed without delay.

Young people, 16 to 17 year olds, are mature enough to decide their health needs and treatment, including their mental health needs. This amending legislation acknowledges them as being capable, responsible and giving them ownership over their own health which only improves outcomes. We know this change is needed legislatively.

An important point is to be made about stigma. In my 30 years as a mental health nurse, I know more than most about the persistent damage of stigma around mental health treatment, as well as the trauma of secrecy that stigma imposes. We are breaking those barriers and this legislation will assist with that. I understand there may be some anxieties around 16 and 17 year olds if they are suffering with their mental health and might not have the capacity to consent. It is important to be clear that this Bill does not take away any protections from vulnerable young people. As we know, capacity legislation has protections for vulnerable adults. These protections also apply for 16 and 17 year olds. This Bill further protects young people by recognising the important role of their parents they play in a young person's life. If a young person is detained for mental health treatment and withdraws their consent, and a medical practitioner believes the parents or guardians ought to know, then this Bill allows a provision for him or her to tell them.

This Bill is about destigmatising mental health treatment as something that is alien to any other medical intervention. It is about clarifying legal capacity in terms of 16 to 18 year olds for the benefit of mental health practitioners. It is about saying to young people that definitively they should have agency and should be respected.

I thank the young people who brought this issue to us and are champions of the cause. They are energetic, know what is good and what is needed to change. I also thank the Oireachtas drafters for their help with the Bill. It was a complex piece to get right and they played a blinder. I hope the House agrees unanimously to allow this to progress to Committee Stage. I must give a special go raibh míle maith agat to Grace McManus, my right-hand woman who drove me and this Bill forward and ensured I gave it as much attention as it required. I look forward to the Bill passing speedily and that we can implement this change for which our young people have asked.

Senator Fintan Warfield: I welcome this Bill, those who have joined us in the Gallery and those watching elsewhere. I am proud to be a co-signatory of this legislation, particularly given that this is World Mental Health Day, a day when the responses to the well-being of the people should be evaluated.

While mental health issues such as anxiety, depression and bipolar disorder know no age, international evidence has demonstrated that mental health issues peak during the adolescent and early adult years. International evidence has also shown that young people carry the burden of mental ill health with mental disorders now the leading cause of disability among young people between the ages of ten and 24 years of age. Closer to home, Ireland currently has the fifth highest rate in the European Union of youth suicide between the ages of 14 and 24 years.

Our response in terms of child and adolescent mental health services, CAMHS, is at criti-

cal levels where we do not meet 43.8% of prescribed whole-time hours set out in A Vision for Change. Our failures in early intervention responses, in particular, will result in a cost ineffective system for years to come and will prolong illness for many. Recognising and treating mental medical conditions early makes as much sense for mental health issues as it does for physical health. However, our CAMHS waiting lists do not allow for early intervention. Early intervention has been shown to have a high success rate for bipolar disorder and anorexia. It has also been shown to benefit young people with schizophrenia, reducing the severity of the illness and leading to better adaptation to the disorder. Early diagnosis of psychosis is vital to the success of specialised treatment packages developed for the individual. On solving mental health problems, the World Health Organization suggests that “early intervention is fundamental to preventing progress to a full-blown disease, in controlling symptoms and improving outcomes.”

While this Bill cannot address the resources required to meet our needs in terms of access to youth mental healthcare services, it does allow for a young person’s agency to provide the treatment that would best suit them and makes early intervention more accessible. As mentioned previously, we allow this same autonomy granted to persons aged 16 and 17 years in cases of physical and dental health and for good reason. For example, those who soon may wish to avail of abortion services and are deemed to be intellectually mature and competent for informed consent can do so freely without intervention by their parents. A young person who requires a blood transfusion can do so regardless of parents who may be ideologically opposed to blood transfusions. In stark contrast, if a young person wishes to start on a course of antidepressants, engage in counselling or cognitive behavioural therapy, CBT, he or she cannot do so without informing his or her parents as to why and informing them of the illness. Furthermore, a LGBTQI young person cannot receive treatment without potentially having to disclose his or her identity to his or her parents. Transgender people aged 16 and 17 years require psychiatric assessment prior to accessing either a gender recognition certificate from the State or hormone therapy, none of which can be obtained without parental consent. This can be made even more difficult when the individual may not have tolerant parents.

