Vol. 261
No. 7

Wednesday,
21 November 2018

DÍOSPÓIREACHTAÍ PARLAIMINTE
PARLIAMENTARY DEBATES

SEANAD ÉIREANN

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

SEANAD ÉIREANN

Dé Céadaoin, 21 Samhain 2018

Wednesday, 21 November 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 Colette Kelleher that, on the motion for the Commencement of the House today, she proposes to raise the following matter:

The need for the Minister of State at the Department of Health with special responsibility for mental health and older people to outline the plans for an increase in dementia advisers under the HSE service plan for 2019.

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

The need for the Minister for Health to outline the measures being taken to increase access to early intervention for children with autism in north Dublin; and to reduce the waiting times for children who require psychological assessments.

I have also received notice from Senator Robbie Gallagher of the following matter:

The need for the Minister for Housing, Planning, and Local Government to outline his plans to introduce amendments to the tenant purchase scheme; whether tenants who were allocated council houses under Part V regulations can avail of this scheme; and when he intends to publish the tenant purchase scheme review report.

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

The need for the Minister for Education and Skills to review circular 22/2012 where persons who take a leave of absence to undertake further studies are prevented from working part time.

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

The need for the Minister for Health to consider introducing an eyesight-testing scheme for children in primary school.

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

The need for the Minister for Health to provide access to the drug, Translarna, for the five young children in Ireland who suffer from Duchenne muscular dystrophy.

Of the matters raised by the Senators suitable for discussion, I have selected those of Senators Kelleher, Ó Ríordáin and Gallagher and they will be taken now.

I regret I had to rule out of order the matter submitted by Senator Swanick on the ground that it is a repeat of a matter raised on 12 July 2018.

Senator Colm Burke has withdrawn his matter which I had selected.

Senator Byrne may give notice on another day of the matter that she wishes to raise.

Commencement Matters

National Dementia Strategy

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

Senator Colette Kelleher: I welcome the Minister of State. I would like to share time with my colleagues, Senators Devine, Swanick and Humphreys. I know it is unusual, but we wish to outline a cross-party approach to the matter. We are all members of the all-party Oireachtas group on dementia. I thank Senator-----

Senator Kevin Humphreys: It was submitted in all our names.

An Leas-Chathaoirleach: I regret that no notice was given of this intention.

Senator Colette Kelleher: It was submitted in all our names.

An Leas-Chathaoirleach: I am advised it was not.

Senator Colette Kelleher: Yes, it was.

An Leas-Chathaoirleach: It is a Commencement matter, not a motion.

Senator Kevin Humphreys: However, it was submitted in all our names.

Senator Colette Kelleher: It was submitted in all our names.

An Leas-Chathaoirleach: It is in Senator Kelleher's name only.

Senator Colette Kelleher: However, I submitted it in all of our names.

An Leas-Chathaoirleach: The Senator cannot submit a Commencement matter on behalf of other Senators. She could do so for a motion, but not for-----

Senator Colette Kelleher: I will speak on behalf of everybody else, but we all signed and

it was an idea that came from the group.

An Leas-Chathaoirleach: I am advised that in the circumstances, I could give a minute to each of the others.

Senator Colette Kelleher: We have it worked that way.

An Leas-Chathaoirleach: Senator Kelleher can take two minutes and I will give the others a minute each.

Senator Máire Devine: The Leas-Chathaoirleach is very generous.

An Leas-Chathaoirleach: However, there is no arrangement. I am totally reliant on the advice I receive, as Senators will understand.

Senator Colette Kelleher: We appreciate the Leas-Chathaoirleach's largesse.

An Leas-Chathaoirleach: It is an unusual situation. We will allow it. Senator Kelleher has two minutes and the other Senators have a minute each.

Senator Colette Kelleher: I thank the Leas-Chathaoirleach and the Clerk of the Seanad for allowing us the opportunity to raise this important issue. I welcome the Minister of State, Deputy Jim Daly, to the House. Dementia is an issue that affects every community throughout Ireland. An estimated 55,000 people live with the condition with this figure expected to more than double in the next 20 years. People with dementia need a wide range of community services to support them from the moment of diagnosis and throughout their journey. We are all aware of the significant gaps in these vital services and supports in every county.

Senator Máire Devine: We have worked hard together as a group. Today we made a decision to focus on the estimated 4,000 people who develop dementia each year. That is at least 11 people per day. Those are not my estimates; they come from the HSE's Understand Together information campaign. Each one of these 11 people and their families need access to a dementia adviser to support them as they embark on their journey with dementia, which can last years or even decades. Many of us in the group have medical backgrounds and we have had hands-on involvement with the frightening terror when somebody is given that diagnosis.

A dementia adviser works with people with dementia and their families, providing a highly responsive and individualised support to the person with dementia from the moment of diagnosis onwards, and includes their carers. They help people to connect with dementia supports and services in their areas. However, there are only eight such advisers throughout Ireland. Access is on the basis of a postcode lottery.

An Leas-Chathaoirleach: The Senator's time is up.

Senator Máire Devine: As a member of the all-party Oireachtas group, I am acutely aware of the lack of equity. Sinn Féin's budget submission strongly advised the Government to provide funding for an increased allocation for dementia advice.

Senator Keith Swanick: I thank Senator Kelleher for sharing time. A recently published independent report, Evaluation of The Alzheimer Society of Ireland Dementia Adviser Service Report, by UCC, which was commissioned by the HSE's national dementia office as part of the implementation of the national dementia strategy, highly recommended an increase in the

number of dementia advisers to meet the increasing demand as a result of increasing prevalence of dementia in Ireland. The report also recommends the development of the service to achieve national coverage.

This independent evaluation is the first external evaluation of the dementia adviser service in Ireland and it has provided evidence of overall high levels of satisfaction with the service. People living with dementia, their carers, and health and social care professionals reported satisfaction with the information, advice, peer group and signposting of services provided by the service. The report found challenges with equity of access to the dementia adviser service across the country and a large number of people with dementia, including some in counties Roscommon and Mayo, and their families simply cannot access a dementia adviser because of where they live.

Senator Kevin Humphreys: This is a vital support for people suffering from dementia and their families. Will the Minister ensure that funding for an increase in the number of dementia advisers will be included in the upcoming 2019 HSE service plan? Nothing less is needed for these families. Will the Minister also commit to building up a national network of dementia advisers in order that there is one in every primary care unit in the country? We have seen the changes at first hand and how a dementia adviser can help families and sufferers. It is vital we provide this service throughout the country. Will he ensure the funding is put in place in the 2019 HSE service plan to ensure dementia advisers are easily accessible for people diagnosed with dementia?

Minister of State at the Department of Health (Deputy Jim Daly): I thank the Senators for raising the issues. As a response to the challenges facing people with dementia and their families and carers, the national dementia strategy was launched in December 2014. It contains 35 priority and additional actions and its implementation is led by the national dementia office in the HSE. Plans are progressing to further implement the dementia strategy through the national dementia office, including in the area of diagnosis, post-diagnostic supports and care pathways.

In 2016 and 2017, the national dementia office partnered with the Alzheimer Society of Ireland on a project to map dementia-specific community-based services and supports. It provides a useful snapshot and baseline study into what, where and when dementia services are offered. The study was also used to inform a service finder hosted on the national dementia office's website, which allows people to search for dementia-specific community services in their area.

There are gaps in access to services and a large variance in what services are provided across the country. The national dementia office met with senior HSE officials in each community healthcare organisation region to highlight gaps in each area and develop local action plans to improve service provision. The national dementia office also developed a needs analysis framework to support local dementia service planning and development. This framework is a mechanism to help the office direct time, energy and resources into dementia care that most appropriately meets the needs of people with dementia. It will be used to make dementia service development more responsive and consistent around the country.

The national dementia strategy calls for the HSE to consider the provision of dementia advisers, based on the experience of demonstrator sites. There are nine dementia advisers in the country, eight of whom are hired by the Alzheimer Society of Ireland. The HSE contributed €400,000 to the service in both 2017 and 2018. An evaluation of the dementia adviser service

was published on 26 September and recommended the continuation and expansion of the service to ensure equity of access country-wide. The Government welcomes the positive results of the evaluation and will continue to work to improve service delivery for people with dementia.

Dementia advisers are not the only community support being given to people with dementia and their families and carers. The Department of Health secured funding through the Dormant Accounts Fund for numerous projects to improve care and supports for people with dementia, including the delivery of post-diagnostic supports, a dementia diagnostic service for people with intellectual disability, a national network of memory technology resource rooms, the development of a national dementia registry, the national roll-out of a dementia training programme for HSE home care staff, the development of dementia resource centres, funding for a dementia community activation co-ordinator and community support projects for people with dementia. On the Senator's request to increase the number of dementia advisers, the quantum of services to be provided by the HSE is being considered as part of the HSE's 2019 national service plan.

Senator Colette Kelleher: I am disappointed that all the Minister of State can say is that dementia advisers are being "considered" rather than committed to. This is after several budget submissions on our behalf and a clear evaluation by University College Cork. The national dementia strategy is welcome but it does not go far or fast enough. It is time for the Government to make good on dementia commitments and recognise the emergency that faces people with dementia and their carers in Ireland. People feel that while they may be heard by the Government and sympathetic Members, hearing and listening are not being matched with real money and public investment for real supports and services for which people with dementia and their carers are crying out. There is strong cross-party support for supports and services such as a national network of dementia advisers, a real uplift in dementia-specific home care, day supports, Alzheimer's cafes and the range of supports that are needed in every county.

As the Minister of State will know, in Cork, where we are both from, according to the Alzheimer Society of Ireland, ASI, there are approximately 4,000 people with dementia, who are cared for by 12,000 people, and an additional €500,000 is needed in 2019 to bring it up to the minimum level. That is why ASI is holding an emergency dementia summit next Wednesday to be followed by an AV room briefing by the all-party group on dementia. This is an emergency on which there is an urgency to act, and I am disappointed by the Minister of State's response.

Deputy Jim Daly: I regret the Senator's disappointment but the HSE's service plan is in the gift of the HSE and has not yet been passed back to Government. It is up to the HSE as the Minister does not write the service plan. It must examine all areas and divide up its budget and present it to the Minister, which I expect will happen by the end of the month.

In the interim, I cannot start part-writing it nor make part-commitments on the floor of the House, which might box in the HSE. We must wait and see what the HSE will decide. While I had numerous discussions with the HSE before its preparation about what I would like to see in it, it must revert with its plans and, therefore, I will not prescribe anything here. It is not within my gift to do so until the service plan is presented to me at the end of the month when I will be in a position to comment further.

Psychological Assessments Waiting Times

Senator Aodhán Ó Ríordáin: I go door to door as often as I can and the other night in Ra-

heny I came across two families with children in dire need of help from the Government. One family has a child in need of a psychological assessment in a school where there are 12 such children in need of a psychological assessment. Three of them will be able to get that assessment but this child is not one of them. The parent is now faced with the prospect of either going privately, at a cost of €650, or not having an assessment at all. What are the Government's plans to ensure every child who needs an assessment can obtain one in order that he or she can maximise his or her potential?

I came across another family where the situation was even more worrying and distressing, and the family has no problem with me naming them. Abigail, the daughter of Claire and Mark, was diagnosed with autism at the age of two. They also have two younger children and difficult enough as it is to hear that type of news about the daughter they love dearly, they have fought a war since that diagnosis to get any sort of early intervention from the HSE to benefit their child. In recent days, they were told the earliest they will get help from the early intervention team in north Dublin is approximately six months' time. The child will be almost five years of age. She will finally get help almost three years after her diagnosis. She is approximately 150th on the list, but there are hundreds and hundreds of children on the list.

Unfortunately, in this country, not only must people deal with the difficulty of managing a child with autism, as well as every other aspect of family life such as looking after other children and doing their best for them, they must also embark on a war with the State. Unless people kick, shout, roar and scream, it appears they get nowhere, and it is utterly exhausting. I do not know of any other European country that has a waiting list of this nature for a child as vulnerable who needs this intervention. There may have been an argument a number of years ago, in the pit of an economic recession, that there was no money. We could have argued over and back about the priorities in budgets and so on. In the current circumstances, however, when it is clear there are resources, why must Abigail wait three years to get access to an early intervention team in order that she can begin the journey of maximising her potential as a little girl?

Deputy Jim Daly: I thank the Senator for raising the issue of access to children's early intervention services and psychological assessment in north Dublin.

As the Senator is aware, there is a very high demand for early intervention services. Regrettably, there are now very significant waiting times in Dublin north city and county as well as other areas. There are a growing number of local factors driving this demand, including the increasing child population and growth in terms of the number of children presenting with complex needs.

The early intervention service for the area receives, on average, between 13 and 14 new referrals a month. A high level of requests for assessment of need are also received. These are typically carried out by therapists who also work in the early intervention service. From January to August of this year, 1,251 assessments of need were completed by the HSE disability service in north Dublin.

The HSE fully acknowledges the stress that delays in access to services and assessment can cause to families and is actively working to address the waiting times. The HSE disability service in Dublin north city and county has begun recruiting for five additional posts, one in each of the following services: psychology; occupational therapy; speech and language therapy; physiotherapy; and social work. These additional staff will further contribute to a reduction of waiting times for early intervention services across the area.

The local HSE disability service is currently engaged with the HSE nationally in the reconfiguration of services for children to deliver a new model of assessment and intervention that will provide a clear pathway for children aged zero to 18 years. The progressing disabilities services programme aims to achieve a national equitable approach in service provision for all children based on their individual need and regardless of their disability, where they live or where they go to school. The programme is doing this by forming partnerships between all of the disability organisations in an area and pooling their staff, who have expertise in the different types of disabilities, to form local children's disability network teams who will provide services for children with a significant disability, regardless of their disability. Evidence to date from areas where this has been rolled out shows that implementation of this programme will also have a positive impact on waiting lists both for assessments and therapies.

Senators will be aware that funding for an additional 100 therapy posts was secured as part of budget 2019. These additional posts, along with the reconfiguration of services and other initiatives, are expected to have a significant positive impact on waiting times for early intervention and assessment of need. It will also help meet the needs of children and young people in a more efficient, effective and equitable manner.

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

Senator Aodhán Ó Ríordáin: I acknowledge that the Minister of State is a compassionate individual who feels strongly about this issue. What time does he think is reasonable to wait from the diagnosis of a child just like Abigail to the beginning of intervention? What time does he aim for? What is his vision? Does he feel that three years is too long? I am sure that he does. What is a reasonable length of time for a family in this scenario to wait? I mean the families that have children like Abigail.

I do not think it is good enough for a family to be stressed over waiting for an intervention. They will have to deal with this diagnosis for many years to come as will other members of the family. Everybody around the family will be clued in to this issue. There is a constant state of conflict with agencies that are supposed to surround people with care and compassion. As happens in other jurisdictions when there is a diagnosis like this, one automatically feels as if there is a team of people working with the family and the child to improve his or her circumstances. The situation is completely different in Ireland where one feels almost completely abandoned and must work through this by oneself. The stress, as one can appreciate, is quite substantial. I ask the Minister of State the following again. What timescale does he think is appropriate from the time that a child gets a diagnosis to the time that the early intervention team can click into place? Are we working towards that timeframe? Then we can have a sense that we are all working together.

Deputy Jim Daly: I understand what it is like for a child to be diagnosed with needs and for a child not to get services. I am a parent of a child with special needs. Like the Senator, I am a former school principal and understand the situation very well.

I also understand, as the Senator does as he formerly held my current ministerial position as a Minister of State, the challenges that exist within the system. In his opening speech he said that he understood a few years ago why every child did not get what he or she needed but now he cannot understand why every child does not get what he or she needs and inferred that there are plenty of resources available. I refute that inference and state that there are insufficient resources in the country. Despite having the largest health budget ever in the history of the State

amounting to €17 billion next year we will not go anywhere near coping with the demand that is placed on that budget. Whether it is children with special needs or, like the previous Commencement matter, Alzheimer's disease, which affects the elderly, for whom the Senator cares a great deal, they are all competing needs. We also have acute sectors of hospitals and nursing homes. All sectors and all strands of society compete for funding.

To answer the Senator's question directly, it is immaterial what I think is a reasonable waiting time for a child.

Senator Aodhán Ó Ríordáin: I cannot accept that.

Deputy Jim Daly: I do not mind whether the Senator accepts what I say and I am stating a matter of absolute fact.

Senator Aodhán Ó Ríordáin: The Minister of State must have a view.

Deputy Jim Daly: It is completely immaterial what my opinion or belief is.

Senator Aodhán Ó Ríordáin: The Deputy is a Minister of State in the Department of Health so he must have a view on what is an appropriate waiting time.

Deputy Jim Daly: I do not mind what the Senator accepts or does not accept.

An Leas-Chathaoirleach: There is a procedure here.

Deputy Jim Daly: It is completely immaterial what my opinion is. We are working on a finite budget. There are competing demands for that budget across a wide variety of sectors.

Senator Aodhán Ó Ríordáin: That answer is absolutely unacceptable. I genuinely do not want to do this but it is unbelievable.

An Leas-Chathaoirleach: I cannot allow Senator Ó Ríordáin in again, unfortunately. I thank both the Minister of State and the Senator.

Deputy Jim Daly: I assure Senator Ó Ríordáin that we have noted his concerns and interest in the area that he represents, and his desire to see those waiting lists dealt with. This is an area for the Minister of State at the Department of Health, Deputy Finian McGrath. We will continue to work with the HSE, which is the service delivery organisation, to reduce the waiting times and continue to invest in the issue, as resources allow.

Tenant Purchase Scheme

Senator Robbie Gallagher: I thank the Minister of State at the Department of Housing, Planning and Local Government, Deputy English, for coming to the Chamber.

I would like him to outline the Government's plan to amend the tenant purchase scheme thus allowing Part V tenants an opportunity to buy their properties if they so wish. Most people, where possible, would like to own their own home and a home is also a very important asset for families. Amending the tenant purchase scheme would facilitate a positive transfer of wealth to a section of society that does not have that opportunity too often. Under the tenant purchase scheme, Part V houses are excluded. I believe the provision discriminates against the people

who occupy such properties. There are approximately 4,000 Part V houses in the entire country. In County Monaghan there are 154 Part V properties out of a total housing stock of 1,550 units and the figures are similar for County Cavan. In my travels I have spoken to a number of young families who are heartbroken because a clause prevents them from buying the Part V properties in which they live. They dream of owning a home. Unfortunately, their dream is out of reach and will never be realised due to the way the scheme is currently designed.

From the State's point of view, it is difficult to understand why the Part V provision preventing the purchase of a home has been included. The sale of Part V properties, like other council properties, will generate much-needed revenue for the State and mean that the State is no longer responsible for their maintenance thus saving money. The moneys that accrue from sales that are part of tenant purchase schemes should be ring-fenced and given to the local authorities concerned and where the sale occurs.

In summary, I want to give the people who live in Part V houses hope that some day they will fulfil their dream of home ownership, which is currently out of their reach. I earnestly ask that the Government amends the condition in the Part V regulations that prevents people from buying their homes. The removal of the condition will allow people an opportunity, if they wish to avail of it, of investing in a property that can be their own home. Many of them have spent money on home improvements and they dream of ultimately owning those homes. I ask that the condition that forbids people from purchasing is removed so that they can, if they so wish, purchase their homes like other people do under the tenant purchase scheme.

11 o'clock

Minister of State at the Department of Housing, Planning and Local Government (Deputy Damien English): I thank the Senator for raising this issue. It is an important issue, which has been raised at council meetings around the country and by colleagues of the Senator in this House.

The new tenant incremental purchase scheme for existing local authority houses came into operation on 1 January 2016. The scheme is open to eligible tenants, including joint tenants, of local authority houses that are available for sale under the scheme. To be eligible, tenants must meet certain criteria, including having a minimum reckonable income of €15,000 per annum and having been in receipt of social housing support for at least one year. The terms of the scheme involve discounts of 40%, 50% or 60% off the purchase price of the house, linked to tenant income. On the sale of a house under the scheme, the local authority will place an incremental purchase charge on the house equivalent to the discount granted to the tenant. Generally, the charge withers away over a period of 20, 25 or 30 years, depending on the discount involved.