In Sinn Féin’s opinion, this infringes a person’s bodily autonomy and contravenes Article 12 of the UN Convention on the Rights of the Child which upholds the rights of children to participate in any decision-making process affecting them. It also diminishes the understanding that doctors are gatekeepers in recognising any legal capacity to make medical decisions. The Mental Health Act 2001 is flawed and hindering our responses in a society that is becoming more open, more caring and more responsive to the needs of those who are mentally unwell. The 2015 report has still yet to be fully realised. While I understand the Department is preparing legislation to meet these recommendations, the recommendation that forms the objective of my colleague and comrade, Senator Devine’s Bill is a no-brainer and should be legislated for with expediency as the disparity between consent and treatment between mental health and physical health infringes on a young person’s right. I commend Senator Devine and my friend, Grace McManus, for being champions for positive health and mental health, even long ago when Senator Devine and I were on South Dublin County Council. I urge the Minister to heed the calls of this Bill and of Sinn Féin as well of those in Mental Health Reform, the Children’s Mental Health Coalition and the 2015 report.

Senator Colm Burke: I welcome the Minister of State and thank the Senators for introducing this Bill. As someone who has introduced a number of Private Members’ Bills, I am aware of the time and effort that it takes to get it to draft stage and introduced. I thank them for the

work they have done, which is appropriate as it is World Mental Health Day.

We need to give more time and effort to the issue of young people's mental health. While 16 or 17 year olds can give consent to receive the treatment they require for their physical health, it is not the same for mental health. It goes back to how we have dealt with mental health through the years, where a mental health problem was treated totally differently. It is only in the last ten or 15 years that we have started to treat mental health in the same way as we deal with other health issues. We still have a lot of work to do in getting across the message that if someone has a mental health problem, he or she should not be afraid to discuss it, whether it is depression or another issue relating to mental health, and to seek help when he or she requires it. This Bill allows the person to get the care and attention that is required. The Minister of State will outline the issues that the Department would have and how further work would have to be done to finalise this legislation but it is welcome.

While we are dealing with mental health and young people, a concern which I had to deal with during July and August is the problem of access to mental health services for young people. A geographical boundary seems to have been erected in the area I come from with regard to access to psychiatric services. I am concerned that when someone retires or resigns from a particular area and someone is not appointed to replace that person immediately, there is then a vacuum. The person who might be assigned to the adjoining geographical area cannot be accessed by the person who requires care. I am sorry for raising this now, but it is an issue I have had to deal with. I am not aware of any other area in the health service where access is denied because the healthcare provider is in a different geographical area to the area that the person is living in. That especially relates to young people who require help and assistance at a very early stage. They cannot get on the CAMHS programme because they cannot get an assessment for psychiatric services. I do not think that is the appropriate way to deal with care. Why does it happen with mental health and why do we not have the same set of rules as with physical health? This issue needs reform and I will continue to raise it.

I welcome this Bill. There are some issues in it that need to be dealt with. I have no doubt that the Minister of State will deal with those but we need to make sure that when problems are identified in reports, they are prioritised. The Scally report which we were dealing with in the Joint Committee on Health this morning has 50 recommendations and he has agreed to stay with it until the implementation of those recommendations. Likewise, the expert group has made recommendations. I accept that there are pressures in Departments, but when reports are brought forward, they need to prioritise the recommendations made in order that we can continue to improve the services.

With regard to young people and mental health, it is extremely important that we prioritise this issue and area and do not leave it for another four or five years until it is dealt with. The recommendations of the Madden report go back to 2008 and part of that report has still to be implemented. Likewise, an expert group brought forward a recommendation in this area. It should not be left on the shelf and should be dealt with. I hope that we can deal with the areas that are not dealt with in the Bill. I thank the proposer, Senator Devine, and the seconder for bringing it forward. I hope we will see it pass into law in a reasonable period.

Senator Keith Swanick: I welcome the Minister of State. As my colleague, Senator Devine said, this is World Mental Health Day. I commend her for bringing forward this very timely Bill. This year's theme is young people and mental health in a changing world. Half of all mental illness begins by the age of 14 years. Suicide is the second highest cause of death

among 15 to 29 year olds worldwide, but most cases go undetected and untreated. When left untreated and without supports, those who are experiencing mental distress can quickly spiral downwards with devastating consequences. Fianna Fáil supports the principle of this Bill which gives 16 and 17 year olds the same legal right to consent to mental health treatment as they have for physical health. The change was recommended by the expert review group on the Mental Health Act 2001 and by the Law Reform Commission in 2011. We understand the Government believes the Bill needs amendments and we may also table some amendments on Committee Stage.

The report of the expert group on the review of the Mental Health Act 2001 highlighted how children of any age can suffer from a mental illness or mental health difficulties but, of course, adolescence is a typical time for the development of such problems, often with long-term implications. Based on the recommendations of the expert group, a child shall be defined as a person under 18 years, thus bringing it into line with the Children Act 2001. Children aged 16 or 17 years should be presumed to have capacity to consent or refuse admission and treatment. For the admission of a 16 or 17 year old to proceed on a voluntary basis, the child must, therefore, also consent or at least must not object to his or her voluntary admission. When a 16 or 17 year old objects, the case should then be referred to a child-friendly district family court, which can determine whether the child has the necessary maturity or capacity to make an informed decision. The autonomy and self-determination of the child should be respected insofar as is practical, in conjunction with parents or persons as required acting *in loco parentis*.

Best practice shows that optimal results are obtained when a person is actively involved in his or her own treatment. I feel very strongly about this. As we are all too aware, there is an ongoing requirement for availability of child and adolescent inpatient services and the state of CAMHS is abysmal. We have let young people down very badly so far. Almost 3,000 children and young adults are waiting for the HSE to provide them with an appointment for CAMHS, including a disgraceful 368 young people who have been waiting for longer than 12 months. The Government's failure to resource and implement its child and adolescent mental health service adequately will be a stain on its legacy. I have always tried to be pragmatic about CAMHS. The Minister of State is aware that I have spoken about this issue in the House on many occasions. I have always said the introduction of a 24-hour rapid access CAMHS appointment service for very vulnerable children is required, whereby a GP or a mental health professional could pick up the telephone to ensure a patient would be seen within a 24-hour period in a suitable environment if the young child or adolescent was suicidal. It could be provided at minimal cost, would not be abused and could enable people to act very quickly. It would be solution-driven, pragmatic and implementable. It also would prevent the child from ending up in an emergency room, which is what we are trying to avoid.

I welcome the Bill and congratulate Senator Máire Devine. We may table amendments to it on a later Stage.

Senator Frances Black: May I share my time with my colleague?

Acting Chairman (Senator Gerry Horkan): That is fine.

Senator Frances Black: I welcome the Minister of State and wish to speak strongly in support of the legislation, the purpose of which has been outlined in detail by colleagues across the House. I would really like to see it being passed on Second Stage and progress to Committee Stage quickly. I was delighted to co-sign and co-sponsor it and commend Senator Máire

Devine and her team, especially Ms McManus who is in the Visitors Gallery, for presenting it to the House. I know how hard they have worked on it. It has been well researched and the case for its acceptance is compelling.

As matters stands, there is a disconnect between several Acts on the Statute Book and how they deal with the capacity of 16 and 17 year olds to consent to mental health treatment. Fixing it was a key call of the expert group tasked with reviewing the Mental Health Act which ultimately gives young people little say in their treatment. It is one of the common-sense steps we could take to reform and improve mental health services. I was very pleased to see Mental Health Reform contact Senators this afternoon to offer its full support for the Bill. Lowering the age of consent to receive mental health treatment to 16 years would ensure previous discrepancies would be cleared up. To me, this is part of a much broader and very welcome change in our attitudes towards mental health and young people. We have made great strides in recent years removing the stigma surrounding mental health and our willingness to talk about it. Listening to young people, it is clear that this generation are not the same as previous ones. They are willing to speak about their mental health and seek help when they need it.

Similarly, on our attitudes to young people, progressive steps have been taken in this Chamber and wider civil society to treat them with greater respect, see them as autonomous individuals who are well able to navigate life's decisions and chart their own course. For example, Bills to lower voting age to 16 years have been tabled in the House. That is a positive and democratic step that has been taken in several European countries, including Austria, Estonia, Germany, Greece, Malta and Norway. Such moves seek to recognise the intelligence, capacity and interest of this generation of young people and empower them to participate in public life and wider society. It was in this spirit that I was very happy to co-sign the Bill. We are saying to a generation of 16 and 17 year olds who are more willing more than ever before to speak about their mental health that they have the capacity to make decisions about the care they receive. I commend the Bill to the House.