The provisions of Part V of the Planning and Development Act 2000, as amended, are designed to enable the development of mixed-tenure sustainable communities. Part V units are excluded from the tenant incremental purchase scheme 2016 to ensure that units delivered under this mechanism will remain available for people in need of social housing support and that the original policy goals of the legislation are not eroded over time. The continued development of mixed-tenure communities remains very important in promoting social integration. There is a concern that if people were able to buy out all the Part V houses, they would not be used again for social housing, which would defeat the purpose of what we are trying to achieve with the Part V mechanism, which is social integration. Having said that, we are conscious that there are many people, with probably hundreds in counties Cavan and Monaghan as well as in

my own county of Meath, who would like the option of buying a house and who did not realise the option would not be there. Following consultation with colleagues of the Senator and others around the country, we committed to examine the issue to see if we could find a solution but our desire is to continue with mixed communities and the social integration that goes with that. We do not have a magic solution but we are looking at it because this issue causes concern for people. Not everybody would avail of the option but they would like to have it.

Local authorities may also, within the provisions of the regulations, exclude certain houses which, in the opinion of the authority, should not be sold for reasons such as proper stock or estate management, such as in the case of houses for elderly people, in particular bungalows. It is a matter for each individual local authority to administer the scheme in its operational area in line with the overarching provisions of the governing legislation for the scheme, and in a manner appropriate to its housing requirements.

In line with the commitment given in Rebuilding Ireland, a review of the first 12 months of the scheme's operation, including the issue raised by the Senator, has been undertaken. The review has incorporated analysis of comprehensive data received from local authorities regarding the operation of the scheme during 2016 and a wide-ranging public consultation process, with submissions received from individuals, elected representatives and organisations. The review is complete and a full report has been prepared, setting out findings and recommendations. I hope to publish the review shortly, following consideration of a number of implementation issues arising.

Clearly, the tenant purchase scheme offers tenants the option to purchase their homes, something the Government and I are supportive of as we acknowledge that people want to own their own home, if possible. It is critical, however that we balance this against the need to maintain our stock and add to our social housing stock over the coming years. We are committed to increasing the number by a minimum of 50,000 houses by 2021 under Rebuilding Ireland and we want to continue that. Any house sold through the tenant purchase scheme needs to be replaced, with the money ring-fenced and put back into housing.

Senator Robbie Gallagher: Not everybody will wish to purchase their own homes, but for those who do it is heartbreaking that they are not allowed under current regulations. I know of a couple of cases in County Monaghan where there are Part V houses in a development alongside local authority properties. A person in, say, No. 5 may be allowed to buy out their house but somebody in No. 12 might not, and that is unfair.

I welcome the fact that the review will be published shortly. The Minister of State might outline a date for when it will be published and when he hopes to be in a position to act on its recommendations. It would be interesting if the Department could carry out a survey of how many people in Part V developments, of which there are 4,000 in total with only 160 in Monaghan, would be interested in purchasing their home. It may not have the effect on the social mix that the Minister of State suggests.

Deputy Damien English: We have committed to completing and dealing with the report in this quarter but it may be in the new year as some legal issues have to be sorted out. Once it is published, we can make decisions and we will do so early in the new year because it is an important area. I do not promise the full solution sought by the Senator but we are trying to find one that solves the issue as it relates to Part V houses. Not everybody will want to avail of it and we will consider that aspect of the issue as well.

We need a tenant purchase scheme that works for everybody. The current scheme does not work for everybody and the generous discounts need to be examined as well, as we have to make sure we use taxpayers' money wisely. The social housing build programme had a budget of €2.4 billion and next year an additional 10,000 social houses will enter the system. This year it will be more than 8,000 and we want to get to the magic number of at least 10,000 per year. Beyond 2021, we have committed resources to build 12,000 social houses per year, which will also give us scope consider issues under the tenant purchase scheme.

Sitting suspended at 11.07 a.m. and resumed at 11.30 a.m.

Order of Business

Senator Jerry Buttimer: The Order of Business is No. 1, motion re Horse and Greyhound Racing Fund Regulations, referral to committee, to be taken on the conclusion of the Order of Business without debate; No. 2, European Investment Fund Agreement Bill 2018 - all Stages, to be taken at 12.45 p.m. and to adjourn no later than 2 p.m. if not previously concluded, with contributions from group spokespersons on Second Stage not to exceed six minutes, or four minutes in the case of all other Senators, the Minister to have not less than four minutes to reply, and Committee and Remaining Stages to be taken immediately thereafter; No. 3, Judicial Appointments Commission Bill 2017 - Committee Stage (resumed), to be taken at 2 p.m. and to adjourn at 6 p.m., if not previously concluded; and No. 4, Private Members' business, Irish Nationality and Citizenship (Naturalisation of Minors Born in Ireland) Bill 2018, Second Stage, to be taken at 6 p.m., with the time allocated to the debate not to exceed two hours.

Senator Lorraine Clifford-Lee: I raise the very serious issue of sports capital grants, as discussed in the media this morning. There are shocking reports that senior Ministers and figures in the Fine Gael Government lobbied extensively for the allocation of sports capital funds to private golf clubs in their constituencies. The sports capital programme is primarily designed to fund local sports groups and clubs with a particular emphasis on areas of deprivation. The message from the Government on the sports capital programme states that it is the primary means of providing funding to sports and community organisations and that grants are designed to prioritise the needs of disadvantaged areas and groups in the provision of sports facilities. However, it emerged a number of months ago that large amounts of last year's funding went to private golf clubs and fee-paying schools in various constituencies. It is very serious that senior figures in Fine Gael, including the Tánaiste, Deputy Coveney, the Minister for Business, Enterprise and Innovation, Deputy Heather Humphreys, the Minister for Health, Deputy Harris, the Minister of State at the Department of Defence, Deputy Kehoe, the Minister of State at the Department of Health, Deputy Jim Daly, Deputy Marcella Corcoran-Kennedy and, in particular, the Minister for Transport, Tourism and Sport, Deputy Ross, lobbied the Department on behalf of private golf clubs in their areas.

Senator David Norris: Hear, hear. The Minister for Transport, Tourism and Sport, Deputy Ross, was not too backwards.

Senator Lorraine Clifford-Lee: Large amounts of funding which should have been given to more deprived areas and the clubs serving a broad cross-section of the community which should have had priority were allocated elsewhere. I ask the Leader to address this issue. It

shows the ideological leanings of Fine Gael when private clubs are prioritised ahead of deprived areas and clubs providing sporting-----

Senator David Norris: It shows the background of the Minister, Deputy Ross.

Senator Anthony Lawlor: Who closed down the sports capital fund?

Senator Lorraine Clifford-Lee: May I continue?

An Cathaoirleach: Please allow the Senator to speak.

Senator Lorraine Clifford-Lee: These clubs are providing sporting facilities to a broad cross-section of our communities, particularly in deprived areas which sorely lack them.

Senator David Norris: Hear, hear.

Senator Lorraine Clifford-Lee: There is very little green space in Dublin's inner city and long-established clubs have no playing pitches.

Senator David Norris: There is no golf club in Dublin 1.

Senator Lorraine Clifford-Lee: While schools suffer a severe lack of sporting facilities, hundreds of thousands of euro from the fund have been allocated to private clubs. I would really like the Leader to address that.

Senator Terry Leyden: It is private schools and the rich boys' clubs.

An Cathaoirleach: I ask the House to allow Senator Craughwell to proceed.

Senator Gerard P. Craughwell: Frequently, we get the Leader's infinite wisdom on topics. This morning, I would like him to discuss something and perhaps organise a debate on it. We are about to head into a winter of discontent in the public service. That is clear from what we have seen with the Irish Nurses and Midwives Organisation, INMO, teachers, the Army and gardaí. In fact, all of the public service is in crisis. Nevertheless, the people who caused the problem, namely, the bankers, will operate tax free for the next 20 years. How is it that we could introduce financial emergency measures in the public interest, FEMPI, legislation to put our hands in the pockets of public sector workers and the pockets and wallets of pensioners but cannot introduce legislation to change the tax laws which allow the banks that broke the country to continue to trade back into healthy profits and in turn to go back to trading on the Stock Exchange? I would like a debate on that.

I have just returned from Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union, COSAC, at which the forthcoming European elections were discussed. An issue raised during that discussion was the use or misuse of social media. I made the point, which is one we should debate in the House, that the misuse of social media is only allowed because we have failed to regulate it. The Leader has an interest in this area. Perhaps he will consider organising a debate on how we might regulate the use of social media. In particular, we should discuss how to do away with the right of people to anonymity. While they can certainly use nicknames if they want, there must be a way to track them down and take action against them when they libel others. This is a matter worthy of debate and I am sure many Senators have something to say. I ask the Leader to organise such a debate at his earliest convenience.

Senator Rose Conway-Walsh: I again wish to raise the matter of drugs that are used to treat rare diseases. There are two main issues here and the first is the lack of transparency within the current system. There is no way of finding out what cost-benefit analysis model is used for these drugs and what negative or positive externalities are used to make an assessment on whether the drugs will be approved. This process must become more transparent. The protectionism in the system stopping this from coming to the fore must be tackled. The only person who can tackle it is the Minister. I know it is the HSE's statutory obligation but the Minister is allowing it to have that protectionism and lack of transparency. Where we have a lack of transparency we have a lack of trust. The Cathaoirleach knows the two main drugs I have been following for months are Translarna and Spinraza. Time is of the essence in these situations for children to have the optimum benefit from the drugs in the case of Duchenne muscular dystrophy. Translarna is effective only between certain ages. Children admitted to intensive care units in hospital do not have the time to wait for Spinraza. They do not have the time for the obscure processes to work their way through the system.

At European level, the Benelux countries have approved them but we need to see the benefit of being part of the EU and we need to know when this will become apparent to the people who are most impacted by the lack of transparency in decision-making. If a medicine is approved by the European Medicines Agency in terms of it being effective and safe surely we do not have to make the same judgment again. We need to stop reinventing the wheel in these situations. We also need to have greater clinician involvement. This country has some of the most fantastic clinicians and we need to take their advice and guidance on board with regard to the assessment of these drugs. We also need to have patient advocacy. It is hugely important in terms of patient input to the decision-making process that the patients are not chosen by the agency. They need to be from a range of backgrounds and put forward in ways other than being selected by the HSE. I would like a debate in the House on the issue.

Senator Aodhán Ó Ríordáin: I join with others in seeking a debate on sports capital funding. What was outlined in recent days in respect of Ministers lobbying heavily for private golf clubs is quite disturbing. That fund is deliberately to benefit children in disadvantaged areas, in particular to enable them to access sports facilities and compete on a level playing field. A debate is necessary and I call on the Leader to facilitate it with the Minister who has responsibility for sport. In this regard, I pay tribute to Martin O'Neill and Roy Keane who left their positions as manager and assistant manager of the Republic of Ireland soccer team by mutual consent this morning. Many of us have had a difficult time following the Irish team in the past year but we need to look back to the great wins over Germany and Austria to get us to the European Championships. The best half of football I have probably ever seen an Irish team play was during the match against Sweden in the European Championships. I also saw the team getting a one-nil win over a great Austrian side in Vienna. They lifted the expectations of the Irish soccer side for a number of years. Things have not been great in their most recent period. Whoever takes on the job, be it Stephen Kenny, Brian Kerr or whoever, it is important to give credit where it is due even though the past year or so has been difficult.

I also want to raise the issue of the Government's response to our Private Member's Bill that will be debated this evening. Our citizenship Bill would give effect to citizenship rights for children born in Ireland who have been resident here for three years. The Government has decided to oppose the Bill and I find this quite outrageous.

Senator David Norris: It is disgraceful.

Senator Ivana Bacik: Hear, hear.

Senator Aodhán Ó Ríordáin: The Minister for Health can go around his constituency of Wicklow to advocate for a child who may be deported and the Minister for Justice and Equality can go around his constituency of Laois to advocate for a child who may be deported but when it comes to an overall system to improve the situation for all children who may not be their constituents they are against it.

Senator David Norris: Hear, hear.

Senator Aodhán Ó Ríordáin: I find it absolutely unbelievable. I appreciate we will have plenty of time to flesh this out this evening but I find it very disturbing that it is fair enough to get stuck into a campaign as a constituency issue for a child who is clearly identified but when the Government has a chance to regularise the situation for children who do not need to be deported and who may be deported it turns its back on them in the most callous fashion. It backed the referendum in 2004, which was wrong. The Labour Party along with Sinn Féin, the Green Party and others campaigned against the referendum.

Senator David Norris: And me.

Senator Aodhán Ó Ríordáin: And Independent Members. Now the Government has an opportunity to put it right and it is turning its back on the children it pretends to support in individual cases in Wicklow and Laois.

Senator Maria Byrne: I raise the report that was published this morning on the 51 private water connections where E. coli was found. This is very serious. I realise that at this stage many houses and group schemes are on the main connection but Irish Water will have to investigate all of the connections. The report states that more than 700 connections were not assessed. This is very important because E. coli is so dangerous, particularly for younger children. A family not too far from me had to leave their home recently because of E. coli in the connection to the water system in the new house they bought. They had a private system but the entire connection was in a very bad state. I ask the Minister to call on Irish Water to investigate every connection.

An Cathaoirleach: I thank Senator for her brevity

Senator Terry Leyden: I am checking the microphone because I want to make sure the Leader of the Seanad hears me this morning. I do not want any mistakes.

Senator Diarmuid Wilson: What did you say?

Senator Terry Leyden: The fourth estate is running policy for Fine Gael and the Independent Alliance. Yesterday we had the headline "'Tax grab' on workers follows FG cuts pledge" and today we have "Donohoe in climbdown on loss of tax breaks as Taoiseach accused of 'clobbering workers'". Yesterday we had one headline and today we have another. Who is running the show? It is Independent News and Media and very active journalists. I compliment Senator Nash who highlighted this issue yesterday.

The fourth estate, or the fourth power, refers to the press and news media in explicit capacity of advocacy and implicit ability to frame political issues. What we have is a very astute propaganda unit in the Government, which is supposed to have been done away with by the way, and when it views these stories all of a sudden the policy mooted at the weekend with the Revenue

Commissioners has been dropped until after the next general election to ensure the Taoiseach returns to power with Sinn Féin. That will be the make-up of the next Government the way it is going at the moment.

Senator David Norris: It will be Fianna Fáil and Sinn Féin. It will be Senator Leyden and the Shinners.

Senator Gerard P. Craughwell: A Sinn Féin-Fianna Fáil coalition.

Senator Terry Leyden: What lovely-----

Senator David Norris: Ask Senator Mark Daly and Deputy Ó Cuív. We know all about that little honeymoon. The marriage did not last too long.

Senator Terry Leyden: What lovely bedfellows they make but when we see such a somersault-----

An Cathaoirleach: I ask Senator Leyden to refrain from too much entertainment.

Senator Terry Leyden: I can tell the Cathaoirleach it was not so much entertainment when the Government was going to take allowances from workers in bars and from other people.

Senator Rose Conway-Walsh: It is thanks to Deputy Pearse Doherty.

Senator Terry Leyden: If Deputy Pearse Doherty influenced that decision it confirms the alliance and coalition between both parties.

Senator Rose Conway-Walsh: It confirms Fianna Fáil was asleep.

Senator Terry Leyden: If Senator Conway-Walsh is claiming Pearse Doherty is responsible for this, I am claiming the fourth estate, and particularly the *Irish Independent* and its top journalists are responsible for the change in policy. All I can say is whatever the composition of the next Government it should govern and it should not come in one day and state these are its policies and what it stands for but if one does not agree with them it will change them. That is not leadership.

Senator Máire Devine: Fianna Fáil was asleep but it has woken up with the threat of an election in the air and good for it. I want to talk about air pollution and climate change. A poor whale was washed up in Indonesia with 6 kg of plastic - including 25 plastic cups, 115 plastic bags and flip-flops - inside it. I do not know if there was a human attached to the flip-flops. Our air, sea and land are exposed to stuff with which they can no longer cope. We see what is happening and it is up to us to change it. I commend Deputy Thomas Pringle on the Fossil Fuel Divestment Bill. It is a brave step and I commend all Deputies who voted for it on Second Stage. Tomorrow, the Bill will proceed to Committee and Remaining Stages and I hope it will go through smoothly. We are not great in this country but the Bill leads the way globally in the context of fossil fuel divestment. What is proposed in the Bill will cause problems for people who burn fuel on a regular basis and who depend on it but it is a great step for us. I wanted to welcome the Bill because I will not be available for the debate tomorrow.

Senator David Norris: On the Order of Business, we normally refer to the passing of colleagues from the Seanad or the Lower House or distinguished politicians. It is also important that we recognise the significance of cultural voices. I was very saddened last night to learn

of the death of Sandy Harsch. She had a most distinctive, velvety midnight voice and I used to listen to her every Saturday on "Country Time". I never met her but I felt she was a friend. RTÉ has a great talent for finding people with distinctive voices like Gay Byrne, Val Joyce and Sandy Harsch. Sandy had an encyclopaedic knowledge of country music and won for Ireland a series of international radio awards of which we can be very proud. I would like to mention her passing and send my sympathy to her family.

Senator Keith Swanick: I wish to speak on the topic of loneliness. As Members are aware, I founded the loneliness task force in association with Seán Moynihan from ALONE. We sought submissions from all over the country and these prove that loneliness crosses all demographics. Loneliness is a problem for young and old, urban and rural, and rich and poor. We all know it is corrosive in terms of people's mental and psychological health. The task force published a report, a copy of which Senators will have received, entitled A Connected Island: An Ireland Free from Loneliness. This report highlights the problem that loneliness is for our health, our social well-being and our economy through lack of productivity, absenteeism from work, over-attendance at GP clinics and overuse of prescription medication. This is a real problem and we need to address it. The report identifies some fundamental, solution-driven and achievable targets. Unfortunately, these have not been implemented. I have forwarded the report to all Members of the Oireachtas. I contacted the Taoiseach, the Minister for Health, Deputy Harris, and the Minister of State, Deputy Jim Daly, but I have received no response. I hope the Leader will agree to arranging a debate on loneliness in the coming weeks or in the new year. This is a real issue and it is gaining traction among people. We need to treat it as a serious problem.

Senator Jerry Buttimer: I thank the Members for their contributions to the Order of Business. On my behalf, on behalf of the Fine Gael Party and on behalf of the House, I join Senator Norris in extending our deepest sympathies to the daughters, brother and sister of Sandy Harsch. Coming here from Rhode Island, she brought an encyclopaedic knowledge of country music to our airwaves. Like Senator Norris, we were all impressed by her wonderful voice and her ability to communicate a love of music, particularly in the genre in which she specialised. I pay tribute to her and thank her for opening our minds and hearts to music. I thank Senator Norris for making his remarks this morning. Ar dheis Dé go raibh a h-anam dílis.

Senator Clifford-Lee referred to the sports capital programme. I remind the Senator that her own constituency benefited as a result of this Government and that which preceded it reopening that programme. This year, €40 million will be allocated to improve sporting and community facilities. If we engaged in a trawl of the record of members of Fianna Fáil or those of any other party - Senator Ruane also made a contribution in this regard - I am sure we would find a great variety of representations.

Senator Aodhán Ó Ríordáin: That is not an answer.

Senator Máire Devine: No.

Senator Jerry Buttimer: That is the answer Senators are getting, although they may not like it.

Senator David Norris: The leader is being snotty. He is displaying a touch of the Charles Flanagans.

Senator Gerard P. Craughwell: There is assertiveness for you.

Senator Máire Devine: It is rude.

Senator Aodhán Ó Ríordáin: It is remarkable and very disappointing.

Senator Jerry Buttimer: I will be very happy to have a debate on the sports capital programme and we will go through the record entirely. That would be no problem at all. I am quite happy to make representations on behalf of the sporting and community clubs in my area as the Senator does in his.

Senator Aodhán Ó Ríordáin: Only for private golfers.

Senator Jerry Buttimer: I am very proud of the fact that my Government reopened the sports capital programme at a time when there was little money in the country.

Senator Gerard P. Craughwell: Perhaps publishing details in respect of all the lobbying would be good.

Senator Jerry Buttimer: Senator Craughwell spoke about a winter of discontent; it is like the morning of discontent in here at the moment. I remind the Senator that the FEMPI legislation has been rescinded and we are now restoring pay.

Senator Gerard P. Craughwell: I do not dispute that at all.

Senator Jerry Buttimer: Some of the contributions make it seem as if the Government is doing nothing or that we are taxing people to the hilt. The Taoiseach is criticised if he mentions tax.

Senator Gerard P. Craughwell: That is only when it is unrealistic.

Senator Jerry Buttimer: Let us be fair.

Senator David Norris: Will they allow us to restore our own pay here?

An Cathaoirleach: Allow the Leader to respond.

Senator David Norris: I will not try that one.

Senator Jerry Buttimer: I would be very happy to have the debate that was suggested. The Senator's work with COSAC is very important and I commend him on it. The points he makes are very relevant and valid and I would be happy to have a debate with the Minister in due course.

Senator Gerard P. Craughwell: I appreciate that.