Senator Grace O'Sullivan: I welcome the Minister of State, Deputy Jim Daly. I support this really important legislation which has been brought before the House by Senators Máire Devine and Fintan Warfield and commend Ms McManus for her contribution and research. It is common-sense legislation. As this is World Mental Health Day, it is a really appropriate day on which to see the Bill being passed. The Green Party and my colleagues in the Civil Engagement group are very happy to support it. I am delighted to be a co-signer of it.

Senator Niall Ó Donnghaile: I am definitely going to mention Ms McManus too. The Minister of State is most welcome. I sincerely acknowledge Senator Máire Devine's role in the preparation of this timely Bill and bringing it to us on such a significant and important day. I am, however, one of those who are very firmly of the view that every day should be World Mental Health Day. The legislation seeks to give young people, in the first instance, the capacity and the ability to affirm, assert and engage based on their own needs and judgment on to what they should be entitled, that is, a right to access the treatment they have decided they need. It is not a coincidence that Senator Máire Devine was a psychiatric nurse. It shows how diverse and active Seanad can be in the discourse on political and social issues that on such an appropriate day such an important Bill has been brought before us on Second Stage. As mentioned, Ms McManus had a significant input into its compilation. As well as being Senator Máire Devine's adviser and right-hand woman, as she put it, she is possibly also the psychiatric nurse of those of us in Sinn Féin. She is a great support to us and obviously broader society when she helps to craft legislation such as this.

I will make two brief points, the Acting Chairman will be glad to hear. I am not trying to take away from the positive contributions made thus far, but I wish to make two political points. This is, after all, a political Chamber. First, it looks as though the Bill will be passed on Second Stage tonight. We are voting to give young people the capacity to determine their own needs in seeking access to mental health treatment, care and services, but this will not matter a jot if the necessary and appropriate services are not available to them. We all need to acknowledge, separate from this significant legislation, that we need to work, collectively and collaboratively, to address the broader problems. Not just for young people but for people across the generations, accessing the mental health services they need at an appropriate time and location can be a chronic problem

My colleague, Senator Frances Black, touched on the second point I wish to make. If we vote to pass the Bill on Second Stage tonight, without reference to any amendment that might be tabled on a later Stage, we are acknowledging rightly - this is good - that young people have the capacity to decide their own needs and make responsible and informed judgments on their health and well-being. If we accept this, I do not see why the Government opposes the argument that we should enfranchise young people to vote at the age of 16 and 17 years. I will not digress too much, but I am sure the Senators who have spoken and those who will contribute on later Stages would give young people a bit of *béalghrá* and *plámás* them by telling them how valued and important they are. I do not doubt their sincerity on this issue, but when it comes to others, I just wish they would value the input, wherewithal and capacity of young people.

Senator Pádraig Mac Lochlainn: I thank my colleagues who drafted this legislation and acknowledge, in particular, Ms Grace McManus, for her work in its drafting. She is a young woman who is committed to dealing with the issue of mental health, on which she is a campaigner. It speaks volumes that she worked with Senators Máire Devine and Fintan Warfield in producing the legislation. It is important for us to acknowledge those who work as advisers and assistants in these buildings.

There is sometimes a perception that Deputies and Senators produce legislation, in which there is a bit of ego, but those of us who know how this place works realise it is the people who work in our teams and have a passion who drive these things forward. I am glad that tonight we are calling out the name of one of those people and giving her the credit she deserves.

I want to tell the Minister a wee story that touches on an area of his responsibility. I knew a family in Donegal and learned this story after the event. The daughter was self-harming on an ongoing basis. The family were deeply alarmed and repeatedly sought psychiatric assistance for the daughter in Donegal and each time they could not get it. This happened not long ago. They brought her to Derry city where the health services broke the rules by treating her and thank God they did because I am not sure that young woman would still be alive today otherwise. She got the help she needed and today she is thriving. She has her degree sorted, has graduated and is in professional work. That is the reality of how we fail young people.

When organisations like Jigsaw and similar support agencies emerged, we believed we were moving in the right direction but it is clear, when one looks at the waiting lists for CAMHS, that the resources are not being pulled in where they are required.

I needed to tell that story today. I believe the Minister of State is committed to reversing the position but we need more of his senior Government colleagues to support him in that pro-

cess. All we need to do is table parliamentary questions or talk to those working at the front line of these services to learn about their exasperation at their inability to give the supports they want because of the caseloads they carry.

We fail young people in these Houses. I am being kind when I say “we” because I mean those who have historically been the political establishment in this state. They knew young people did not vote in the same way other cohorts of society voted. There was no political reward for delivering for young people. If that political reward was available, young people would not have to wait the length of time they do for the assistance they need.

Thankfully, the young woman survived the utterly disgraceful failure of the State and her family got through it all, although they had to cross the Border to get help. While she is thriving, I wonder how many young people are in early graves because of our societal failure.

That is why this legislation is important. It is another step in the right direction, not just in giving support services to young people but empowering young people to make decisions for themselves, with professionals, in the event that their family may not be stepping up to do what needs to be done. This important legislation is part of the overall message to young people to reverse the mistakes, ignorance and stupidity of the past. Well done to my colleagues.

Senator Rose Conway-Walsh: I will not repeat what my colleagues said. I, too, commend Senator Devine and Ms Grace McManus on bringing forward this legislation. We could have chosen any topic for discussion in Private Members’ time but because it is World Mental Health Day, as Senator Devine and Ms McManus reminded us, it was appropriate to do introduce this Bill. It is invaluable to this Chamber that we can bring to bear Senator Devine’s decades of experience as a psychiatric nurse.

We all have different experiences of mental health issues, whether with family members or representations and issues with which we are trying to deal in communities. As Senator Ó Donnghaile said, this legislation is important because we cannot continue to differentiate between what is available in terms of access for physical health and mental health, as has happened so many times. This legislation will certainly right a wrong, but it will only be fully appreciated if the services are available when young people look for them.

It is in that light, looking at the budget announced yesterday, what was allocated to the mental health services was really important. The headline figure was €84 million, but, once the pay recommendations are accounted for, the allocation will be €55 million. Will the Minister of State ensure this money goes to front-line services? It must go to them. Young people are arriving in Mayo University Hospital and being told by the medical team that there is no psychologist because the hospital does not have the resources or the money to have one. Others arrive looking for prescribed medication, but the clinician required to prescribe and approve the medication is not available, meaning these young people are discharged again.

There is a revolving door operating in emergency departments. They cannot cope because they do not have the full complement of mental health teams to treat and support young people. Young people are often left sitting in waiting rooms for hours before deciding to go home again. Others will be hospitalised overnight and sent back to the community again the next day without proper treatment. They may have to wait months for treatment they deserve. We are not progressing and moving forward.

I worked for five years to develop Mindspace Mayo and it is a good project. The Mindspace

programme reached out to more rural areas like Belmullet and Erris and, all of a sudden, there are no resources to engage in that outreach. I am concerned about the lack of supports available to support the mental health of young people and right throughout the life cycle. I ask the Minister of State to ensure the money allocated in the budget announced yesterday is used specifically for front-line services.

I attend different medical events all the time and I am always amazed to learn of the management levels that have been invented throughout the HSE and the mental health services. It is incredible. We must be running out of titles for the different managers, yet we do not have front-line staff. There are mental health nurses and other practitioners with impossible caseloads. No human being, however qualified or expert, could give quality treatment to the number of people in their caseloads. This is creating serious risks.

England has today, for the first time, appointed a Minister with responsibility for suicide prevention. That is a progressive decision and a recognition that mental health and suicide prevention have to be given much greater priority in this country and Britain. The Minister of State is in a position to do something about this. We have a rainy day fund. I do not want to see a rainy day fund going to the banks again. I understand the restrictions surrounding a rainy day fund, that it has to be targeted at the banks, but I would much rather see that fund targeted to provide proper mental health services for people across the life cycle who are affected by poor mental health and need that help and support now.

Minister of State at the Department of Health (Deputy Jim Daly): It is no coincidence that I am in the Seanad on World Mental Health Day because, since I became Minister of State, I have found the unstinting value and focus the Seanad continues to put on mental health help. It has played a part in maintaining political focus and moving mental health centre stage in the political debate. As a result of what happened yesterday, we can now claim - with some justification - that mental health is no longer the Cinderella of the health service when it comes to funding. We have passed the €1 billion mark in funding for mental health. A few short years ago, the amount of money we were spending on mental health was €700 million. In the interim, that amount has doubled. There is no other sector of Government spending that has seen that percentage increase or focus. I accept that it was coming from a very low base and that it needed to be done. This House has played a crucial part in keeping mental health centre stage and ensuring that its importance was never lost.