Senator Jerry Buttimer: Senator Conway-Walsh referred to orphan drugs. This morning, the Joint Committee on Health is discussing rare diseases and the issue of the drugs in question. It is important to have that debate. To be fair, there is a level of transparency. Professor Michael Barry has been very open in his presentations to the committees. I chaired the Joint Committee on Health for five years and he came before it regularly. Deputy Ó Caoláin and I initiated discussion of rare diseases on 28 February and also on orphan drugs. I will be happy to ask the Minister to come to the House on the matter. We need to see how we can ensure that people are able to access drugs or treatment in a more expeditious manner and I accept that point totally.

I join Senator Ó Ríordáin in commending Martin O'Neill and Roy Keane on their steward-

ship of the Irish soccer team. They were probably working at a time when we may not have had the best of players but we have to acknowledge their contribution to Irish sport and the management of the team. We were unlucky on a couple of occasions when a number of decisions went against us and a few chances that could have come off did not.

On this evening's Private Members' debate, the Minister will outline the Government's decision. We need to find a way through and it should not be a case of our opposing the motion simply for the sake of doing so. The points made are relevant and I hope the Government will work with the Labour Party in reaching a compromise on the matter. I say that in a personal capacity. Ultimately, it is a matter for Government.

Senator Aodhán Ó Ríordáin: I thank the Leader.

Senator Jerry Buttimer: Senator Byrne made reference this morning's media reports on water treatment plants, sources of water and E. coli. This highlights the importance of inspections and of having a good water infrastructure. I would be happy to have the Minister come to the House for a debate on water.

How do I answer Senator Leyden's question?

Senator Terry Leyden: With great difficulty.

Senator Jerry Buttimer: I am sure he is yearning for the day-----

Senator Diarmuid Wilson: If in doubt, leave it out.

An Cathaoirleach: Please allow the Leader to respond and do not confuse him.

Senator Jerry Buttimer: I wonder who said that. Would it have been a former leader of Fianna Fáil?

Senator Diarmuid Wilson: I am trying to assist the Leader.

Senator Terry Leyden: The Leader should compose himself and respond.

Senator Jerry Buttimer: Is Senator Wilson saying that we should leave Senator Leyden out?

12 o'clock

Senator Diarmuid Wilson: Certainly not. I am trying to assist the Leader.

Senator Terry Leyden: The Leader should compose himself and then attack.

Senator Jerry Buttimer: There are students in the Gallery who will not remember *The Irish Press*, thankfully, but I am sure Senator Leyden is yearning for the return of that newspaper as the Fianna Fáil propaganda unit.

Senator Terry Leyden: It is a major loss.

Senator Jerry Buttimer: I cast my mind back to the establishment of a number of radio stations, aided and abetted by the former Minister, Ray Burke. We know what happened there.

Senator Aodhán Ó Ríordáin: The Civil War ended in 1923.

Senator Jerry Buttimer: On the subject of spin units, the Fianna Fáil Party, which was in government for a while, had a particular unit-----

Senator David Norris: They had a one-man spin unit, namely, P. J. Mara.

Senator Jerry Buttimer: They had a couple, actually.

Senator Lorraine Clifford-Lee: You guys had an awful lot more spin doctors than we ever had.

Senator Jerry Buttimer: I know Senator Clifford-Lee is trying to assert herself here but it is important to listen as well.

Senator Máire Devine: That is not good language.

Senator Lorraine Clifford-Lee: It is very gendered language. I take exception-----

Senator David Norris: How is it gendered language?

Senator Lorraine Clifford-Lee: It is very misogynistic language. I take exception to misogynistic language used in my direction.

Senator David Norris: That is rubbish. Absolute tripe.

Senator Jerry Buttimer: Senator Clifford-Lee has used that phrase in the House a couple of times.

Senator Lorraine Clifford-Lee: I will continue to call out misogynistic language.

Senator Jerry Buttimer: I can assure the Senator-----

Senator David Norris: That is nonsense.

An Cathaoirleach: Please allow the Leader to conclude.

Senator Jerry Buttimer: If Senator Clifford-Lee wants to throw things at me that is fair enough, but one thing she cannot accuse me of is that. I have never done that.

Senator Lorraine Clifford-Lee: The Leader is obviously not aware of-----

Senator Terry Leyden: Senator Clifford-Lee asserts herself all over the constituency where she works-----

Senator David Norris: I am the expert and I exonerate the Leader.

Senator Terry Leyden: -----and she is an example and an inspiration to women in this country.

An Cathaoirleach: If there are more interruptions I will suspend the House for 30 minutes.

Senator Jerry Buttimer: I have never made an untoward comment like that in this House and nor do I ever intend to.

Senator David Norris: The Leader is quite right.

An Cathaoirleach: I ask Senators to direct their comments through the Chair.

Senator Jerry Buttimer: I am disappointed with the remarks of Senator Clifford-Lee because, in my time as Leader of the House, I have worked with colleagues on the Opposition benches, including the Independent benches, to bring people together rather than divide.

Senator Lorraine Clifford-Lee: Would the Leader have said it if it was a man who was sitting where I am?

Senator David Norris: Of course he would. He is neutral.

Senator Terry Leyden: Senator Norris is collaborating with him now.

Senator Jerry Buttimer: I really object to this. I do not do personal attacks and I am never personal in anything I do or say as Leader or as a politician. I am never personal in here. Senator Clifford-Lee's remark was very disappointing.

An Cathaoirleach: If Senators do not allow the Leader to conclude, I will suspend the House.

Senator Jerry Buttimer: Senator Clifford-Lee's comment is very disappointing. I am never in this House-----

(Interruptions).

An Cathaoirleach: I am suspending the sitting for 15 minutes. What is going on here is nonsense.

Sitting suspended at 12.03 p.m. and resumed at 12.17 p.m.

An Cathaoirleach: I ask the Leader to conclude the Order of Business.

Senator Jerry Buttimer: I am disappointed at the remarks of Senator Clifford-Lee. I am definitely not misogynistic and I ask her to withdraw the remark.

Senator Lorraine Clifford-Lee: I will not withdraw my remark and I am disappointed by the Leader's comments.

Senator Terry Leyden: The fault is not on the side of my colleague but on that of the Leader. He should withdraw his comments and I recommend strongly that he do so.

An Cathaoirleach: If this is going to continue I will put the question on the Order of Business.

Senator Gabrielle McFadden: She is damaging the cause of women. She should withdraw her remark.

An Cathaoirleach: I cannot take interruptions. Otherwise, I am entitled as Cathaoirleach to put the question and forget about continuing the debate.

Senator Martin Conway: It is a point of integrity.

An Cathaoirleach: That weighs both ways.

Senator Jerry Buttimer: I am not misogynistic, and I will stand up for myself on all occasions.

Senator Gabrielle McFadden: She should withdraw that remark.

Senator Jerry Buttimer: I am very upset. I enjoy the rough and tumble of politics but I have never in my 12 years in the Oireachtas been personal or made personal charges against people. I make a political charge and the Members of the House will vouch for that. I am very disappointed.

Senator Lorraine Clifford-Lee: It is clear the Leader is not even-----

Senator Gabrielle McFadden: She should withdraw the remark.

Senator Jerry Buttimer: I can assure Senator Clifford-Lee that I have known members of her party for more than 30 years and we have never once had a cross word on a personal level. I work with Members every day. I compromise and work with people. I engage in the banter of political life but I never get personal. I am very disappointed and most upset-----

Senator Lorraine Clifford-Lee: Would the Leader say it if there was a man sitting in this seat trying to assert himself?

Senator Neale Richmond: Withdraw the remark.

Senator Gabrielle McFadden: Withdraw the remark.

Senator Martin Conway: Do the decent thing.

Senator Lorraine Clifford-Lee: Let him withdraw the remark he made against me.

Senator Jerry Buttimer: Senator Leyden raised the issue that was raised yesterday by Senator Nash. The Revenue Commissioners are updating their concessionary flat rate expenses practice. It is a review. Despite the comments of Senator Leyden, the fourth estate does not govern the country. Policy is set by the Government. The Revenue Commissioners are independent of the Government and they are in charge of the tax code. As I said yesterday, the changes outlined will also allow workers to be able to claim where they were unable to do so in the past.

Senator Devine raised the important issue of air pollution.

Senator Terry Leyden: The Leader should read today's *Irish Independent* to find out.

An Cathaoirleach: Senator Leyden is not supposed to display newspapers. He should not antagonise me. The display of newspapers in the Chamber has been disallowed for as long as I have been in the Oireachtas and I have been here for as long as, if not longer than, Senator Leyden. One can refer to them but not display them. It is out of order under Seanad decorum.

Senator Kieran O'Donnell: Senator Leyden is making mischief. That is all he is doing.

An Cathaoirleach: I do not need Senator O'Donnell to intervene either. I ask the Leader to continue.

Senator Jerry Buttimer: To make a final point to Senator Leyden, the practice he refers to is being withdrawn only where the Revenue Commissioners are satisfied there is no longer a

legally valid basis to the issue. We should let the review conclude and then have a debate on it.

On the important point raised by Senator Devine regarding air pollution and climate change, that is the reason the Minister for Communications, Climate Action and Environment, Deputy Bruton, outlined a whole-of-government plan to tackle climate change. The country is way behind its targets so we must step up to the mark in terms of our ability to respond to the central issue of climate change. It is the biggest issue this generation will face. Our task is to make Ireland a leader, not a follower, in responding to it. I will invite the Minister to the House in due course.

Finally, I commend Senator Swanick on the excellent report of his task force on loneliness. I thank him for what he is doing. We all have a role to play in dealing with loneliness and I am pleased the Senator has produced the report. I am happy to commit to scheduling a discussion on loneliness in the new year. Before Christmas he could use the opportunity of Fianna Fáil's Private Members' time to have the debate but if that is not possible, I will schedule it in the new year.

Senator Lorraine Clifford-Lee: A Chathaoirligh, I wish to put it on the record that we were of a mind to vote against the Order of Business today but we do not wish to disrupt the work of the House. I ask the Leader to reflect on his comments and, perhaps, come to me later to discuss the matter.

Order of Business agreed to.

Horse and Greyhound Racing Fund Regulations 2018: Referral to Joint Committee

Senator Jerry Buttimer: I move:

That the proposal that Seanad Éireann approves the following Regulations in draft:

Horse and Greyhound Racing Fund Regulations 2018

copies of which were laid in draft form before Seanad Éireann on 20th November, 2018, be referred to the Joint Committee on Agriculture, Food and the Marine, in accordance with Standing Order 71(3)(k), which, not later than 29th November, 2018, shall send a message to the Seanad in the manner prescribed in Standing Order 75, and Standing Order 77(2) shall accordingly apply.

Question put and agreed to.

Sitting suspended at 12.25 p.m. and resumed at 12.45 p.m.

European Investment Fund Agreement Bill 2018: Order for Second Stage

Bill entitled an Act to enable certain Ministers of the Government to enter into agreements with the European Investment Fund for the purpose of facilitating access to finance for qualifying enterprises; and to provide for matters connected therewith.

Senator James Reilly: I move: "That Second Stage be taken today."

Question put and agreed to.

European Investment Fund Agreement Bill 2018: Second and Subsequent Stages

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

An Leas-Chathaoirleach: The Minister is welcome. We look forward to her address.

Minister for Business, Enterprise and Innovation (Deputy Heather Humphreys): I welcome this opportunity to present the Bill to the House. I thank Members for agreeing to take all Stages today. This short, technical Bill will enable me, as the Minister for Business, Enterprise and Innovation, and the Minister for Agriculture, Food and the Marine to enter into agreements with the European Investment Fund, EIF, to facilitate access to finance for qualifying enterprises. The new future growth loan scheme was announced in the budget as part of the Government's response to Brexit, and enactment of this Bill will allow us to launch the scheme in early 2019.

The future growth loan scheme will be an important support for businesses throughout the country that are facing challenges arising from Brexit. It will be available to SMEs, including those in the primary agriculture and the seafood sectors. To bring this loan scheme to the Irish market in early 2019, it is imperative that we, as Ministers, be granted the necessary powers to enter into the agreement with the EIF this year, which includes providing the necessary Exchequer funding.

This scheme is an important component of the Government's Brexit mitigation measures for businesses, as it will provide businesses with the opportunity to borrow for periods of between eight and ten years to support long-term capital investment. The tenure of borrowing currently available on the market for SMEs is typically anywhere from three to seven years. The future growth loan scheme has been developed to address a gap in the market for longer-term loans up to ten years.

The scheme will support enterprises that wish to invest and diversify their business by ensuring they have appropriate and affordable finance available to them. This, in turn, will fuel future economic growth in our important indigenous sectors by helping them to remain competitive. Given the particular exposure of the food sector to Brexit, the scheme, which will be 40% funded by the Minister for Agriculture, Food and the Marine, will also be available to primary producers. To unlock the EIF counter-guarantee, which will be used to leverage funding of up to €300 million for the future growth loan scheme, both my Department and the Department of Agriculture, Food and the Marine will collectively contribute €62 million in Exchequer funding over a five-year period. The counter-guarantee with the EIF is a bespoke agreement, wider in scope than those available through the European Commission, offering 64% risk cover rather than the standard 40%. The scheme represents the first time that we, as Ministers, have entered into such an agreement, although there is potential for further such agreements, if needed. The Attorney General has advised that primary legislation is needed to provide the necessary powers to both Ministers to enter into such an agreement. The Department of Agriculture, Food and

the Marine will contribute 40% of the loan fund on the basis that it is anticipated that at least 40% of the scheme will be used by food businesses and primary producers. The remaining 60% will be channelled through my Department's Vote in 2018 and subsequent years.

I refer to the heads of the Bill. Section 1 defines the "relevant Minister" as the Minister for Business, Enterprise and Innovation or the Minister for Agriculture, Food and the Marine, as we are the Ministers entering into the agreement with the EIF for the future growth loan scheme.

Section 2 provides the Ministers with the power to enter into agreements with the EIF, with the consent of the Ministers for Finance and Public Expenditure and Reform. This includes providing the necessary financial contribution from the Exchequer and limiting this to an aggregate total of €75 million should the Ministers wish to implement additional schemes concurrently. It also includes the discharge of any additional fees and expenses. Definitions of "qualifying enterprise", "SME" and "small mid-cap" are also referred to here.

Section 3 provides for a review of the operation of the Act after four years following the passing of the Act.

Section 4 provides that expenses incurred in the administration of the Act be paid out of moneys provided by the Oireachtas.

Section 5 provides for the Short Title and the commencement provision.

This short Bill is important as it will allow me, as Minister for Business, Enterprise and Innovation, and the Minister for Agriculture, Food and the Marine to enter into an agreement with the EIF to implement the future growth loan scheme, which is a critical component of the Government's response to Brexit. Essentially the scheme is a longer-term Brexit loan scheme. If we want to ensure our businesses throughout the country succeed and prosper in the face of fundamental challenges such as Brexit, it is essential that we take the necessary steps to ensure appropriate financial supports such as this scheme are in place for businesses. I look forward to hearing Senators' contributions.

Senator Aidan Davitt: The business representative body, IBEC, said this €300 million future growth loan scheme for loans with terms of eight to ten years is a good start. It added that it will not be enough, however, considering the major concern presented by Brexit. While additional Brexit measures have been announced by the Minister, the low uptake of support schemes and loans to date indicates there is an awareness challenge. Businesses still seem to be encountering cumbersome red tape in gaining access to the various loans and schemes. It is two and a half years since the UK voted to leave the EU. With less than four months until its departure, unless there is an extension, Irish businesses remain ill prepared for the implications. Grants under Enterprise Ireland's Be Prepared grant scheme are being awarded at a rate of six per month. This means just 2% of Enterprise Ireland's approximately 5,700 client companies have availed of the scheme. Grants under InterTradeIreland's Start to Plan voucher scheme are being awarded at a rate of approximately six per month. Only 3% of the €300 million available through the Brexit loan scheme has been sanctioned to date, despite it opening last March.

I welcome the proposed scheme. It is good news. I have two questions based on the points I have made. Does the Minister still believe the red tape is onerous? It has led to a low uptake thus far. Considering the schemes at face value and in light of my extensive business background, I would have expected many of the producers and other businesses to jump at the opportunity. Could the Minister give us a flavour of the types of businesses involved? She

referred briefly to agriculture and fisheries. What other types of businesses are considering the schemes? I am sure she has had inquiries. She does not have to name entities in her response. Are niche businesses involved?

Senator James Reilly: I welcome the Minister to the House and I also welcome the Bill. The Bill is an important part of preparing for Brexit and Brexit-proofing arrangements for businesses, which will face challenges. As the Minister knows better than most, SMEs are critical to our economy. They are the beating heart of the economy and of communities. They are working in an ever-changing, rapidly moving market nationally and internationally. Innovation is essential if a business is not to lose its place in the market quickly.

I wish to speak not only about what Senator Davitt mentioned, namely, the need to make businesses aware the scheme is available and the need to minimise any red tape or obstruction that makes dealing with financial institutions difficult, but also about the interest rate on the loans. The rate will be critical to their attractiveness. What collateral will businesses have to put up?

Will the Minister comment on what the requirements are likely to be if she is in a position to do so?

I would like to speak of the lack of competition with regard to financial institutions in the country. It was clear to us at the Joint Committee on Business, Enterprise and Innovation that businesses were finding it difficult to access money and that the pillar banks are of a particular nature and do not by any means suit everybody. Some of us on that committee went to Germany to visit Sparkassen banks to see what they do. They offer rates of 1.5% and lend anything between €5,000 and €50 million, always within their own area. They are community-based banks. It is critical that we have a similar type of bank available to small businesses in this country and, considering the sums they lend, not-so-small businesses. They have survived two world wars, depressions, etc. They have been in business for 200 years. They are old-style banks where people go to visit the farmer on his land or the business person in his workplace, factory or wherever he might be, understand him and his community and the nature and real risks in business. Much of that has been lost in Irish banking because of the over-emphasis on property and property development up to the crash. If there was any doubt about the fact that there is lack of competition, when Mr. Mario Draghi appeared before the committee and everyone asked why rates are so high here, he gave the same answer repeatedly, which is that there is a lack of competition. I wish the Minister well with this. It is part of an important set of arrangements but we need to do more. The Government needs to look at how we could encourage a facility such as Sparkassen in this country. They do not ever set up banks in other countries. They merely give advice on how to set them up and the ethos behind them. It is badly needed. In the past, when we had ACC Bank and the other small bank for industry, many businesses were started that could not get access to finance elsewhere. I welcome this. I give it my full support and look forward to its rapid passage through the House.

1 o'clock

Senator Pádraig Mac Lochlainn: This short, straightforward Bill proposes to give powers to the Ministers for Business, Enterprise and Innovation and Agriculture, Food and the Marine to enter into certain agreements with the EIF. The purpose of this proposal is to facilitate the introduction of the future growth loan scheme, which will provide medium and long-term funding for small-to-medium sized enterprises in areas including the primary agriculture and seafood sectors.

I thank the Minister for introducing this legislation. It seeks to give powers to the Ministers for Business, Enterprise and Innovation and Agriculture, Food and the Marine to enter into certain agreements with the EIF with the intention of setting up a new loan scheme to help businesses with the effects of Brexit. My party recognises the importance of supporting SMEs across Ireland and the particular need to assist them with the challenges Brexit will bring next year and in the following years. We are happy to support this Bill. I have some questions and would appreciate if the Minister could answer.

Will she outline how much is intended to be leveraged by the Government to secure the €300 million scheme and has she set any targets or estimates for the number of businesses that will avail of this scheme? I ask about this because the €300 million Brexit loan scheme announced last year has not been a success. It was announced in budget 2018 and has performed poorly. The latest figures, from October, show the uptake of the scheme has been poor. Just 224 firms have been approved by the SBCI and just 38 loans to the value of €8.5 million have been sanctioned. That means not even 3% of the total pot has been drawn down on this existing fund. Is this new €300 million future growth loan scheme which this Bill is aimed at establishing just a new renamed, rebranded one aimed at taking the bad look off the previous loan scheme? My colleague, Deputy Maurice Quinlivan, has raised this with the Minister, and asked if she has looked into why the uptake has been so poor. Is it as a result of too much red tape or the imposition of criteria that are too strict? Will she enlighten us? It is vital that we know before we jump into another scheme and make the same mistakes again. That would be an unacceptable error and mismanagement of public money and, therefore, the Minister needs to clarify that.