I welcome the opportunity to be in the Seanad yet again to address mental health and the Private Members' Bill in the name of Senator Devine, which is co-signed by many of her colleagues. I acknowledge the presence and contribution of many others, including Grace McManus, who is in the Gallery. I understand she is part of Senator Devine's backroom team and was instrumental in the production of the Bill. Often those in the background who do much of the work do not get the gratitude and recognition they deserve. I thank Grace on my behalf and on behalf of those who will benefit from the Bill when it is enacted by the Houses.

I had a conversation with Senator Devine earlier and I told her I am happy to facilitate her in any way I can in order to try to progress this Bill. A lot is outside my control but if my officials and I can be of assistance, we will not stand in the way of the Bill making speedy progress through both Houses. We will do our bit and I will make myself available at every opportunity to assist in that regard. Scheduling is outside my control in some instances so I cannot give a guarantee in that regard. I am pleased to confirm that the Government is happy to support the Bill and agrees with it in principle. There are a few minor textual amendments on which we

will work with the Senator during the passage of the Bill. The amendments are technical in nature. The principle of the Bill is supported by the Government which welcomes the focus that is brought to the issue.

As Senators will be aware, it has been a busy time in 2018 for mental health legislation. In May Second Stage of the Mental Health Parity Bill 2017, as introduced by Deputy Browne, was taken in the Dáil. Shortly after that, in early July the Mental Health (Amendment) Act 2018, also introduced by Deputy Browne, was enacted by the Oireachtas. Immediately after, Senator Freeman's Mental Health (Amendment) Bill 2016 passed all Stages in the Seanad and the next step will be to bring that Bill before the Dáil. Senators will recall that last month we discussed the Mental Health (Renewal Orders) Bill 2018. They will be pleased to hear that this legislation was signed by the President last week and that it was commenced on Monday last. This legislation was urgently required following a finding of unconstitutionality of section 15(3) of the 2001 Act. Once again, I thank Senators for their co-operation in passing that important and time-sensitive legislation.

We are discussing Senator Devine's Mental Health (Capacity to Consent to Treatment) Bill 2018, the principal aim of which is to ensure a child of 16 or 17 years can consent to any mental health treatment without the need to obtain the consent of his or her parents or guardian. The Bill recognises the growing emphasis to acknowledge that while legislation provides that a child is someone under the age of 18 years, nonetheless there needs to be recognition of the fact that a child of 16 or 17 years can be in a position to make their own decisions where healthcare is concerned. In that regard, it is already the case that a child of 16 or 17 years has the right to consent to any surgical, medical or dental treatment. This provision is contained in section 23 of the Non-Fatal Offences Against the Person Act 1997. The section also covers any procedure undertaken for the purposes of diagnosis and any procedure such as administration of anaesthetic which is ancillary to treatment. As pointed out in the expert group review of the Mental Health Act 2001, however, there has long been uncertainty about how this Act interacts with the provisions of the 2001 Act. In other words, it is not clear that a child of 16 or 17 years can consent to mental health treatment under this section. It is for this reason that the expert group review recommended that whatever legislative clarity is required should be introduced to ensure there should be no difference for a child of 16 or 17 years agreeing to treatment, whether it is for surgical, medical or mental health purposes. This is also a recommendation of the youth mental health task force which reported last year and it is this gap Senator Devine seeks to address in her Bill.

The expert group review recognised that modern international human rights standards promote the view that a child's wishes should be taken into account in making decisions about their healthcare needs and, as the child grows towards maturity, be afforded more weight. Such an approach involves putting the interests and well-being of the child at the centre of all decisions and ensuring the child's own voice is heard and respected as far as possible. This is a principle recognised and provided for in the recently passed Mental Health (Amendment) Act 2018. This Act which has not yet commenced nonetheless provides that in making a decision under the 2001 Act concerning the care or treatment of a child, due regard shall be given to a number of guiding principles in the case of a child who is capable of forming his or her own views. One of these principles is to consult, where practicable, the child at each stage of diagnosis and treatment and give due weight to the child's views and will or preferences, while also having regard to the age and maturity of that child. This is an important new feature of the 2001 Act, but it is a principle, not an absolute right, and it does not differentiate between those aged 16 or 17 years,

on the one hand, and those under 16, on the other.

While the Senator's Bill only seeks to amend the Mental Health Act 2001, it may be that an amendment to section 23 of the Non-Fatal Offences Against the Person Act 1997 will also be required to effect the proposed change. In addition, as currently drafted, the Bill proposes to add a new section 25A to the 2001 Act to allow a child of 16 or 17 years the right to consent to his or her treatment. It must be remembered that the majority of children requiring inpatient treatment for a mental illness or a mental disorder are admitted on a voluntary basis at the request of their parents or guardian. The change proposed by Senator Devine relates to voluntary admission, but Part II of the 2001 Act, which would now include the new section 25A, only covers involuntary admission. It is likely, therefore, that adding a new section 25A is not the right place in the legislation for this provision.

It will be important to examine how this legislation interacts with the new guiding principles relating to giving due weight to a child's views which are included in the new section 4A of the 2001 Act as inserted by the Mental Health (Amendment) Act 2018. It may be that the guiding principles need to be tweaked to take account of the new right included in the Bill. In such circumstances, I will, prior to Committee Stage, refer the Bill to my officials for a fuller examination of the current text. It will also be important to refer the Bill for legal advice and to the Mental Health Commission which has obvious expertise in interpreting the 2001 Act. I will, of course, be happy to work very closely with Senator Devine and others on the changes that will be required on this Bill as we are all agreed on the principle of it.

There are two other important points to bear in mind in considering the text of the Bill. The first relates to the legal position regarding refusal of treatment or social care by a child of 16 or 17 years, which is unclear. While it may be argued that consent and refusal are opposite sides of the same coin, I am informed that courts in other jurisdictions have held that there is a clear practical distinction to be made between consent to and refusal of medical treatment. Second, the issue of capacity to give a valid consent may arise in any given case. Just as an adult may not be competent to give a valid consent, a child of 16 or 17 years, may not be competent to give such consent. The current text of the Bill may need to be tweaked a little further in relation to one or both of these issues.

I will briefly mention the ongoing work of my Department on the review of the 2001 Act which will see the recommendations of the expert group review set out in a comprehensive mental health (amendment) Bill. Oireachtas Members have continually urged my Department to progress that as soon as possible and some have said there would be no need for Private Members' Bills if that comprehensive Bill was before the Oireachtas. While that is true to a point, as I mentioned, the work required by my Department on the various mental health Bills clearly impacts on the Department's ability to simultaneously progress the comprehensive Bill. For example, last week we finalised the Mental Health (Renewal Orders) Bill 2018 and that legislation commenced on Monday. That was a significant body of work at official level which had very fixed time pressures and serious consequences if not enacted in time. It is a fact, however, that before the focus could return to the comprehensive Bill, this Private Members' Bill has to be dealt with as a priority. We must all accept that there is something of a catch-22 situation here which is not easily resolved.

I wish to speak briefly about child and adolescent mental health services. A priority for the Government is ensuring appropriate and accessible mental health services for children who need them, especially in an emergency. Notwithstanding competing priorities overall, we have

provided significant additional funding for mental health in recent years to the extent that approximately €910 million will be spent this year by the HSE on this key care programme. A significant proportion is for those under 18 years. As Members are aware, I was fortunate to secure a further €55 million for service improvement for 2019 in the budget announced yesterday. Further to Senator Conway-Walsh's statements on front-line services, the amount of money added to the mental health budget for next year is €84 million, €29 million of which is to meet existing pay demands, but they are front-line services, not backroom services.

Senator Rose Conway-Walsh: Therefore, it stays the same.

Deputy Jim Daly: Front-line services are provided by consultants, nurses and psychologists who must be paid. Pay increases are part of front-line services. There is no difference. In addition to the sum of €29 million, €55 million is provided for new developments and services. The current range of services will be expanded for children and adolescents and adults and will include eating disorders, mental health of intellectual disability, MHID, to provide easier access pathways, some online therapies and a crisis digital text line. We have loads of ambition in the area of mental health and loads of new positive initiatives that we want to roll out. I also hope to provide a funding stream for voluntary organisations on the ground such as sports clubs that have great capacity to reach out to and build resilience among young people and to support those efforts. We have huge ambitions in the area of mental health and are putting the resources behind it, with a sum of more than €1 billion. We continue to have challenges such as the recruitment of skilled personnel. There is a worldwide shortage of consultant psychiatrists. To tackle this I have tried to look at the online space and e-delivery of mental health services which is supported by many groups, organisations and professionals such as the College of Psychiatrists of Ireland that believe this is a way to enhance and add quality to the service we provide. We are very ambitious in the area of mental health and have a very busy programme for the year ahead. We are putting the resources behind it and I am confident. We will not solve everything and will not find the perfect panacea, but we will greatly enhance the range of comprehensive services that are available. There will always be faults and failings and it will always be possible to pick out the individual who is being let down, but mental health services are being delivered by individuals and there will always be situations where someone is not diagnosed, treated or accommodated appropriately. This will continue until we have a full-time service run by robots. In the meantime we are going to have to deal with those challenges and acknowledge them, not run away from them.