Small businesses are the engine of the economy, as they comprise 245,000 firms or 98% of all business across the State. They employ 927,759 people and contribute €66.1 billion to the economy annually. Sinn Féin was disappointed and underwhelmed by the proposals for the Department of Business, Enterprise and Innovation announced in budget 2019. An allocation of just €8 million was made for funding to the Department, its enterprise agencies, and regulatory bodies, to assist enterprises to diversify in global markets and to meet the challenge of Brexit. This is a tiny amount when divided among all the different enterprise agencies and offices, and is dwarfed by what Sinn Féin proposed in our detailed alternative budget. We proposed an increase of €27 million for Enterprise Ireland alone to provide it with a record €300 million budget for the year of Brexit, while also providing €10 million extra to IDA Ireland, €2 million for InterTradeIreland, and €5 million for Science Foundation Ireland. We proposed a 50% increase in the digital voucher scheme and €2.25 million to develop our worker co-operative SME sector. As the engine of the economy, this sector deserves the required attention from Government and Sinn Féin recognised that fully in our alternative budget. We are committed to delivering that attention.

With regard to this Bill, we are happy to see a new investment avenue being opened for this sector. It is vital that with all of the threats that Brexit may bring to business we think ahead and secure investments for those ordinary businesses which may be at risk. I thank the Minister for bringing the Bill forward and we are happy to support it.

Senator Fintan Warfield: I welcome the Minister. I met departmental officials this morning to discuss digital archiving on the web. It was a productive meeting. I encourage the Minister to give urgency to that issue. A number of Senators have talked about the sectors that may benefit from this Bill. The EIF introduced a loan guarantee fund for the creative and cultural sector. The Minister will be aware that the sector has been constrained in its ambitions and growth potential by the unavailability of debt finance. In Ireland, the sector is almost

entirely reliant on State funding for projects of limited scale. To address this across Europe, the European Commission, through Creative Europe, provided €121 million for a cultural and creative sector guarantee fund, managed by the EIF on behalf of the Commission. The fund targets microbusinesses and SMEs by acting as insurance to financial intermediaries such as banks or credit unions. To date, financial intermediaries have been approved in Belgium, the Czech Republic, France, Spain, Italy and Romania. In December of last year, the fund had enabled loans of €130 million across those countries. In her new role, will the Minister call on Irish banks, community lenders, or credit unions to make expressions of interest to the EIF as financial intermediaries with the intention of generating access to loans for creative and cultural SMEs in Ireland? I would appreciate it if the Minister could shed any light on whether financial intermediaries are in discussion with the EIF about it.

Minister for Business, Enterprise and Innovation (Deputy Heather Humphreys): I thank all the Senators who contributed to the debate and who have shown great flexibility by taking all Stages today, because this Bill is urgent. The Senators raised issues around the supports we have for businesses. The Government and its agencies are in constant contact with businesses about Brexit preparations. We have instituted a wide range of initiatives that can be tailored to meet the needs of individual businesses, such as the Brexit score card and the market discovery fund. We are also offering financial support to help businesses prepare for Brexit. There is a €5,000 Be Prepared grant from Enterprise Ireland and the Start to Plan vouchers from InterTradeIreland which are worth over €2,000.

Some 85% of Enterprise Ireland-supported companies have Brexit plans in place so businesses are getting ready and these schemes are being drawn down. The supports are easily accessible. I have not received any complaints regarding barriers around access to any of the supports that are being offered through InterTradeIreland, Enterprise Ireland or local enterprise offices. Companies across different sectors are taking up the supports.

Last March, the €300 million Brexit loan scheme was launched which provides for short-term working capital to businesses to address Brexit-related challenges. To date 304 applications have been received and €12.4 million in loans have been approved. We should remember that businesses do not just rush out to borrow money, they must look at what their business needs are. Borrowing money must be part of an overall plan for business and it would be wrong to say they are not being taken up because businesses are putting their plans together. The first thing they must do is apply to Strategic Banking Corporation of Ireland**,** SBCI, to ascertain whether they are eligible. If they are, they then go to the pillar banks, namely, AIB, Bank of Ireland or Ulster Bank. AIB did not enter the scheme until mid-June, I think, so it is only a few months that the scheme has been up and running with all the banks. The money is available and businesses are interested in it. I would be more worried if the €300 million loan scheme was all gone by this stage because that would indicate that there was a real problem out there. It is good that businesses are considering it.

We are now identifying a gap in the market for long-term loans. The banks are not lending for terms beyond seven years and this €300 million fund, for which I am introducing the legislation, will mean that businesses can apply for long-term loans of between eight and ten years, which is something they have asked for. That is a need in the market to which we are responding.

We are also doing our upmost to ensure that businesses are aware of the various supports available to them. There has been a nationwide campaign to help businesses get Brexit ready.

Almost 4,000 participants have attended local enterprise office Brexit seminars. Some 2,350 small and medium sized enterprises have engaged directly with InterTradeIreland, whose budget I increased for 2019 to allow it to support businesses on both sides of the Border, even though there is no matched funding from Northern Ireland, due to the absence of operational institutions. However, I said that they needed the help and we were prepared to give it extra funding and it was very much welcomed. Enterprise Ireland runs ten Brexit advisory clinics across the country. There is a cross-Government awareness campaign, Getting Ireland Brexit Ready, and events have taken place in Cork, Galway, Monaghan, Dublin, and Limerick and a further event is planned for Donegal. These have been very well attended. IDA Ireland and Enterprise Ireland have taken on 90 additional Brexit-related staff to date. We want businesses to diversify into new markets. Enterprise Ireland is out there, boots on the ground, identifying new markets for Irish businesses. Just over a week ago, I returned from a trade mission to China, where there are huge opportunities. We signed deals worth €60 million to several Irish companies which can now export into China.

The Senator referred to the extra €5 million to Enterprise Ireland and IDA Ireland. That is helping them to expand their global footprint and help businesses to diversify into new markets.

The Government is providing an array of different supports to businesses, however, ultimately businesses must decide themselves if they want to avail of those supports. I am sure that Senators will have heard the very intensive radio campaign telling businesses about the supports and the Brexit advisory clinics. Ultimately, they must engage themselves. I want to use this opportunity to once again tell businesses that if they only do one thing, they should appoint one person who is responsible for Brexit and allow them to research and identify all the different supports available. They are all on the Department's website and those of Enterprise Ireland and InterTradeIreland and they can be found at the local enterprise office. The supports are there and businesses ought to draw them down. They should know that the Government wants to help them.

The Senators asked about the terms and conditions of the loan. I understand the long-term loan scheme offers up to €500,000 unsecured, which is very attractive, but they must make the business case to the pillar bank for the loan. That will offer considerable help to businesses. The maximum loan is €3 million. I thank Senators for their contributions and I look forward to working with them in progressing the Bill through the House.

Question put and agreed to.

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

Sitting suspended at 1.19 p.m. and resumed at 2 p.m.

Judicial Appointments Commission Bill 2017: Committee Stage (Resumed)

SECTION 33

Debate resumed on amendment No. 72:

In page 23, lines 6 to 17, to delete all words from and including "(1) Section 5" in line 6

down to and including line 17 and substitute the following:

"(1) Section 5 (amended by section 11 of the Court of Appeal Act 2014) of the Act of 1961 is amended by the insertion of the following after subsection (7):

"(8) Section 45A (inserted by section 33(4) of the Judicial Appointments Commission Act 2018) provides an additional basis for qualification for appointment as a judge of the Supreme Court, the Court of Appeal or the High Court.".".

- (Senator David Norris)

Acting Chairman (Senator Diarmuid Wilson): To clarify, amendments Nos. 72 to 77, inclusive, are related. Amendment No. 75 is a physical alternative to No. 74. Amendments Nos. 72 to 77, inclusive, are being discussed together and that has been agreed. Senator McDowell was in possession.

Senator Michael McDowell: When I reported progress, I had asked the Minister to set out some of the thinking in regard to Senator Bacik's amendment No. 72 and to set out his own attitude to that amendment.

Senator Ivana Bacik: I welcome the Minister. I thank Senators Norris and McDowell for speaking on the Labour Party group of amendments and, in particular, Senator Norris for proposing the amendment. These amendments are somewhat self-explanatory and I will wait to hear the Minister's response. Essentially, they seek to adjust or tweak some of the provisions in section 33 of the Bill around eligibility and qualifications for office, specifically to deal with issues around District Court judges and promotion to the High Court, and whether the Supreme Court, the Court of Appeal and the High Court should be included in section 33(1)(*b*). Similarly, with regard to the appointment of legal academics to judicial office, they seek a certain tweaking of those provisions.

I propose to adjust these amendments somewhat for Report Stage so I may withdraw them from the House on Committee Stage today. I will also be bringing forward on Report Stage further amendments to section 33 relating to a separate issue. While I will speak on it further when we come to section 33 itself, the separate issue I want to deal with is around the eligibility of in-house counsel to judicial appointment, an issue that was raised with me but too late for me to get amendments in on Committee Stage. It is around the expression "practising barrister" and whether that is aligned with the understanding or definition of "practising barrister" in the Legal Services Regulation Act 2015. It is a serious issue and a particular issue in the context of gender balance and judicial appointments, given we in the Labour Party have put forward amendments later in the Bill on the need to ensure gender diversity or, more properly, gender balance in judicial appointments.

I am conscious, from research I and others have done, that many women gravitate towards in-house counsel roles where there are more protections in regard to maternity leave, greater entitlement to leave for childcare purposes and so on. Therefore, it is for traditional reasons and reasons around culture at the Bar and among self-employed persons. I can go into this in more detail when we come to discuss section 33, although it is perhaps not appropriate to speak about it on these amendments.

I will not speak at length on amendments Nos. 72 to 77, inclusive. They are self-explana-

tory and seek to adjust or make various tweaks to the arrangements currently set out in section 33. I will await the Minister's response.

Minister for Justice and Equality (Deputy Charles Flanagan): I acknowledge what Senator Bacik has said. I would be interested in hearing from her on the matter in the discussion on the section or in the course of the amendments, whichever she deems most appropriate.

On the matter of amendment No. 72, which was moved last night in the absence of Senator Bacik and to which she made brief reference, the amendment seeks to delete part of the amendment to section 5 of the 1961 Act which is contained in section 33 of this Bill. I point out that the qualifications and eligibility framework laid down in the statute contain important safeguards to ensure that only appropriately-qualified persons compliant with the appropriate and relevant statutory provisions may be considered for appointment to the Bench and subsequently appointed.

The changes proposed under section 33 make two adjustments to what is the current and existing framework. First, it provides that a judge of the District Court with two years service can be eligible for appointment to the High Court. I emphasise "eligible for" because, listening to some of the debate last night, one would think it was mandatory. This is about eligibility and enabling.

Second, it provides that a legal academic of 12 years standing, with four years practice as a barrister or solicitor, will be eligible for appointment as a judge. Again, we are dealing here with enabling or eligibility factors, rather than the type of mandatory doomsday scenario to which we were feted last evening. While these are reasonably significant changes, I would not regard them as being particularly radical. Section 33 enables the commission to consider applications from persons in those categories and to make recommendations in respect of such persons as it deems appropriate and fit.

The amendment would remove from the Bill the new provision whereby a judge of the District Court who has served for not less than a period of two years will qualify for appointment as a judge of the High Court. I do not accept the amendment. I believe that to do so would be a regressive step and an unfortunate one on the basis that what we are doing is broadening the scope of eligibility rather than introducing any mandatory entitlement.

Section 33(1) amends the 1961 Act so as to address the anomalous situation whereby a judge of the District Court is precluded from being eligible for appointment to the High Court. Specifically, a new paragraph (d) to be inserted in section 5(2) of the 1961 Act will extend that eligibility for appointment to a judge of the District Court with a period of service of two years. As of now, to qualify for appointment to the High Court and, indeed, the Court of Appeal and the Supreme Court, practising barristers and solicitors of not less than 12 years standing may be eligible. Of course, Circuit Court judges of not less than two years standing are also eligible for appointment to the High Court. Practising solicitors and barristers must have practised for a continuous period of two years immediately prior to first-time appointment as a member of the Judiciary. Sitting District Court judges, however, no matter how long they have sat on the Bench, cannot even be considered as potential appointees to the High Court. Senator McDowell in many respects predicted the reasons for these amendments when he said he was not motivated by intellectual snobbery and that this was not a cause in defence of members of the Bar. We are merely adjusting what I and members of the Judiciary perceive to be an anomalous situation, that is, where sitting district justices, many of whom have long-standing service and

expertise, cannot even be considered as potential appointees to the High Court.

I am reminded of a debate in the Oireachtas 20 years ago, about which I would hazard a guess Senator McDowell, then a Deputy, is on the record, if he was not then engaged full time in the Four Courts. There was an active campaign by the Bar to ensure solicitors would not be eligible for membership of the High Court. That law changed many years ago and the prophets of doom were wrong. A number of former solicitors sit on the Bench of the High Court, and many of them are exemplary in the conduct of their work on the Bench.

Section 33 merely corrects an unfairness. It opens up eligibility arrangements for the appointment of district judges to the High Court. It is appropriate, even overdue, and I do not agree it should be undone by way of amendment.

Senator Michael McDowell: If the Minister is trying to introduce an irrelevant and slightly offensive tone to this debate, he started off on the right foot. He informed the House that I was probably involved in the campaign to prevent solicitors from becoming judges of the High Court, or else that I was too busy in the Law Library to participate in the debate while I was a barrister. If he checks the record, however, he will find I supported the amendment to the law to make solicitors eligible to be members of the High Court. He will also find I was involved in the drafting of the legislation that made solicitors eligible to be members of the High Court, and that I was either Attorney General or Minister for Justice, Equality and Law Reform when the first solicitors were appointed members of the High Court. If he carefully checks the record, he will find I encouraged solicitors to become members of the High Court. Far be it from how he portrays or imagines it to be, it is the diametric opposite. I was always happy with the idea that solicitors would become members of the High Court.

Although the Minister's memory appears to be fading slightly in this respect, he may recall the only precondition that was set for solicitors to become members of the High Court was that they should have experience of the workings of that court. It might be a strange precondition to apply, but it would be impossible for a barrister to practise for ten or 12 years yet never to have seen the inside of the High Court. He or she would be a very strange barrister.

In the case of the solicitors' profession, on the other hand, of which the Minister was then a member, it would be entirely possible, especially if operating in one of the larger firms in Dublin, to be an eminent solicitor yet never to have seen the inside of the High Court nor to have participated in any High Court litigation in one's life. I have been in the Four Courts in the company of solicitors who had never seen a jury sit in their lives. That is how closeted some solicitors are. I have seen solicitors who, while waiting for another case, attend a jury trial for the first time in their lives, even though they were ten or 20 years in practice.

The law was changed, I was there, I stood over it and I implemented it. I am proud of the people who were appointed on my watch and with my active encouragement to the High Court from the solicitors' profession. I am proud of them not merely because they were pioneers at the time, seeking appointment with the active encouragement of the Minister of the day, but also because they turned out to be exemplary members of the High Court and have served this country well. The implication of the Minister's barbed remarks that I was an opponent of solicitors becoming eligible to be a High Court judge is entirely incorrect. I played a significant role in making it possible and encouraging it to happen.

The Minister also said that based on my remarks yesterday he thought it was somehow

mandatory for District Court judges to become High Court appointees. I said nothing of the kind and only wishful thinking could lead the Minister to think I somehow implied it would be mandatory for district judges to become High Court judges. I am capable of reading a section, and I know the distinction between eligibility and the fact that one might or might not be selected. I made it clear, and I reiterate, that I cannot imagine circumstances in which a District Court judge would seek appointment to the District Court Bench.

Senator David Norris: Does the Senator mean a legal academic?

Senator Michael McDowell: No, a lawyer. I cannot imagine that a lawyer would seek appointment to the District Court Bench and, within two years, say he or she is in the wrong court and should be in the High Court. A person so philosophically and professionally confused about where his or her forte in law lay would need a great deal of counselling.

If one applies to be a District Court judge, one is applying for a particular form of judicial office. It is an office in which one will exercise local and limited jurisdiction, largely of a summary kind although some complex cases in the family law sector, in particular, are heard and disposed of in the District Court nowadays. I do not accept for one minute, however, that the qualities that would make someone a good District Court judge would make him or her a good High Court judge. I am not saying one could not have those qualities, but if someone opts to be on the District Court, he or she is making an application to the Government for appointment which is based on the proposition that he or she is expressing a preference to be appointed as a judge of the District Court. As we know, a District Court judge is eligible to be promoted to be a Circuit Court judge, who in turn is eligible to be appointed to be a High Court judge. What this measure is supposed to do is provide for a leapfrog exercise from the District Court to the High Court and I cannot conceive in what circumstances that would be done. It is not a matter of snobbery or anything else; it is a matter of plain common sense. It is extremely unlikely and questionable whether it would be appropriate for such a person after two years in the District Court to say, "I have had enough of this I am going to apply to be appointed to the High Court". I cannot imagine a reasonable person pursuing that career path. However, I can well imagine a judge of the District Court saying he or she would like to be a member of the Circuit Court and serving some time as a member of that court, conducting trials on indictment, jury trials, and being successful in so doing, functioning on a different level from that of the District Court. Eventually he or she would be entitled to say he or she has done several years on the Bench of the Circuit Court and has conducted complicated trials, and if there is to be an appointment to the High Court, particularly on the criminal side or whatever, his or her experience now makes him or her eligible and suitable for that position. That could very easily happen but I cannot see any circumstance in which a District Court judge would want to leapfrog directly from the District Court to the High Court because their years of experience in the District Court would not prepare them for practice in the High Court. They would be cut off from the kind of law which is practised in the High Court to a large extent and would be doing different duties as judges.

I should say also, and it is a prejudice of mine, that I do not believe in too much promotional movement of judges from one court to the other as a defined career path. I do not believe that the way to become Chief Justice is to start off as a District Court judge. That is not correct because it would seriously compromise the independence of the Judiciary if one was effectively to start in the District Court, be promoted to the Circuit Court, have the ambition of going to the High Court, the Court of Appeal and on to the Supreme Court. That is an unnatural progression and is not readily amenable to notions of judicial independence because people would accuse judges of looking over their shoulder on such a promotional career path in respect of the judg-

ments they gave.

Will the Minister explain something that I cannot follow in the text of the Bill? A 'legal academic" suddenly appears in section 45A to be inserted by this amendment. It is defined in subsection (4) as:

> a permanent member of the academic staff of an educational establishment who—
>
> (a) teaches one or more subjects in the field of law, or
>
> (b) carries out, or supervises the carrying out, of research in one or more such subjects,
>
> whether or not in conjunction with the carrying on by him or her of administrative duties relevant to that teaching, research or supervision.

A person could, for instance, be teaching business law in a university as a member of permanent staff, or some other form of law, medical law, in the faculty of medicine or whatever, or else could be researching those topics. That is the definition of a legal academic, whether or not the person is also carrying on "administrative duties relevant to that teaching, research or supervision".

Subsection (5) states:

> In the case of a person who—
>
> (a) is the head of a faculty immediately before the appointment referred to in subsection (1), the requirements of that subsection and subsection (2) shall be deemed to be satisfied if, within the period of 12 months before the person's becoming the head of that faculty, he or she was either a legal academic of not less than 12 years' standing (2 of which years shall have been continuous) or the head of another faculty of not less than 4 years' standing (2 of which years shall have been continuous), or
>
> (b) was the head of a faculty at a time other than immediately before the appointment referred to in subsection (1), any period served by him or her as the head of a faculty shall, for the purposes of that subsection and subsection (2), be deemed to be a period served by him or her as a legal academic.

The word "faculty" does not seem to be defined at all and I do not see where the phrase "head of faculty" is coming from or what exactly it means because, for instance, educational establishment is defined as a university to which the 1997 Act applies or the Honorable Society of King's Inns or the Law Society of Ireland. Are there faculties in the Law Society of Ireland and the King's Inns? I am not aware that there are. We are presumably talking about university faculties. I find it difficult to understand why a special provision is being made for somebody who used to be a lecturer or researcher but has gone on to greater things, to be the administrator of a faculty of other people who do that work but who does not do it him or herself. I have deep concerns about that. I do not know why precisely these special provisions are being made for the head of a faculty as distinct from a legal academic. Perhaps somebody would explain that to me. There are faculties in universities. In University College Dublin, UCD, where I am an adjunct professor, believe it or not, the law school is not a faculty. It is located in the faculty of arts. It has some other name now.

Senator David Norris: I think in Trinity College Dublin it is arts, humanities and social sciences.

Senator Michael McDowell: Humanities or something like that. Some other phrase is used now. The head of the law school is the dean but the dean is not the head of a faculty. In King's Inns, the dean is not the head of a faculty. I would have to check the rules. As far as I know in TCD, which is a major law school, it is a school.

Senator Ivana Bacik: Yes.

Senator David Norris: Exactly.

Senator Michael McDowell: There is no faculty involved at all. I am bit mystified as to why we are using these terms without definition and why we are making special provision for people who have done that. I can well imagine the head of the law school in Trinity going on if they have faculties in Trinity – I presume they do-----

Senator David Norris: We have all our faculties.

Senator Michael McDowell: The Senator is not losing them.

Acting Chairman (Senator Diarmuid Wilson): Senator Norris.

Senator David Norris: That was a very small interruption. The Acting Chairman should not be tetchy.

Senator Michael McDowell: The Senator is not losing them yet.

Acting Chairman (Senator Diarmuid Wilson): I am very lenient with Senator Norris. He has made several interruptions. I am just asking him-----

Senator David Norris: No, my interruptions were this morning.

Acting Chairman (Senator Diarmuid Wilson): We are trying to get through this Bill.

Deputy Charles Flanagan: Senator Norris is not at risk of losing his faculties.

Senator David Norris: That is a joke I have made. The Minister is disappointing.

Acting Chairman (Senator Diarmuid Wilson): We are trying to get through this Bill as speedily as possible.

Senator Michael McDowell: This legislation appears to have a governance picture of the law schools in Ireland which is not what happens on the ground. There is a dean of the law school in UCD, an immensely talented woman-----

Senator David Norris: The majority of people on the commission have no acquaintance with the law at all.

Senator Michael McDowell: There is a law school in TCD but I am not clear whether its head is called a dean, and the head of the law school in the college is not the head of the faculty as far as I am aware. Can I have an explanation for this elaborate provision for a job that does not exist in the Law Society of Ireland or in the King's Inns? One might be the head of the humanities faculty or whatever the old arts faculty in UCD is called but I do not know how that is

relevant to this Bill. Likewise, I do not know what the position is regarding TCD. Can I have an explanation?

Senator Niall Ó Donnghaile: Is it appropriate for me to move my amendment now?

Senator David Norris: Of course it is.

Acting Chairman (Senator Diarmuid Wilson): It is being discussed. It will not be moved formally.

Senator Niall Ó Donnghaile: I will discuss it briefly and the Chair can advise me on the right time to move it. Amendment No. 74 relates to the requirement that a legal academic must have continuous practice of four years before being considered for appointment. While we all acknowledge it is important to ensure there is considerable legal experience involved, the requirement is too restrictive. Somebody might be qualified but he or she might not have practised for four continuous years. This raises a number of considerations for the future. Generally, we should be more open to considering the appointment of legal academics, in particular to some of the superior courts where issues might be of a more technical, abstract or academic nature. Experience in that realm could be of great benefit.

People with academic experience are considered for appointment in other jurisdictions and the evidence proves that it works well. Provided the person has qualified as a barrister or solicitor, that he or she qualifies in every other respect and that he or she is a fit and proper person with good experience and knowledge of the law to serve in such a position, it makes sense that he or she would be considered for appointment. I am also taking into account that the current provision might have implications for those who have left practice for a period such as female barristers who have taken a leave of absence at various points for personal reasons. That is the general approach in other jurisdictions and it makes sense. It could be taken into account as we move forward with this legislation. That is what amendment No. 74 seeks to do.

Senator David Norris: To follow the comments of Senator Ó Donnghaile-----

Senator Niall Ó Donnghaile: That is a good effort. I appreciate that.

Senator David Norris: Tá Gaeilge go flúirseach agus blas álainn dílis Protastúnach agam agus ba mhaith liom an Ghaeilge a labhairt go minic i Seanad Éireann. Nuair a bhím ag caint as Gaeilge bíonn eagla mhór ar Fhianna Fáil.

Senator Niall Ó Donnghaile: Bulaí fir.

Senator David Norris: Following that brief excursion into the first national language, which carries supremacy when ruling on constitutional matters, I wish to comment on amendment No. 74. It states, "Subsection (1) shall only apply to a legal academic who has qualified as a barrister or solicitor..." and rules out the four consecutive years of practice. That does not go far enough. I do not see why they must have any experience as either barristers or solicitors. After all, these academics are teaching the barristers and solicitors so presumably they know more about it than the barristers and solicitors. Why not let them at it? There is no reason, other than the closed shop professional school nonsense one gets from both barristers and solicitors from time to time, that they should have to qualify as barristers or solicitors. I reiterate that they are teaching the barristers and solicitors. Is the teacher not as good as the pupil? Of course the teacher is. It is absolute nonsense.

I do not believe the Minister answered Senator McDowell's point regarding a high-flying academic. Why on earth would a high-flying academic want to go to the District Court and deal with people cycling on the pavement? It is an absurdity. I cannot envisage a situation where such an academic would demean himself or herself to seek appointment to the District Court.

Amendment No. 76 deals with section 33(4)(*a*) and (*b*) which states: "... (a) teaches one or more subjects in the field of law, or (b) carries out, or supervises the carrying out, of research in one or more such subjects, ...". One or more subjects means the person could teach one subject. That subject could be Roman law, which is not of great use in the courts of Ireland aside from an occasional casual reference. With regard to paragraph (b), "...carries out, or supervises the carrying out, of research in one or more such subjects, ...", supervising research is very different from carrying it out. The amendment differs by stating: "In page 24, to delete lines 15 to 17 and substitute the following: "(a) teaches one or more subjects in the field of law, and ...". The word "and" replaces the word "or". It has the two requirements, including "(b) carries out research, or supervises the carrying out of post-graduate research, ...". It requires a higher stage of academic development. It is a change from any kind of research to postgraduate research.

I support Senator Bacik's amendment, which proposes to delete "continuous" regarding the four years required and insert "cumulative". However, I would be much happier to get rid of the whole thing. What is wrong with teachers? Surely to God a professor of law is good enough to be a judge. A professor of law at a reputable academic institution is teaching people and is the instructor of the judges. Surely the instructors are as good as the "instructees".

Senator Ivana Bacik: I thank the Minister and my colleagues for elaborating on the amendments and raising so many points. I am grateful for the opportunity to have this debate and, as I said, I hope to adjust some of these amendments between now and Report Stage. Listening to the debate helped to clarify my mind on this. I accept the Minister's point about sitting District Court judges, to address amendment No. 72 first. His response was almost entirely directed to that amendment. The calibre of District Court judges has improved enormously, and those judges are currently being promoted to the Circuit Court and from there to the High Court. However, I am also conscious of the motivation for our amendment which is, as Senator McDowell said, that there is a concern about undue emphasis on promotional opportunities within the Judiciary and the compromising effect that can have on judicial independence. That is not to say it has that effect-----

Deputy Charles Flanagan: I do not disagree.

Senator Ivana Bacik: I accept that, which is why I must re-examine the amendment. Perhaps it is too much to remove that provision, as we propose to do in amendment No. 72, but two years may be simply too short. It might be preferable to reformulate the amendment to state four years or the like. I will consider it. Senator McDowell has pointed to the leapfrog issue. Somebody could be a serving District Court judge for five years. I practised in the District Court for years as a junior barrister when I was in practice and some of the most difficult, tricky cases are tried in the District Court and they get little publicity. There are some quite technical issues, making it quite difficult to practice in the District Court in many ways. I would never underestimate that. If somebody-----

Senator Martin Conway: The Senator could have been Chief Justice.

Senator David Norris: It would not be the first Trinity woman.

Senator Martin Conway: She would be very good.

Senator Ivana Bacik: There is an excellent Trinity woman in the form of Chief Justice Susan Denham, I am glad to say.

It is worth reflecting on whether it is sufficient to refer to a five-year period spent as a District Court judge. One might have been President of the District Court, for example, and such an individual certainly should be eligible to go to the High Court. Therefore, I do not believe the leapfrog point is necessarily a good one in all cases. My original purpose in the amendment, to delete all the wording, was too much. We should leave open the possibility, as at present, and tweak it a little further. I am glad to have had the opportunity to debate amendment No. 72.

Amendment No. 73 concerns the eligibility of legal academics. As a legal academic, I have a certain interest in it. What we were really trying to do was tweak the provisions. In amendments Nos. 73 and 75 to 77, inclusive, our intention is to adjust somewhat the requirements on academics' eligibility for appointment to judicial office. I will withdraw the amendments and reconsider them for Report Stage.

Senator David Norris: Not yet. We are not finished with them.

Senator Ivana Bacik: Once we have considered them a little more, perhaps.

I wonder about eligibility for the appointment of academics to the District Court and Circuit Court. It seems to be a more appropriate route to the High Court, Court of Appeal and Supreme Court. I am not, however, wedded to the idea and that is why I am not going to push amendment No. 73 at this stage. I will withdraw it and I may resubmit it for Report Stage.

On amendment No. 75, on substituting "cumulative" for "continuous", the point is important but it could be made in respect of other passages in section 33 as well as line 10 on page 24. I am conscious that "continuous" also appears at line 3 and in subsection (5), at lines 26 and 28. I ask the Minister to consider whether "cumulative" would be preferable to "continuous" in all these cases. I press the point in amendment No. 75 but I am conscious I did not submit amendments in respect of all the references to "continuous" throughout section 33. Therefore, I will come back to this on Report Stage to remedy it if the Minister is not willing to accept the point.

With regard to the substantive point in amendment No. 75, we are suggesting that somebody who has practised as a legal academic for a cumulative period of four years should be eligible. It should not necessarily be a "continuous" period. I am conscious that there may be all sorts of reasons a period of practice might be interrupted — for example, for sabbatical leave spent teaching at an institution abroad, which is very routine and which can be very prestigious and greatly benefit academic research and teaching. It would also benefit the Judiciary. There may be an interruption for reasons associated with childcare and maternity leave, for example. Therefore, the reference to a "continuous" period might be problematic. It would be preferable where the word appears throughout the section to refer instead to "cumulative". That is the substantive point in amendment No. 75.

On amendment No. 76, we are just tightening up the requirement, as Senator Norris pointed out. The amendment seeks the insertion of, "teaches one or more subjects in the field of law", and, "carries out research, or supervises the carrying out of post-graduate research". We are pointing out that it should be postgraduate research. I do not necessarily believe this is the best formulation but we are just trying to put in a reference to postgraduate research.

Amendment No. 77 proposes to change the definition of "university" to which the phrase "educational establishment" applies. Again, I will consider this for Report Stage.

Let me refer to Senators' point on the head of faculty. Senator Ó Domhnaill addresses this in amendment No. 74. As others have said, the language in the legislation is somewhat problematic. In Trinity, for example, we have a law school and a faculty of arts, humanities and social sciences. The head of law is the head of law and not a dean of a faculty or anything like that. I am conscious that the proposed subsection (7) states any reference to the head of faculty shall be construed as a reference to the dean, etc. That deals with the point. I am not quite sure why section 33 refers so much to "head of faculty" in any case. That is the more substantive point. The reference seems quite specific. There are so few law schools in Ireland and so few heads of faculty that it almost sounds somewhat personalised. That is why there is a slight concern.

Senator David Norris: In Trinity, it would be the faculty of arts, humanities and social sciences.

Senator Ivana Bacik: No, because the proposed subsection (7) implies that "head of faculty", where it appears in the section, shall be construed as a reference to the head of the law school in Trinity's case. In UCD, it is also the head of a school. It is just a global term used to cover all heads of schools. I am just not quite sure why there are so many references in the section. It seems a little clumsy to me. Overall the section could be tightened up and improved.

The Minister kindly said he might accept my points on in-house counsel at this point. I am happy to wait and address them when addressing section 33. The points are also relevant to section 35. Could I make these points because, as I said, I want to reserve the opportunity to submit amendments on Report Stage?

Deputy Charles Flanagan: I invite the Senator to make the point.

Senator Ivana Bacik: In the interest of time, I will. These are important points but they were raised with me subsequent to the Bill commencing Committee Stage. Therefore, I could not table amendments on the matter for Committee Stage.

The issue raised appears to involve a somewhat technical oversight, but with potentially serious consequences. It concerns the relationship between this Bill and the Legal Services Regulation Act 2015, which precedes this Bill. The serious consequence is that there may be discrimination against practising barristers currently employed as in-house lawyers because the legislation may treat them differently and put them at something of a disadvantage by comparison with solicitors doing exactly the same work in-house.

Let me explain why the issue arises. The expression "practising barrister" in the legislation that governs eligibility for judicial appointment — principally the Courts and Court Officers Act 1961, referred to in section 33, and also the Legal Services Regulation Act — is not defined and is not aligned with the new definition of "practising barrister" contained in the 2015 Act. As a result — the point has been made to me and I am still working through it — barristers employed as lawyers in an in-house capacity may not be regarded as being in practice for the purpose of eligibility for judicial appointment while solicitors working side by side with them may be eligible to apply provided they retain their certificates of practice.

I have canvassed a number of in-house lawyers on this. It is certainly a matter of real concern to many. It is a serious issue, particularly for many women who in order to achieve a

work–life balance or for another reason left the Bar, in particular, because it is more precarious and involves more self-employment, to practise law in-house or in the State sector. The view that they should be eligible to apply for a judicial appointment is very much welcomed. That is one reform that is very welcome in the Bill.

Let me examine the technical point. Section 2 of the Legal Services Regulation Act has a broad definition of "practising barrister". I believe that section has been commenced, with the role of practising barrister now established under the Legal Services Regulation Act. This means barristers practising in-house will be legally recognised as practising their profession. That should deal with the point but it seems the section 2 definition is applicable only for the purposes of the 2015 Act.

I seek clarification on whether that definition can apply within this Bill given that it seems to be the Courts (Supplemental Provisions) Act 1961, as amended, that sets out the eligibility criteria for judicial appointment. The 1961 Act does not define "practising barrister" as an expression. In a 1981 case, Walshe *v*. Murphy, *Irish Reports*. Vol. 275, the Supreme Court held that a practising barrister is a person who has been called to the Bar and offers himself or herself at hazard to take work. It does not include a barrister employed in-house. That is clearly superseded by the 2015 Act. Unless, however, this Bill specifically adopts the new definition of "practising barrister"-----

Deputy Charles Flanagan: Has the Senator the definition from the 2015 Act?

Senator Ivana Bacik: I should have brought the definition. I am sorry. I am reading from the note I have been given. It is from a constituent.

Deputy Charles Flanagan: I can get it anyway before we have considered these sections.

Senator Ivana Bacik: I am told the section 2 definition from the 2015 Act has a broad definition of "practising barrister", to include employed barristers engaged in the provision of legal services. I understand the Act has now been commenced, but only very recently because the Legal Services Regulatory Authority has had to establish a roll of practising barristers. It is only as a result of this that the section 2 definition applies.

I understand barristers practising in-house will become legally recognised as practising their profession. Again, I apologise for not having all the detail. I can certainly check whether the provision has been commenced. The definition is the preferable one. The question is whether it applies specifically within sections 33 and 35 of this Bill. If we do not adopt the 2015 Act definition, it is arguable that only practising barristers within the meaning of the 1961 Act, as interpreted in the Walshe *v*. Murphy case would apply, the effect being that barristers working in-house would have less eligibility or would appear to be ineligible compared with solicitors doing exactly the same job in the same place. Clearly, that is not the intention of this Bill.

It may be dealt with elsewhere in the Bill but it has certainly been suggested to me that it is an oversight that could easily be fixed to ensure that the term "practising barrister" is simply defined consistently across the legislation. The issue raised with me by an individual certainly shows the difficulty with this Bill and this body of legislation, and the need to ensure consistency across them. Will the issue fix itself once the authority is fully operational and the role of practising barrister is up and running? Possibly but, in the interests of certainty, it would be preferable to have a clear consistency and a clear adoption of the 2015 Act definition.

In the interests of saving time, this point is also relevant when we will come to debate section 35. In particular, subsection (5), which is very much related to section 33, states: "the Commission shall have regard [...] to the nature and extent of the practice of the person concerned in so far as it relates to his or her personal conduct of proceedings in the Supreme Court, the Court of Appeal and the High Court whether as an advocate or as a solicitor instructing counsel in such proceedings or both". This section 35(5) provision appears firmly based on a traditional division of the professions. Again, the question is how does it affect in-house lawyers, whether originally barristers or solicitors, or either continuing with practising certificates as solicitors or continuing on the role of practising barristers. Again, we need to future-proof sections 33 and 35 to ensure that both provisions take account of in-house lawyers and to ensure there is no disparity of treatment as between those in-house lawyers who are trained as barristers or who are trained as solicitors.

That is the specific issue that has been raised with me. I am conscious it has been a matter of concern for quite a number of people and that it may have an impact more particularly upon women. However, clearly it is a more general issue about in-house lawyers, both barristers and solicitors, the need to ensure that the legislation applies consistently to both and that there is consistency across this Bill, the 2015 Act and the earlier 1961 Act. I am grateful to the Minister for dealing with this point now. I will not have to repeat it when we come to deal with section 35 but, clearly, it is relevant to both sections.

Senator Lorraine Clifford-Lee: I want to refer to the District Court on foot of some comments that were made. I concur with Senator Bacik regarding the work that is done in the District Court. I practised as a solicitor for many years in the District Court and far from being demeaning to high-flying academics, some of the most complex and difficult family law matters, of which I have had experience, are dealt with at District Court level. Many legal academics would like to practise in the District Court. The fact that complex family law matters are dealt with in the District Court is another issue and perhaps they could be dealt with in dedicated family law courts-----

Senator David Norris: Yes, they should.

Senator Lorraine Clifford-Lee: -----but that is a completely separate issue. Currently, District Court practice can be very complex, and very valuable work is being done there. Therefore, I do not believe any high-flying legal academics would be demeaning themselves by applying to be a judge in the District Court. Some complex and very difficult issues such as guardianship, domestic violence and access are dealt with in the District Court. I just wanted to put that on the record.

Senator Niall Ó Donnghaile: I am conscious when I speak on this Bill that I am among some particularly eminent legal minds. I am genuinely appreciative and in listening mode when it comes to what those Members have said about my amendment.

Senator Martin Conway: The Senator is not too bad himself.

Senator Niall Ó Donnghaile: I do not know about that but go raibh maith agat. I am listening and it is worthwhile hearing those Senators' views on it. I am not at a great divergence from Senator Norris's thinking on it. I heard what he said about amendment No. 74 and having four years experience in practice. I agree with everything he said about the wherewithal and ability of legal academics, and in this amendment I was seeking to bolster that with a degree of

practical experience. That is all it seeks to do. It does not seek to take from anyone's ability.

I hope I did not come across as being facetious because I appreciate Senator Norris's intervention, as Gaeilge, in the mother tongue. I had a cheeky thought, which is something I am sure the Minister would dread, that if Senators Norris and McDowell had made all their contributions in both English and Irish, what point would we be at in dealing with the Bill?

Senator David Norris: I remember when that was done.

Acting Chairman (Senator Diarmuid Wilson): Senator Ó Donnghaile should spare a thought for the Chair.

Senator David Norris: The late former Senator Pól Ó Foighil made a submission in English and the next morning he came in and made the same submission, as Gaeilge, for two hours. That was a filibuster and a half.

Senator Martin Conway: I agree regarding academics and the important role they play. It is hard to get an absolute fix in that regard. I am sure Senator Norris would consider what he said was an oversight and that he would want to withdraw his comments regarding the work of the District Court being demeaning. Its work is extremely important. I am sure the President of the District Court would be very upset if he does not withdraw those comments.

Senator David Norris: I will not withdraw anything.

Deputy Charles Flanagan: In the first instance, I acknowledge and welcome what Senator McDowell said and his placing on the record his acknowledgement of the importance of the eligibility of solicitors for consideration for the High Court. I accept, without equivocation, what he said. Mind you, I was minded to commence my contribution today in view of the Senator's comments last night when he stated at length, and has continued to state today, his very strong view of the unsuitability of a judge of the District Court for eligibility for elevation to the High Court, having regard to the fact that most members of the District Court Bench have formerly practised as solicitors. I felt that Senator McDowell was being consistent but he was not. I am pleased now that he has placed on record his work of almost 20 years ago and I acknowledge it.

Senator David Norris: And the Minister will withdraw his comments.

Acting Chairman (Senator Diarmuid Wilson): Senator Norris, we are trying to get through this as speedily as possible. The Senator is not helping matters by interrupting the Minister.

Senator David Norris: No. We are certainly not trying to get through this as speedily as possible.

Acting Chairman (Senator Diarmuid Wilson): The Senator is not exclusively interrupting the Minister. He seems to be interrupting everybody.

Senator David Norris: We are trying to draw this out as long as we possibly can, or at least I am.

Acting Chairman (Senator Diarmuid Wilson): Allow the Minister to continue without interruption.