The HSE service plan has a significant focus on the further development of the Child and Adolescent Mental Health Services, CAMHS, against a background where the population of children is increasing and where the demand for CAMHS has increased by over 20% since 2012. Some 18,800 referrals are expected for HSE CAMHS this year, with approximately 14,300 being seen by this specialist service.

There are now 69 CAMHS teams and three paediatric liaison teams, supported by about 50 operational CAMHS beds nationally, with further resources planned to come on-stream in the future. Since 2012, more than 1,500 new health professionals have been recruited to improve mental health services, despite difficulties in recruiting and retaining specialist staff. I am satisfied that the HSE is working to provide the best possible service within available staffing resources and they have my full support in that regard.

I believe it is important, insofar as we can, to have legislation that does not differentiate in issues of capacity and consent between physical and mental health. I once again thank Senator

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Devine and her colleagues for introducing the Bill. We are in agreement that the principle of the change being proposed needs to be made and I am certain that we can agree to the text changes necessary to the Bill to effect the change proposed.

Senator Máire Devine: Gabhaim buíochas leis an Aire Stáit. I need to talk about services and access to them. I believe the Minister of State would be surprised if I did not. I have spoken to him about the Linn Dara day programme, on which we disagreed publicly. Therefore, he knows my thoughts very well in that regard. I am very vocal at times on the different issues such as the lack of child psychiatry services and mental health nurses, with the 70% of A Vision for Change that has not been implemented. The Oireachtas Joint Committee on Future of Mental Health Care met for the last time on the report today. It will be launched next week with doable actions to improve the nation's mental health. I hope we and the Minister of State can talk again about that to see what we can implement with speed and what else needs thoughtful consideration.

The Mental Health Act is being reviewed by the Minister of State's Department and I am aware that the report is due at the end of the year. It is an onerous task because there is a lot there that needs to be overhauled. As the Bill lessens that burden on the Department, I would like a "thank you" from it for that.

I stress that this progressive Bill will put mental health on par with physical health. It will prevent a hearing and a possible ruling from the High Court not if but when a case is taken or a challenge is made. The Bill respects young people's autonomy and allows them the capacity to decide and consent to the best treatment for them. It also gives them ownership, which is very important in a psychological sense. Ownership is important for all of us because once we take ownership it becomes ours and something for us to do and we are determined to ensure its success. With ownership of this issue and young people determining what they need, in conjunction with their treating team, it will, in reality, give a much better chance of success in living a happy, contented life, instead of being driven by others' needs and diktats.

The Bill destigmatises mental health and well-being. It is no longer to be a whispered, dark secret. It acknowledges well-being as part of all of us, that we all at times suffer from the jitters or nerves, or whatever we want to call it. We do not need the stigma; we need to talk to each other about it. That helps to blow the lid on having to hold something very close and not being able to talk about it or make decisions on it.

I thank the Minister of State for being here and accepting this Bill. I thank my Sinn Féin colleagues, all of the Senators who co-signed the Bill and all of the Senators who spoke for their support. I hope to progress the Bill quickly to Committee Stage and I am looking forward to discussing, tweaking and ensuring all of the t's are crossed and the i's dotted in order that it will go through smoothly. I believe the Bill has unanimous support and is needed very soon. It would be lovely to get it through quickly and have it signed into law. I thank everyone and the Minister of State for his input.

Question put and agreed to.

Acting Chairman (Senator Gerry Horkan): When is it proposed to take Committee Stage?

Senator Máire Devine: Next Tuesday.

Seanad Éireann

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

Committee Stage ordered for Tuesday, 16 October 2018.

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

Senator Colm Burke: At 10.30 a.m. tomorrow.

The Seanad adjourned at 7.30 p.m. until 10.30 a.m. on Thursday, 11 October 2018.