Deputy Charles Flanagan: Senator McDowell spoke at length about section 33(5), the

purpose of which is to consider the fact that a head of faculty may not at the time of appointment meet what would be the precise definition of a legal academic. Subsection (5) ensures that this person who may, in effect, be the most suitable person for appointment is not ruled out of consideration.

I note the Senator did not mention subsection (7). Senator Bacik was right in her remarks on that subsection, which seems to deal with Senator McDowell's query regarding the apparent different arrangements in different colleges, with having a faculty, being a department or a group of teachers or a group of academics in one college, a faculty being a department in another, and a reference to a head of faculty, director or dean, which was mentioned. These have been included in subsection (7), which I believe will meet the Senators' concern regarding eligibility.

I thank Senator Bacik. I am very interested in the point she makes. The Senator indicated that she is prepared to look further at the wording she has put forward in her amendments, with a view to addressing further some issues on Report Stage. I would also be very happy in seeing if we could reach a meeting of minds. The Senator made a number of important points and, while this probably will not lead me to accept her amendments, having regard to what she stated, she probably would not expect me to do so. She made a number of points that I would certainly be prepared to consider further.

3 o'clock

On amendment No. 73 and the proposed new section 45A to be inserted into the 1961 Act, this provides for an initial basis for qualification for appointment as a judge, opening up eligibility for appointment to a legal academic of not less than 12 years' standing who, immediately before such appointment, has been employed as a legal academic for a continuous period of at least two years. In addition, under the terms of the new section 48A, such a legal academic must be a barrister or solicitor at the time of being appointed as a judge and must have practised as a barrister or solicitor for a continuous period of not less than four years. Similar requirements with some modification to take account of the role apply in the case of a person who is deemed to be a head of faculty. Amendment No. 73 removes reference to both the Circuit Court and the District Court. The proposed new section 45A(1) would confine the scope of qualification by a legal academic for appointment only to the three superior courts. I am not sure if Senator Bacik meant that but it is what we have in front of us. I do not see an immediate reason, provided the academic reaches the level of competence or experience that the section contains, that a legal academic might not wish to be considered for appointment to either of the lower courts. That is why I disagree with Senator McDowell. He makes very strident expressions as to the disposition of legal academia. Perhaps he is right but what we are doing here is merely broadening the eligibility. I am not sure Senator McDowell can speak for all academia in the manner in which he does.

Senator Michael McDowell: I am not purporting to do so.

Deputy Charles Flanagan: There may well be legal academics who are especially suited to be appointed from time to time, particularly in the context of their experience or level of expertise. In any event, I would be prepared to come back to this issue with Senator Bacik.

I have an open mind on amendment No. 75. The proposed new section 45A, which deals with academics, relates to section 33(3) of the Bill, which provides for qualification in these cases only of a legal academic who at the time of appointment is a barrister or solicitor practising for a period of four years. Senator Bacik wishes to change the reference in the case of a

barrister in practice from "continuous" to "cumulative". I think the Senator makes an important point. Let us see if we can reach agreement on Report Stage. It is an interesting point and I do not have an immediate disagreement with it. I do acknowledge what Senator Bacik has said to the effect that it may require further consideration. I would be happy to have people engage on that issue.

Senator Bacik has stated that amendment No. 76 may require tweaking on Report Stage. As it stands, the existing subsection provides that a legal academic means a permanent member of staff of an educational establishment, which is defined elsewhere, who teaches one or more subjects in the field of law or who carries out or supervises the carrying out of research in one or more such subjects. Senator Bacik wishes to replace "or" with "and" and add the term "postgraduate" so the reference is now to "postgraduate research". Having listened to the Senator, my feeling is that the overall effect here is probably to make it more difficult for a legal academic to get over the line. I am not really sure if that is what is intended by Senator Bacik but I would imagine not.

Senator Ivana Bacik: No.

Deputy Charles Flanagan: I am concerned that the tightening of the text might result in matters being somewhat more unduly restrictive and I am not sure that is the point the Senator makes. If that is the result, I would be concerned. If it is not the result, my inclination is to accept it but I would not wish there to be an unintended consequence of restriction.

In respect of amendment No. 77, Senator Bacik wishes to delete the reference to King's Inns and the Law Society from the meaning of "educational establishment", which would restrict the meaning to a university in the ordinary sense, if I may use the word "ordinary" in the presence of Senator Norris. In any event, I am not really certain that this is any advance at all. I have doubts about the necessity or desirability of limiting or restricting on the basis that I do not see a reason that membership of the academic staff of the King's Inns or the Law Society would not amount to a qualification of a person.

Senator David Norris: Of course it should.

Deputy Charles Flanagan: Provided, of course, that other conditions of application were met. I acknowledge what appears to be agreement on the part of Senator Norris. I am not inclined to accept the proposed change in this instance.

If I may return briefly to Senator Ó Donnghaile's amendment No. 74, it would have the effect of removing two important elements from the requirements for eligibility of legal academics. It would remove the requirement to be a solicitor or barrister at the time of appointment, and it would remove the requirement of a practical experience of the courts over a number of years, whether that be continuous or cumulative. The Bill stipulates a period of four years. I am not inclined to accept the amendment on the basis that I do acknowledge that the Bill has evolved somewhat from the general scheme published two years ago. In the general scheme, head 26(3) proposed to enable a legal academic of not less than 12 years' standing who qualified as a barrister or solicitor to be considered for appointment regardless of whether that person had practised at all as a solicitor or a barrister. In the proposed new section 45A we are opening up eligibility to a legal academic of not less than 12 years' standing, provided that such a legal academic is a barrister or solicitor upon their being appointed and has practised as a barrister or solicitor for a continuous period of not less than four years. Similar requirements for the role

apply in the case of a person who might be a head or dean of faculty. The reason for the departure from what was in the general scheme to what we have now was a feeling that it might have been more desirable to ensure legal academics appointed to the Bench had an appropriate level of experience of the practice and procedure of the court. Senator McDowell referred to this early in the debate in the context of the importance of having that practical experience and being knowledgeable of the procedure of the court. The practising qualifier is an important additional element with which I am not disposed to dispense. I do not see a wholly convincing argument for the amendment but I appreciate the intention behind it. I invite Senators McDowell and Bacik, both of whom have considerable practical experience, to go as far as to agree with me on the point I make in that regard.

Senator Ivana Bacik: I thank the Minister for his comprehensive response. He did not respond to me on the other point about in-house lawyers but I am happy to wait for that.

Deputy Charles Flanagan: I can do so briefly.

Senator Ivana Bacik: We can return to that.

On the amendments, I welcome the widening of eligibility for appointments to judicial office to include legal academics, which is an important and positive reform. In putting amendments forward, Senator Ó Donnghaile and I are trying to ensure the section works, that it is not too cumbersome and so on. Specific criteria for eligibility generally are also welcome, and I note what Senator McDowell said about the appointment of solicitors and so forth.

On amendment No. 72, I am grateful to the Minister for indicating he is willing to re-examine this, as am I. I indicated I will withdraw that amendment and resubmit it on Report Stage to see whether a better approach can be taken. It is too hasty to delete the provision as I had suggested in the amendment and, therefore, I will withdraw it.

On amendment No. 73, I take Senator Clifford-Lee's point, which is similar to my point about District Court practice. She is quite right about family court practice. I did a good deal of childcare work in the District Courts, in what used to be known as the health board or HSE courts, where complex legal issues are raised routinely. I also did much criminal work in the District Courts, where significant decisions are made daily about locking people up and detaining them in custody for some time. On reflection, I was wrong to limit academic appointments and to rule out the Circuit and District Courts. I do not intend, therefore, to move the amendment.

On amendment No. 75, I am again grateful to the Minister for stating his open mind to the question of continuous versus cumulative practice. This issue is more relevant to practising solicitors as it is easier to take time out without losing practice if one is employed by a solicitors' firm. Where one is working on a self-employed basis as a barrister, it is clear that a continuous period may be necessary to build up a practice. It depends on the nature of the practice, however, and someone could be abroad on sabbatical for a year and still pick up practice on his or her return. I stand by my point, therefore, that continuous practice might be too cumbersome and cumulative might be preferable, but I will not move that amendment on the basis that the Minister indicated he will consider the matter. I will also have to reconsider it because we should have tabled amendments, which refer to all the places in the text of section 33 where the word "continuous" is used rather than only one.

I do not intend to move amendment No. 76, which would make the requirement unduly

restrictive. Nonetheless, it might be worth tabling a different amendment on Report Stage with a reference to postgraduate research, which might be significant. I will not move it in its current format because the intention is not to make it unduly restrictive for legal academics to seek judicial appointment.

I also do not intend to move amendment No. 77. I was wrong to remove a reference to King's Inns and the Law Society, and I am grateful to the Minister for making that point.

It is clear this legislation must be read alongside the 2015 Act and the changes to legal education envisaged in that. We must be mindful of that, and by "we", I mean those of us in opposition who are tabling amendments as well as those engaged in formulating the legislation. I have indicated what I will do with the amendments but I am conscious we have not come to each of them and that I will have to deal with them formally. I reserve my right on Report Stage to return to them, and I await the Minister's response to the point about in-house lawyers, which is a separate point to these amendments but which arises out of sections 33 and 35.

Senator David Norris: I am glad my colleague and friend, Senator Bacik, will not move amendment No. 77.

Senator Ivana Bacik: I thank the Senator.

Senator David Norris: I assume she has no intention of reintroducing it on Report Stage. It would be complete nonsense to exclude the Honorable Society of King's Inns and the Law Society, which are the two premier educational establishments for the legal profession. I was going to say I doubt the Senator read the amendment before she submitted it but I am sure she had. It is possible she did not realise the repercussions of it. It would be a nonsense and I am glad she will not move it.

Subsection (4) of the new section 45A, which will be inserted in the 1961 Act by section 33(4), on the definition of "legal academic", states:

> Without prejudice to subsection (5), in this section 'legal academic' means a permanent member of the academic staff of an educational establishment who—
>
> (a) teaches one or more subjects in the field of law, or
>
> (b) carries out, or supervises the carrying out, of research in one or more such subjects,
>
> whether or not in conjunction with the carrying on by him or her of administrative duties relevant to that teaching, research or supervision.

The lines (a) and (b) are separated by the word "or", which implies there is a natural division. It also implies one could carry out or supervise the carrying-out of research in one or more subjects without teaching. I have never come across this, and I taught in the University of Dublin, Trinity College, for 30 years. I never came across a situation where a permanent member of the academic staff simply carried out or supervised research. I put it to the Minister that the criteria are clearly separated, which suggests an academic could do nothing other than supervise research, but that is simply not the practical situation. I ask him, therefore, to reconsider that provision.

It also seems the final two lines are redundant because they state, "whether or not in conjunction with the carrying on by him or her of administrative duties relevant to that teaching,

research or supervision". Who raised this? Why should it be there at all? Nobody is talking about it, and I do not see why the carrying-on of administrative duties should be referred to at all. It can just be left out. If it states "whether or not", that means we will ignore it and have nothing to do with this administrative stuff. Why then is it inserted at all? I do not see the reason for it.

Senator Michael McDowell: I hope Senator Norris will not take offence at this, but I must agree that his claim that high-flying academics will demean themselves by becoming judges of the District Court is slightly unfortunate.

Senator David Norris: I hope I do not appear in the District Court any time soon.

Senator Michael McDowell: As he is not disposed to withdrawing that phrase, I must express my disagreement with it because the position of district judge is an important constitutional office in our judicial system. The District Courts and the Circuit Courts may be courts of local and limited jurisdiction, but nobody demeans oneself by becoming a judge in any of those courts. When the Senator used the phrase "high-flying academic", he probably had professors in mind who are unlikely to say at some stage of their career that they would give up being a professor and turn instead to being a judge in the District Court. It sounds unlikely but, as the Minister emphasised, it is purely a matter of eligibility. If someone was eligible to be a High Court judge, it seems remarkable he or she would be ineligible to be a District Court judge, but I accept the Minister's point. I am not quite clear why someone would want to do that.

In early 2002, when I occupied the position of Attorney General, and John O'Donoghue was Minister for Justice, Equality and Law Reform, legislation was passed to provide for solicitors to become judges of the High Court. At that time, the Legislature specifically provided in the Act, in section 8, that "in the case of an appointment to the office of ordinary judge of the Supreme Court or of ordinary judge of the High Court, has an appropriate knowledge of the decisions, and an appropriate knowledge and appropriate experience of the practice and procedure, of the Supreme Court and the High Court". That is still the law of the land and will stand to be repealed by this statute because the JAAB provisions will be swept away. That provision was designed to ensure that while someone could be a practising barrister or solicitor, it might be the case that they might never have darkened the door of either the High Court or Supreme Court at all. In 2002, the Legislature said that if a person wished to be appointed to either of those courts, that the JAAB would have to be of the opinion that the person being recommended had an appropriate knowledge of the decisions and an appropriate experience of the practice and procedure of the Supreme Court and High Court.

We have not reached the idea of an in-house solicitor or barrister, to which Senator Bacik referred. There is no doubt that it is complicated but it would be possible for someone to be the in-house solicitor of a building society and to have never seen the Four Courts in his or her life. Under the current JAAB legislation, the board was precluded from recommending people, be they barristers or solicitors, for appointment to the High Court or the Supreme Court, as then was – the Court of Criminal Appeal did not exist then – unless they had what was provided for in law. They had to have "an appropriate knowledge of the decisions," and, therefore, they had to be learned in the case law of those courts and, second, they had to have "an appropriate knowledge and appropriate experience of the practice and procedure, of the Supreme Court and the High Court". Senators Boyhan and Craughwell and I seek to maintain this requirement in section 35, so that it would not be possible to come into those courts as a neophyte who knows little or nothing about their practice, procedure or case law. This is very important.

Senator Norris, in making a different point, laid the ground for the point that I make now. He said that a professor of law teaches law students, ergo, he should be able to do what they do. I did not study law in university but I did study King's Inns subjects in UCD which was then possible. For my arts degree in UCD, I took economics, politics, Roman law and jurisprudence. I did so as the alternative was statistics, and my mind would go blank at the sight of a square root sign. I was never happy at the sight of square root signs, cubes, sigmas and all the rest that one had to master to become proficient in the science of statistics. I, therefore, decided to take the other option, which was what remained of legal and political science that later became group 9A in the arts faculty. I was lectured in Roman law and jurisprudence, happily by the late John Maurice Kelly, who was a wonderful lecturer. At the time, another person lectured in Roman law. As Senator Norris noted, someone might teach Roman law and qualify for appointment. It does not follow that teaching Roman law as a historical subject would be an eligibility criterion for being a member of the High Court or Supreme Court.

I understand that the Minister cannot be prescriptive and say that someone must lecture in the basic core subjects, but the mere fact that someone happens to be a professor or a lecturer in a law faculty, or a commerce faculty – in UCD this became the School of Business but I do not know its name now – and lecture in some aspect of law in a university does not mean that a person is likely to be a good candidate for a promotion to the Judiciary, and currently, the JAAB cannot recommend this, for the reasons outlined in section 8 of the 2002 Act.

This brings me to what Senator Bacik said about in-house lawyers. There are many in-house lawyers, in semi-State bodies and the like, for whom I have the greatest of time, who almost act as attorneys general for the semi-State bodies. I can see it of those people. However, I can imagine the case where someone is described as an in-house lawyer who might be a lawyer to a large supermarket chain. In the case of those types of people, one must ask oneself whether a person employed in private enterprise and having no day-to-day involvement in the practice of law in the courts sense, qualifies to be a judge in the Court of Appeal or the Supreme Court. I am deeply worried about the Minister repealing the 1996 Act, insofar as it relates to the Judicial Appointments Advisory Board, and the amendments made to it in 2002 which said that one could be an in-house barrister or solicitor but must demonstrate practical experience of the superior courts before being appointed to them. That will be swept away. The requirement for practical experience will be got rid of. That is why the requirement that one has practised as a barrister or solicitor before becoming a legal academic or in conjunction with being a legal academic is important. That used to often be the case, although Senator Bacik may correct me as to whether it is as fashionable now to do a bit of both; I know that some of our most eminent judges practised and lectured at the same time.

Senator Ivana Bacik: They still do that.

Senator David Norris: Senator Bacik is a prime example.

Senator Michael McDowell: Senator Bacik herself is an example of that. I have no problem with that. I think that is great. I am quite happy with the idea that if somebody had practised for six years as a solicitor and then sought a post at Trinity College, that after accumulating the relevant years of experience as a legal academic there, that person would be eligible for appointment to the Judiciary. I have a problem with us sweeping away, as one of the criteria for recommendation to the Government, the requirement which now exists and has existed since 2002 that a person should have practical experience of the operation of the courts. In other words, somebody who has literally never seen the inside of a court could be eligible to

be made a judge. That is a bad idea.

Senator Anthony Lawlor: They may have a bit more common sense than most judges.

Senator David Norris: Where did Senator Lawlor come from?

Senator Michael McDowell: Senator Lawlor always comes in-----

Senator David Norris: Pop-up Senator.

Senator Michael McDowell: -----with these little *mots justes*. I do not know what point he is making. Our Judiciary is excellent. It is not the case that somebody who has just seen the inside of a court is as good as a candidate from the Judiciary.

Senator Anthony Lawlor: Some 12 good men on a jury.

Senator Michael McDowell: Service on a jury does not make one an eligible full-time judge.

Senator Anthony Lawlor: They decide whether a person is guilty or innocent.

Senator Michael McDowell: It is absurd to suggest-----

An Cathaoirleach: Please address the Chair.

Senator David Norris: Senator Lawlor has a remarkable faculty for stating the obvious.

An Cathaoirleach: The Senator is addressing issues to the Minister and maybe the Minister is better qualified to respond rather than delaying proceedings with unnecessary cross-fire.

Senator Anthony Lawlor: Cross-fire can be good too.

An Cathaoirleach: If Senator Lawlor puts his name down to speak, I will let him in. I have no problem with that but I do not want interruption of the person in possession.

Senator Anthony Lawlor: Yes, your honour.

Senator Michael McDowell: I ask the Minister to indicate why the amendments made in the Act of 2002 to the Judicial Appointments Advisory Board provisions in the 1995 Act are to be done away with and the requirement for appropriate experience of the practice and procedure of the Supreme Court and the High Court to now be dispensed with as a criterion for eligibility. Why would we do that at this stage, with this having been part of our law for 16 years? This anticipates our amendment to section 35. Listening to the discussion here about legal academics and such, it is slightly worrying that insufficient emphasis has been put on the fact that one should know what one is doing, how courts function and that one should understand what makes a good judge and a bad judge. One of the best ways is to watch judges in practice. It is very hard for somebody who has never seen a judge adjudicate in any case to have a clear understanding of what makes a good judge or a bad judge. That applies to the lay majority aspect of the Bill.

Senator Bacik has a number of amendments. She is keeping her powder dry with them, which is an option she has and so be it. I am not satisfied that the Bill in its present form is sensible. I do not believe that two years of experience in the District Court should render one eligible to go to the High Court. It is not a good idea.

Deputy Charles Flanagan: I attract Senator McDowell's attention to section 35(3) which seems to me to meet most of the grievances he has put forward relating to the change from the 1996 Act and the 2002 Act to the current Bill. The Senator will be aware, with the quotation from the Courts and Court Officers Act 2002, that the text has been evolving to cater for the fact that solicitors bring a different type or range of experience to the courts. I remind the Senator of the 1999 working group on qualifications which made specific reference to appropriate knowledge and experience. That, in many respects, forms the change of wording. In section 35(3), with regard to the appointment for office in the Supreme Court, Court of Appeal or High Court, it is clear that the commission will be unable to recommend a name of a person unless, in the opinion of that commission, the person has appropriate knowledge of the practice and procedure, which is the point that Senator McDowell has made, with appropriate knowledge of the decisions and knowledge and experience of the practice and procedure of the court, whether the Court of Appeal, the High Court or the Supreme Court. I feel that meets the point, albeit in a different text. Nevertheless, it adequately covers the point that Senator McDowell has made.

I agree with Senator Bacik that the widening of eligibility for appointments should not be cumbersome. It is a point that I referred to in a reply earlier. It is something that I can work on and I can usefully draw from the points that Senator Bacik made. Lest my silence be misinterpreted, I agree fully with Senator Clifford-Lee on the points she makes regarding the importance of the District Court. I am pleased that Senator McDowell added considerably to the points he made earlier in respect of that cohort. I regret what Senator Norris has said and I certainly do not agree with the point he raised.

If I did not make it clear early on to Senator Bacik, I want to acknowledge the importance of her point, which I believe is most correct, on the section 2 definition of "practising barrister" in the 2015 Act. That, of course, is detached from the Courts Acts insofar as the matter of eligibility is concerned. The point she makes regarding the in-house lawyer is reasonable and is one I will be happy to look at in the context of the earlier debate.

Amendment, by leave, withdrawn.

Senator Ivana Bacik: I move amendment No. 73:

In page 23, lines 32 and 33, to delete "Supreme Court, the Court of Appeal, the High Court, the Circuit Court, or the District Court" and substitute "Supreme Court, Court of Appeal or High Court".

Amendment, by leave, withdrawn.

Senator Niall Ó Donnghaile: I move amendment No. 74:

In page 23, to delete line 37, and in page 24, to delete lines 1 to 11 and substitute the following:

"(3) Subsection (1) shall only apply to a legal academic who has qualified as a barrister or solicitor and subsequent subsections of this section, in so far as they relate to a person who is referred to in them as a 'head of a faculty' or 'head of another faculty', shall not be construed as enabling such a person to be the subject of such an appointment unless the person has qualified as a barrister or solicitor.".

Amendment put:

The Committee divided: Tá, 22; Níl, 14.	
Tá	Níl
Bacik, Ivana.	Burke, Colm.
Boyhan, Victor.	Burke, Paddy.
Clifford-Lee, Lorraine.	Buttimer, Jerry.
Conway-Walsh, Rose.	Byrne, Maria.
Craughwell, Gerard P.	Coghlan, Paul.
Daly, Mark.	Feighan, Frank.
Davitt, Aidan.	Hopkins, Maura.
Devine, Máire.	Lawlor, Anthony.
Gallagher, Robbie.	Lombard, Tim.
Gavan, Paul.	McFadden, Gabrielle.
Humphreys, Kevin.	O'Donnell, Kieran.
Lawless, Billy.	O'Mahony, John.
Leyden, Terry.	Reilly, James.
Mac Lochlainn, Pádraig.	Richmond, Neale.
McDowell, Michael.	
Nash, Gerald.	
Norris, David.	
O'Sullivan, Ned.	
Ó Donnghaile, Niall.	
Ó Ríordáin, Aodhán.	
Warfield, Fintan.	
Wilson, Diarmuid.	

Tellers: Tá, Senators Paul Gavan and Niall Ó Donnghaile; Níl, Senators Gabrielle McFadden and John O'Mahony.

Amendment declared carried.

An Cathaoirleach: Amendment No. 75 cannot be moved.

Amendment No. 75 not moved.

Senator Ivana Bacik: I move amendment No. 76:

In page 24, to delete lines 15 to 17 and substitute the following:

"(a) teaches one or more subjects in the field of law, and

(b) carries out research, or supervises the carrying out of post-graduate research, in one or more such subjects,".

Amendment, by leave, withdrawn.

An Leas-Chathaoirleach: We move to amendment No. 77.

Senator Michael McDowell: I want to talk about leave to withdraw. I would say to Sena-

tor Bacik that I know why she is withdrawing amendment No. 76 at this stage but-----

Senator Anthony Lawlor: Can the Senator speak to a withdrawn amendment?

Senator David Norris: Pipe down.

Senator Michael McDowell: I know why she is proposing to do it-----

Senator Paddy Burke: He cannot speak to an amendment that is withdrawn.

Senator Michael McDowell: I can speak on the question of whether she should be given leave to withdraw it, which is what I am doing now.

Senator Paddy Burke: I do not think he can.

Senator James Reilly: He is not in court now.

An Leas-Chathaoirleach: With respect, I thought we had the agreement of the House to withdraw it.

Senator Michael McDowell: When the Chair asked that, he did not look in my direction. In any event, the point I am making is that this is an important amendment. Even though, in one respect it is only the word "and" or "or", it has significance. In a second respect, the postgraduate research is also an important issue. Everybody carries out non-postgraduate research. As Senator Norris said, this idea that-----

Deputy Charles Flanagan: I am most reluctant to intervene and run the risk of incurring the wrath of the Seanad-----

4 o'clock

An Leas-Chathaoirleach: I am going to speak. The Senator should resume his seat. I want order. This is Senator Bacik's amendment. It has been discussed. It is her right to have it withdrawn and she indicated that is what she wanted to do. I understood that was agreed and I am reluctant to proceed along these lines, with respect, because it is her amendment and her entitlement, and she withdrew it.

Deputy Charles Flanagan: Under what circumstances would leave be refused to withdraw an amendment?

An Leas-Chathaoirleach: I will deal with the matter.

Deputy Charles Flanagan: I am asking the Chair a question.

An Leas-Chathaoirleach: The amendment is withdrawn so that does not arise.

Senator Ivana Bacik: We withdrew it on the basis that the Minister and I had an exchange on it and I am grateful to the Minister for indicating a willingness to consider the issue and an inclination to accept at least the spirit of it. I just want to check the wording of it. I fully intend resubmitting a similar amendment on Report Stage. I said all this earlier.

An Leas-Chathaoirleach: I need the agreement of the House for an amendment to be withdrawn and I understood I had it.

Deputy Charles Flanagan: Under what circumstances would that agreement not be forthcoming?

An Leas-Chathaoirleach: I am not aware but I am advised that I do need the agreement of the House.

Deputy Charles Flanagan: I think it is a legitimate question.

An Leas-Chathaoirleach: I understood it was agreed.

Senator Michael McDowell: On a point of order-----

An Leas-Chathaoirleach: Senator McDowell wants to raise a point of order.

Senator Michael McDowell: The Minister should be aware that somebody cannot just put an amendment down and withdraw it and have the House assume that it is about to decide something of importance and then say it is not deciding it because I am withdrawing it. Once an amendment is tabled it cannot just be withdrawn unilaterally. The Member has to get the agreement of the House.

An Leas-Chathaoirleach: I asked if it was agreed.

Senator Michael McDowell: Senator Bacik now has the agreement of the House and I am grateful to her because she has explained it.

Senator Anthony Lawlor: Did the Senator want to call a vote on it?

Senator Michael McDowell: No.

Senator Ivana Bacik: Just to put the record straight on a point of order, I am not simply withdrawing an amendment unilaterally. We had quite an extensive discussion.

An Leas-Chathaoirleach: The Senator will table it on Report Stage.

Senator Ivana Bacik: We had a discussion and I explained the basis of its withdrawal. I would take issue with any suggestion, and I do not think Senator McDowell intended it-----

An Leas-Chathaoirleach: I accept totally what the Senator is saying.

Senator Ivana Bacik: -----that I am withdrawing it without any due consideration.

An Leas-Chathaoirleach: I understood that there was agreement on that.

Senator Michael McDowell: I am merely saying that the Minister seems to think that any Member can table an amendment and withdraw it and just pull the rug out from under a debate without the leave of the House. That is not true.

Deputy Charles Flanagan: We all know that we have been discussing this for an hour. There is no question of pulling the rug from under the debate.

An Leas-Chathaoirleach: That is superfluous. We have the agreement of the House. We are moving on. Amendment No. 77 is in the names of Senators Bacik, Humphreys, Nash and Ó Ríordáin. Is Senator Bacik moving that amendment?

Senator Ivana Bacik: I move amendment No. 77:

In page 24, to delete lines 34 to 41 and substitute the following:

"(6) In this section 'educational establishment' means a university to which the Universities Act 1997 applies, and in computing, for the purposes of this section, any period that a person must have served as a legal academic, successive employment of the person by 2 or more of any of the foregoing educational establishments shall suffice.".

With some trepidation I am applying for leave to withdraw it again on the basis of the earlier debate that we have had and the very strong reasons offered as to why it should not be accepted and on reflection I think I was wrong to put it in. I have said that and I am seeking to withdraw this amendment.

Amendment, by leave, withdrawn.

Question proposed: "That section 33, as amended, stand part of the Bill."

Senator Michael McDowell: There was no amendment down to remove the first few lines of this section which is about the eligibility of a District Court judge after two years' service to be "qualified for appointment as a judge of the High Court". I am against that proposition for the reasons I have already explained and I am not going to repeat them now. I do not want to delay the House unnecessarily. I am against that provision.

I note Senator Bacik has rightly been persuaded that her amendment would have been unduly restrictive to subsection (6) but in subsection (6) we are dealing with a university to which the Universities Act 1997 applies. Can the Minister tell the House one way or the other whether the technological universities which, as I understand it, are about to come into existence will be covered? Are they universities to which the 1997 Act applies or are they under a separate statute?

Deputy Charles Flanagan: I will check that point on the basis that the Senator says he understands this is something that may happen at some stage in the future. At that stage we will consider it. My understanding is that these colleges are not covered under the Universities Act. They may well be at some stage in the future. As of now my understanding is otherwise.

Senator Michael McDowell: I have not been following the debate exactly but I have the impression that the Oireachtas has already passed legislation for the technological universities.

Deputy Charles Flanagan: If that is the case they are covered.

Senator Michael McDowell: Are they? Does the 1997 Act apply to them?

Deputy Charles Flanagan: I will check that point.

Senator David Norris: If not, the Bill is defective.

Senator Gerard P. Craughwell: I do not believe that the technological universities are encompassed in the 1997 Act. The Act was amended during the debate on the technological universities legislation. This legislation is in fact flawed.

Senator Michael McDowell: Has the other legislation been passed?

Senator Gerard P. Craughwell: It has been passed. The Dublin Institute of Technology and the institutes of technology at Blanchardstown and Tallaght are rapidly moving towards their new campus in Grangegorman. Technological universities and the institutes of technology have delivered some fine legal courses down through the years and have some fine legal

academics working in them. We need to amend this legislation before it goes forward.

Senator Ivana Bacik: It had occurred to me before Senator McDowell raised this issue that the technological universities might be covered. Certainly there are excellent law faculties and departments in very many of them, so that is an important point. It relates to a point I made earlier in respect of the in-house lawyers and the relationship between this Bill and the other legislation such as the Legal Services Regulation Act 2015 and the Courts and Court Officers (Amendment) Act 2007. It is important that the legislation is future-proofed to take account of changes such as the change in university status for the institutes of technology and the other institutions. We just need to check that to ensure that this legislation is properly mindful of other changes that are happening in parallel.

Deputy Charles Flanagan: I agree.

An Leas-Chathaoirleach: That will be checked.

Senator Michael McDowell: I am not trying to be troublesome but I believe the legislation is already enacted for those technological universities.

Deputy Charles Flanagan: It has been enacted.

Senator Michael McDowell: If we do not change this we may miss the bus on this definition of a university.

Deputy Charles Flanagan: We can certainly do it in the context of further discussion on the amendments as put forward and withdrawn by Senator Bacik but with a view to coming back on Report Stage. My understanding is that the Bill has been enacted.

Senator Michael McDowell: It was signed into law by the President on 19 March of this year. Unless there is a deeming provision that the provisions of the Universities Act also apply to the technological universities it would be necessary to make provision for it in this Act.

An Leas-Chathaoirleach: As I understand it, all are agreed that it will be taken care of.

Question put.

The Committee divided by electronic means.

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

An Cathaoirleach: That is not allowed as the Senator is not a teller. If the Senator can get five Members to stand in support I can accept the request.

Question again put:

The Committee divided: Tá, 23; Níl, 16.	
Tá	Níl
Burke, Colm.	Bacik, Ivana.
Burke, Paddy.	Boyhan, Victor.
Butler, Ray.	Clifford-Lee, Lorraine.
Buttimer, Jerry.	Craughwell, Gerard P.

Byrne, Maria.	Daly, Mark.
Coghlan, Paul.	Daly, Paul.
Conway-Walsh, Rose.	Davitt, Aidan.
Conway, Martin.	Gallagher, Robbie.
Devine, Máire.	Humphreys, Kevin.
Feighan, Frank.	Leyden, Terry.
Gavan, Paul.	McDowell, Michael.
Hopkins, Maura.	Nash, Gerald.
Lawless, Billy.	Norris, David.
Lawlor, Anthony.	O'Sullivan, Ned.
Lombard, Tim.	Ó Ríordáin, Aodhán.
Mac Lochlainn, Pádraig.	Wilson, Diarmuid.
McFadden, Gabrielle.	
O'Donnell, Kieran.	
O'Mahony, John.	
Ó Donnghaile, Niall.	
Reilly, James.	
Richmond, Neale.	
Warfield, Fintan.	

Tellers: Tá, Senators Gabrielle McFadden and John O'Mahony; Níl, Senators Gerard P Craughwell and Michael McDowell.

Question declared carried.

SECTION 34

Question proposed: "That section 34 stand part of the Bill."

Senator Michael McDowell: This is the first section in Chapter 2 of Part 6 of the Bill. We are now getting to a crucial portion of this proposed legislation. Chapter 2 is concerned with eligibility and preconditions for appointment to the relevant judicial offices. What I have a major problem with is that section 34(1) states: "Nothing in this Chapter shall be construed as being applicable to a judicial office to which *section 44* applies." This is, in other words, part of a legislative scheme which includes section 44. Section 44, as the Bill currently stands, is an entirely separate chapter of the legislation on appointments to the position of Chief Justice, President of the Court of Appeal and President of the High Court. The exclusion in section 34(1) is to say that the divisions of this chapter will not be applicable to appointments as Chief Justice, President of the Court of Appeal and President of the High Court but will be applicable to all other judicial appointments. That is where, among other places, for the purposes of this discussion, I part company with the legislation.

This chapter provides that: "In addition to the requirement of *sections 7* and *36* and *subsection (2)* and (where it applies) *subsection (3)*, the Commission shall not recommend the name of a person to the Minister unless it is satisfied that the requirements of the relevant provisions are complied with in relation to the person." It then states: "In the taking of steps that result in a recommendation of a person's name to the Minister, the Commission shall ensure that the

requirements in the published statement are complied with."

We will come back to that in a moment when we can deal with that in more detail on section 35. Section 35(3) states:

> In the case of an appointment to the office of—
>
> (a) ordinary judge of the Supreme Court,
>
> (b) ordinary judge of the Court of Appeal, or
>
> (c) ordinary judge of the High Court,
>
> the Commission shall not recommend the name of a person to the Minister unless, in the opinion of the Commission, the person has—
>
> (i) an appropriate knowledge of the decisions, and
>
> (ii) an appropriate knowledge and appropriate experience of the practice and procedure,
>
> of the Supreme Court, the Court of Appeal and the High Court.

The problem with all of this is that if ordinary judges of the High Court and the Court of Appeal, those two categories of people, are to be appointed or considered for a recommendation by the commission, the commission is going to have to ask itself about the candidates appropriate knowledge of the decision and appropriate experience of the practice and procedure of the Supreme Court, the Court of Appeal and the High Court.

To take an example, let us go back to what we were discussing earlier, namely, a District Court judge. A District Court judge, on the Minister's version of section 33, is to be eligible. We are now going to have a situation where the commission is going to have to carry out an inquiry as to whether the District Court judge has appropriate experience of the practice and procedure of the Supreme Court, the Court of Appeal and the High Court. That is an extraordinary thing to do.

It is even more extraordinary that an existing Circuit Court or High Court judge would have to go through that test, that is an existing High Court judge be effectively required to prove his or her experience of the Supreme Court in order to be appointed to the Supreme Court. Once one is a judge of the superior courts, namely, the High Court, the Court of Appeal or the Supreme Court, one should be eligible, *ipso facto*, to be appointed and one is, in statute, eligible to any more senior position in those three courts. Asking existing members of those courts to apply to the commission for its approval and their shortlisting for a position is entirely unjustifiable. I will come back to that at a later stage and will not elaborate now because I do not want to be repetitive.

I utterly disagree with the procedure laid down in section 44 and therefore I cannot agree with the provisions of section 34-----

An Leas-Chathaoirleach: Is the Senator talking about section 44?

Senator Michael McDowell: That is my point, a Leas-Chathaoirligh, I was just going to point that out. I therefore cannot agree with what is provided in section 34(1), which refers to that. I am opposed completely to the procedure set out in section 44. When this Bill started

off, there was to be a fast-track for those positions which did not involve a visit to the judicial appointments commission. It was amended I believe in Dáil Éireann so as to abolish the fast-track and require everybody who wanted to be appointed to the Supreme Court or whatever, to make an application to the judicial appointments commission, and to be either on or off a short-list as the case may be. I am utterly opposed to that in principle. It is wrong. Sitting judges in the superior courts should never have to go before the judicial appointments commission to see whether they are suitable for appointment to the Court of Appeal or to the Supreme Court.

I will elaborate later on this but my strong view is that when the Government comes to decide what person it should or should not appoint to the Supreme Court, it operates on the basis of its own criteria as to what kind of Supreme Court it wants to establish - what kind of philosophical balance, balance of legal outlook, what kind of balance in terms of liberalism and conservatism, being pro-European less pro-European or whatever. These are issues which only the Government is entitled to decide upon and which the Constitution gives to the Government as its own function to make its own mind up on.

Asking judges in the High Court to submit their names to the judicial appointments commission with a view to determining as to whether they should be on a shortlist to be considered by the Government is in my view not merely invidious, but it strikes at the heart of what the Government's prerogative, function and duty is, namely, to make up its own mind on this issue. It can of course take advice from whoever it likes. It can set up an institution which can tender advice. In this case we are making it an offence for anybody to canvass for his or her appointment to the Supreme Court and we are also, as I have pointed out on another occasion, making it an offence for the Attorney General to tell the Government who the unsuccessful applicants for promotion, who were not shortlisted, actually were.

A combination of all these factors makes this an unconstitutional provision. I also believe that it seriously infringes the independence of the Judiciary that they should undergo an evaluation process the same as somebody who is not a judge just because they want to be seriously considered by the Government for promotion from the Court of Appeal to an ordinary member of the Supreme Court. That is not right and is wrong in principle.

I would be reassured if the Minister would tell me that he has been reconsidering the provision that the Attorney General should commit a criminal offence if he or she discloses to the Government who the unsuccessful applicants for promotion were. If the Minister was to even tell me that he was reconsidering the stance he has taken on that in the course of this legislation I would feel some sense of reassurance. In the absence of that I cannot agree to the section 44 procedure existing at all.

Senator David Norris: Chapter 2 of Part 6 states: "In this Chapter 'legal academic' means a legal academic within the meaning of section 45A" and so on. We have quite a lengthy section in section 33 dealing with the definition of a legal academic and so on. I am not sure why it is necessary to rehearse it at this point because it seems to me a legal academic has already been satisfactorily defined in the legislation. One assumes the provisions and terms of the Bill would apply in all cases to legal academic as so defined in the Bill. I am wondering why this subsection is included.

An Leas-Chathaoirleach: I call Senator Craughwell.

Senator Michael McDowell: I want to make one point. I see the point. I am sorry.

Senator Gerard P. Craughwell: I will make one point before I deal with the Bill. There has been some suggestion that we are trying to filibuster this.

Deputy Charles Flanagan: We are on section 34, with respect.

An Leas-Chathaoirleach: We are on section 34.

Senator Gerard P. Craughwell: I would like to deal with it now if I could. There has been some suggestion that we are deliberately filibustering this Bill. Our job is to scrutinise the Bill and put it through its paces. I am a layman. That is all I am. I am not a legal expert but at this stage I cannot for the life of me see why we are still talking about this Bill and why it has not been withdrawn altogether. It is seriously flawed. We are talking about setting up a commission that we do not-----

An Leas-Chathaoirleach: With respect, we are on section 34. The Chair has already ruled on the question of filibustering. We are monitoring the debate to ensure-----

Senator Gerard P. Craughwell: I am attempting to deal with the section.

An Leas-Chathaoirleach: Section 34.

Senator Gerard P. Craughwell: Yes.

An Leas-Chathaoirleach: That is allowed. Please stick to section 34.

Senator Gerard P. Craughwell: When we are talking about learned judges having to go through some sort of a test in order to find themselves short-listed, I cannot, for the life of me, understand or believe any judge would subject himself or herself to that sort of treatment. If this Bill goes through and if it were to be enacted in the morning, members of the Judiciary or Bar would be out of their minds to consider going forward for a position. Why would they want to do that? Why would they want to have people with no legal knowledge assessing their legal knowledge? Why would they do that? For the life of me, I cannot understand it and it needs to be put on the record at every section.

An Leas-Chathaoirleach: The Senator has put it on the record.

Senator Gerard P. Craughwell: The Bill is flawed.

An Leas-Chathaoirleach: It is Senator Craughwell's point of view.

Senator Gerard P. Craughwell: It is flawed. That is my view. I am only a layman. One should look at any of the media reports from over the weekend and read what they are saying. They are saying the Bill is flawed and they support-----

An Leas-Chathaoirleach: That is a point of principle more suited to a Second Stage debate. We are on Committee Stage now.

Senator Gerard P. Craughwell: I will leave it at that. I will not upset the Leas-Chathaoirleach anymore.

An Leas-Chathaoirleach: Does the Minister wish to respond to any points made on the section?

Deputy Charles Flanagan: Yes. All the points Senator McDowell raised are valid but

they are issues that are more particular to the later sections rather than section 34. For ease of debate, it might be desirable that we proceed in accordance with the accepted practice of going through the Bill on a line-by-line basis. The points raised by Senator McDowell, although they are all valid, are more appropriate to a later discussion, with particular reference to an amendment Senator McDowell has submitted.

Dealing with Chapter 2 of Part 6, what we have here in section 34 is a technical amendment cross-referencing what is being inserted into section 33 by the Seanad. It is merely an appropriate, desirable and, dare I say, necessary drafting provision. I do not have anything further to say on the section but I acknowledge the importance of what Senator McDowell has said. He stated he is parting company with the Bill. I have been here for 42 hours. I did not see him in company with the Bill at any stage but under Chapter 2 he now indicates he is parting company with the Bill. I invite him to wait until we have an opportunity to discuss the substance of his amendments. I think I might be in a position to engage in interesting discourse on some of the points that Senator McDowell will make. I do not think they will be made today.

I will not be provoked into a response to Senator Craughwell. I do not think I could respond to him and remain within the rules of the Standing Orders of the House.

Senator Gerard P. Craughwell: Fire away.

An Leas-Chathaoirleach: Is Senator McDowell happy with that?

Senator Michael McDowell: The Minister is signalling we will not reach the amendments on which this great discourse he is promising is going to happen today.

Deputy Charles Flanagan: We might.

Senator Michael McDowell: In view of that concession by the Minister, it is probably a good idea to put this section to a vote and we will deal with the matter on the next day.

Deputy Charles Flanagan: That should not be seen to be in some way a response to something I said because Senator McDowell has been so disposed right during the course of this debate.

Question put:

The Committee divided: Tá, 22; Níl, 12.	
Tá	Níl
Burke, Colm.	Bacik, Ivana.
Burke, Paddy.	Clifford-Lee, Lorraine.
Butler, Ray.	Craughwell, Gerard P.
Buttimer, Jerry.	Daly, Mark.
Byrne, Maria.	Daly, Paul.
Coghlan, Paul.	Gallagher, Robbie.
Conway-Walsh, Rose.	Humphreys, Kevin.
Conway, Martin.	Leyden, Terry.
Devine, Máire.	McDowell, Michael.
Feighan, Frank.	Nash, Gerald.

Gavan, Paul.	Norris, David.
Hopkins, Maura.	Wilson, Diarmuid.
Lawlor, Anthony.	
Lombard, Tim.	
Mac Lochlainn, Pádraig.	
McFadden, Gabrielle.	
O'Donnell, Kieran.	
O'Mahony, John.	
Ó Donnghaile, Niall.	
Reilly, James.	
Richmond, Neale.	
Warfield, Fintan.	

Tellers: Tá, Senators Gabrielle McFadden and John O'Mahony; Níl, Senators Gerard P Craughwell and Michael McDowell.

Question declared carried.

SECTION 35

An Cathaoirleach: Amendments Nos. 78, 79, 90 and 91 are related. Amendment No. 91 is a physical alternative to amendment No. 90. These amendments may be discussed together.

5 o'clock

Senator Michael McDowell: I move amendment No. 78:

In page 25, to delete lines 25 to 34 and substitute the following:

"(3) In the case of an appointment to the office of ordinary member of the High Court, the Commission shall not recommend the name of a person to the Minister unless in the opinion of the Commission the person has—

(a) an appropriate knowledge of the decisions, and

(b) an appropriate knowledge and appropriate experience of the practice and procedure, of the High Court.".

The amendment provides for the-----

An Cathaoirleach: Those Members speaking on the phone in the Chamber should leave. This matter is taking a lot of time. They should allow Senator McDowell to make his contribution without interruption.

Senator Michael McDowell: The purpose of the amendment is to underline our opposition to the idea that sitting members of the superior courts should be under any obligation to submit to legal experience and qualification evaluation by the commission at all. We are opposed to the idea that sitting judges should be asked to submit their names to the commission for appointment to the Court of Appeal and the Supreme Court. This may appear to some people to

be a matter of less importance than I feel it is. The reason I say this is that at present, when the judges of the High Court, Court of Appeal and ordinary members of the Supreme Court carry out their duties, they are required to be impartial and hard-working in upholding their constitutional declaration and they are required to discharge the functions of a High Court, Court of Appeal or Supreme Court judge as the case may be, which involves the evaluation of cases purely as matters of law and not by reference to other criteria. To uphold the Constitution and the laws in their decisions impartially requires them to function clearly independently from public opinion going one way or the other on issues. It is about standing up for the rights of an individual citizen at law and under the Constitution, however popular or unpopular the position of that individual citizen may be.

Under the JAAB procedure at present, no member of the High Court, the Court of Appeal or the Supreme Court is required to, enabled to or in any sense eligible to submit an application to that body for its determination as to his or her suitability. A judge of the High Court cannot apply to be evaluated or declared suitable by the board for promotion to the Supreme Court. There are very good reasons for this. It is not the business of the current members of the board to start ferreting around among the existing High Court Judiciary and saying so-and-so is suitable and so-and-so is not suitable to be on the Court of Appeal. It is a matter for the Government to make this decision, and it is a matter for the Government to take the advice of the Attorney General and, usually, the advice of the Minister for Justice and Equality and make up its mind as to who among the existing Judiciary in the superior courts should be promoted to the Court of Appeal or the Supreme Court.

Currently, of course, the Attorney General or the Minister for Justice and Equality might well confer with the president of either of those courts if it were for a position as an ordinary member of either of those courts for his or her view as to whether there was anybody whom he or she thought would be particularly useful or appropriate to be included in a court to supply a vacancy in that court. The Government does not ask all members of the Judiciary to engage in a beauty parade before an institution that is independent of them for evaluation or shortlisting.

I am interested to know whether any common law jurisdiction requires existing members of its court of appeal to be vetted by a lay commission as to whether they should be made members of the supreme court of that jurisdiction. I do not claim to be an expert but I would be surprised if it were the case that the members of the court of appeal in London would have to submit to a full-scale evaluation by a majority group of lay people to make a recommendation as to whether they should be appointed to the English supreme court. I very much doubt this is the case. Even if the English were so minded to do it, they are not living in the world of a written constitution. The written Constitution we have states such an appointment is a matter for the Government.

I indicated earlier the outline of my view on this matter but in this context I have to reiterate it because we are now getting to the point where it is directly an issue in the amendments, section 35 and succeeding sections. The decision as to whether a High Court judge or a Court of Appeal judge is appointed to the Supreme Court is a matter exclusively for determination by the Government. The Government is free to take advice, soundings or whatever it likes in any quarter on this matter by whatever means it chooses but it is not constitutionally competent for the Oireachtas to tell it that it must operate in a state of legislatively imposed ignorance as to who wants to be appointed and who is available to be appointed to the Supreme Court, and certainly not in a context where the Attorney General of the day, who sits at the table when the Government is making its deliberations and traditionally has always been available to express his or her views as to the desirability of one nominee rather than another, should be committing

a criminal offence if he or she discloses to the Government at a meeting to consider the matter that one particular person has shown an interest and has applied once or on a number of occasions to the commission but has not been shortlisted.

The desire to keep the Government in ignorance as to who are the unsuccessful would-be appointees - by unsuccessful I mean the people who have failed to make the shortlist to be sent forward by the judicial appointments commission - is, in my submission, absolutely indefensible. There is no possible reason a Government in a situation where eight members of the High Court and two members of the Court of Appeal have expressed a wish to be appointed to a vacancy in the Supreme Court, should be told it cannot find out who of those ten people had expressed an interest in the appointment and may only be informed, on pain of the commission of a criminal offence, of the identity of the three people the commission has shortlisted. That proposition, and the desire to have that situation in place, runs counter to the function of the Government under the Constitution.

As I said earlier, if the Minister was to tell me he had been listening to the debate in this House - I know he is listening, I am not suggesting he is not, and he has very little choice in the matter-----

Senator David Norris: Intermittently listening.

Senator Michael McDowell: -----and has reconsidered the notion of making it a criminal offence for the Attorney General to inform the Cabinet as to who the applicants - the non-shortlisted applicants - were and is now open to amending the statute to allow for such information to be given to the Cabinet by the Attorney General, who *ex officio* is to be a member of this commission, at least part of my worries would be addressed here. The Minister should signal now, one way or the other, whether I am wasting my time here, not that it will deter me from continuing to make the point, I hasten to add-----

Deputy Charles Flanagan: I would never make such a suggestion.

Senator Michael McDowell: I would like know whether I am wasting my time and playing handball against a ministerial and governmental haystack in respect of the obligation this Bill proposes to put on all existing members of the superior courts to effectively engage in a competitive process to be shortlisted to be among the three names to be sent forward for consideration by the Cabinet. If I was told the Minister is now reconsidering that position I would be greatly relieved and feel we were making some progress in this debate. However, if I am told that is not the intention of the Government and that it will not yield on that issue, then I am equally obdurately opposed to the passage of this legislation and equally convinced that it is constitutionally infirm.

Section 35(1) states: "In addition to the requirement of *sections 7* and *36* and *subsection (2)* [of section 35] and (where it applies) *subsection (3)*, the Commission shall not recommend the name of a person to the Minister unless it is satisfied that the requirements of the relevant provisions are complied with in relation to that person." The relevant provisions are set out in subsection (6) of the section.

Section (7) is referenced in subsection (1) and, as have already debated it, I will not go into it great length. Section (7) states, "A decision to recommend" and *a fortiori* a decision to include somebody on a shortlist of three "shall be based on merit". It further states: "Subject to *subsection (1)*, where the function, under this Act, of selecting and recommending persons for

appointment to a judicial office falls to be performed, regard shall be had to ... the objective that the membership of the judiciary should comprise equal numbers of men and women." That is the first proposal, that there should be numerical equality between men and women as far as possible. Second, the section also states "the objective that the membership of the judiciary should, to the extent feasible and practicable, reflect the diversity within the population as a whole". Third, it states. "the objective that, consistent with the written statement most recently provided under *section 53(7)* to the Procedures Committee concerning the needs of the users of the courts in that regard, the membership of the judiciary should include persons with a proficiency in the Irish language".

This shortlisting process has statutory criteria which are blended in a strange way with the idea of merit. When we read section 7(1) and 7(2) it is not clear whether it is based purely on these being the three best people full stop, or that these are the three best people having regard to the need for the numerical equality of men and women in the Supreme Court. It makes one wonder. Supposing it were the case that the judicial appointments commission was confronted with a Supreme Court which had of nine members, seven male and two female members, in comprising its shortlist is it to attempt to ensure that the position is secured by a woman? If it is to do that, how is it to do it? Is it to ensure that the majority of the shortlist of three should be women or that all three of them should be women and leave the Government with a choice of the top three women, bearing in mind the existing imbalance in the Supreme Court?

These are the kinds of matters the commission will be driven to considering in its procedures, whereas what happens at Government is something totally different. What happens at Government is a consideration as to whether Mr. Justice Michael McDowell is a person who is a liberal or a conservative on social issues. That is an issue curiously which the commission is not allowed to take into account. Those are not the criteria that it is allowed to take into account. It is strange that the Government is obliged to take into account criteria in respect of which the commission is supposed to compose a short list for the Government that the commission is excluded, by the terms of this Act, from considering.

That emphasises the fundamental error of applying the terms of this statute to promotional appointments within the Judiciary. If the Government of the day wants to make the Supreme Court more liberal or more conservative, as it may well wish to do for perfectly good reasons, or, as I said earlier, more pro-European or less pro-European or more generous on the subject of personal compensation or less generous on that subject, and to make decisions along those lines, not merely is it perfectly entitled to do so, it is duty bound to do so, if it considers that is in the national interest. Yet the body that composes the shortlist for consideration by the Government is not entitled to look to those very questions. It is supposed to come up with a shortlist by reference to different criteria. That is what I find so incongruous about this legislation, that a group of outsiders are being asked to make a shortlist decision by reference to criteria that the Government is not merely not concerned with but that it has a much bigger priority to make its own decision unencumbered by, say, for instance, the gender balance on any particular occasion. It may be far more important for the Government to select Mr. Justice David Norris for appointment to the Supreme Court.

Senator Gerard P. Craughwell: Perish the thought.

Senator Ray Butler: God help us.

Senator Michael McDowell: It may be far more important for the Government to appoint

David Norris on the basis of his liberal outlook or whatever rather than-----

Senator David Norris: It is not my true life but it is a crucially important thing.

Senator Michael McDowell: Exactly. It may be far more important for the Government to make that appointment than to have regard to gender balance-----

Senator David Norris: I am very gender balanced.

Senator Michael McDowell: I know.

An Cathaoirleach: Gentlemen, I do not think President Trump will be appointing-----

Senator David Norris: I doubt it.

Senator Michael McDowell: I refer to having regard to his social background-----

Senator David Norris: Impeccable.

Senator Michael McDowell: -----diversity, or lack of diversity, or where he stands in the spectrum of social diversity in Ireland. Those things may not be of interest to them and yet those are the criteria which we are saying must be the basis of him being, or not being, on the shortlist.

I asked the Minister to inform me whether it is a central pillar of Government policy that existing members of the High Court must apply to the judicial appointments commission to be considered by the Cabinet for promotion to the Supreme Court, and whether that is a cornerstone of this legislation on which the Minister and Government will not budge.

I asked the Minister to indicate again whether he is open to reconsidering whether the Attorney General should be in a position to inform the Cabinet of those ready and willing to be appointed even though they have not been shortlisted - in other words, the people who have been applicants, have displayed an interest in appointment to a particular office and who have not been shortlisted for consideration by the Government. On those two points the constitutionality of this legislation depends. If the Government goes down the road of forcing existing judges to submit themselves to an evaluation by a group of people other than a government, one is not merely on the thinnest of ice but one is up to one's ears in constitutional water. Likewise, if one maintains the proposition that the Government cannot know who among the existing Judiciary is ready and willing to serve but has not been shortlisted, then one is, equally, up to one's ears in constitutional water. We are not allowed know the inner workings of the Cabinet and we are not allowed to know the inner workings of individual Ministers' minds on this issue. Unless there is some willingness to engage on those two issues, then this legislation is fundamentally flawed from a constitutional perspective.

Senator David Norris: I would like to address one point, through the Chair, concerning Senator McDowell's amendment No. 90.

An Cathaoirleach: The Senator must address his question to the Minister.

Senator David Norris: I beg the Cathaoirleach's pardon.

An Cathaoirleach: Through the Chair, yes.

Senator David Norris: Yes, through the Chair.

An Cathaoirleach: The Minister will probably have to answer the Senator.

Senator David Norris: I do not think so. When the Cathaoirleach hears my question he will understand why.

Senator Michael McDowell: Senator Norris pointed out a typographical error in subsection (2) in amendment No. 90.

Senator David Norris: Yes, I mentioned the business about a request.

Senator Michael McDowell: The amendment states that the Minister shall request that the judicial appointments commission furnish a report "of the Government". I want to change the word "of" to "to" so that the amendment reads "to the Government."

Senator David Norris: That is exactly point I was making. One cannot simply use the word "request" because, grammatically, one must request something. Senator McDowell has now made the change.

Senator Michael McDowell: I will apply the change and amend the amendment.

An Cathaoirleach: The Minister can respond now.

Deputy Charles Flanagan: I accept the unimportant point that Senator Norris has made.

Senator David Norris: Grammar is crucial, Minister.

Deputy Charles Flanagan: The typographical error has been accepted by Senator McDowell.

Senator David Norris: It is not a typographical error; it is the omission of an entire phrase.

An Cathaoirleach: Please let the Minister respond. The Senator can come back in.

Deputy Charles Flanagan: Senator McDowell is right insofar as he suggests that we are now dealing with the heart of the Bill. I am not, a Chathaoirligh, going to go back over ground that has already been covered, with particular reference to the role or, indeed, the disposition of the Attorney General at any given point.

I have carefully listened to this debate in its entirety. I am not indicating that I am going to unravel any aspects of the Bill that have already been concluded on Committee Stage. Rather, I would now like to deal with the amendments before us which are amendments Nos. 78, 79, 90 and 91, all of which are important.

In the first instance, Senator McDowell suggested that this legislation is unique insofar as it deals with a form of assessment of candidates. He used the word "vetting".

Senator Michael McDowell: In the Supreme Court but among the existing Judiciary.

Deputy Charles Flanagan: I think in these circumstances the use of the word "vetting"-----

Senator Michael McDowell: Yes.

Deputy Charles Flanagan: -----is not appropriate. I understand that serving judges are assessed in other jurisdictions for promotion. I have already mentioned at an earlier Stage the situation in the neighbouring island, both in Wales and in Scotland. I would be happy to address the point by way of sending a note to Senator McDowell with a particular reference to the point that he makes, not about suggesting names for appointment but suggesting names for what we can describe as elevation or promotion from one rank of the Bench to another. I reject the term "vetting" which, in the circumstances, I do not believe to be appropriate.

Senator McDowell is right when he says that currently the Judicial Appointments Advisory Board does not vet the suitability of candidates for the High Court, Court of Appeal or, indeed, the Supreme Court.

Senator David Norris: Can the Minister suggest a more appropriate word?

Deputy Charles Flanagan: Assess.

Senator Michael McDowell: I could live with the word "assess".

Deputy Charles Flanagan: This is precisely because the Courts and Court Officers Acts do not allow for such vetting, or even assessment.

To answer Senator McDowell question, yes, this is one of the fundamental pillars of this Bill. This is one of the changes in that the commission will assess the suitability of serving judges for such appointment. This is in response to the public consultation that was undertaken prior to this Bill having even been drafted.

Certainly, I am enlightened as to the direction of Senator McDowell in terms of his opposition to the Bill when he repeatedly used the word "outsiders". He said that outsiders are assessing, that outsiders are involved and that outsiders are a part of the process.

Senator Michael McDowell: Outside of the Cabinet only.

An Cathaoirleach: Please allow the Minister to finish.

Deputy Charles Flanagan: This is telling in the matter of the fundamentals of the commission, with particular reference to its status as having a non-legal majority and a non-legal chair, but that is not to describe the commission as comprising outsiders. Again, I was very careful in the context of the Bill, both in this House and the other House, to reassure people who felt that there was an imbalance here that there would be the active involvement, in the membership of the commission, of the Presidents of the Courts, all of whom I expect to be members of the commission because of their importance, expertise and experience. I invite Senator McDowell, in particular, to accept that point because I believe that they have a very important role to play in bringing a level of expertise and a high degree of experience and being in a position to strongly influence the names that ultimately go forward to Government for nomination to the President for appointment.

Senator McDowell's amendment No. 78, as he freely admitted, would significantly narrow the scope of the section to relate only to:

(a) an appropriate knowledge of the decisions, and

(b) an appropriate knowledge and appropriate experience of the practice and procedure,

of the High Court.

This would again serve to reflect the Senator's intentions with regard to amendment No. 90, which is an important amendment.

The scope of the section does not relate to appointments to the position of Chief Justice, President of the Court of Appeal or President of the High Court. I acknowledge that the Senator's amendment observes that clear distinction which is important.

Amendment No. 90 would introduce a senior judicial appointments committee to deal with not just those three positions of leadership, the Chief Justice, the President of the Court of Appeal and the President of the High Court, but all appointments to the Court of Appeal and the Supreme Court. I assume, therefore, that the Senator makes the section relevant only to those appointments that will remain within the ambit of the commission under this amendment.

As I indicated previously, I am giving further consideration to the amendment on the establishment of a senior judicial appointments commission. I am not sure if we can dispose of it in its entirety now, but I would be happy to continue to engage with Senators on the issue. On the conclusion of Committee Stage, I would be happy to reflect further.

Amendment No. 79 again narrows considerably reference to provisions under the section. It would require that the commission would accord with the Senator's intentions regarding the proposed committee under section 90. I am minded to acknowledge the importance of the senior appointments committee or group for the three appointments we mentioned. However, I am not sure about extending that further across the entire range of appointments the Senator wishes to encompass. This would reduce the import of the Bill in a way that is not reflective of Government policy.

I need to preserve the Government's policy in this regard, which is to construct a senior judicial appointments advisory committee but only for the top three positions as mentioned - Chief Justice, President of the Court of Appeal and President of the High Court. The Bill originally provided for that, but a Dáil committee did not favour this provision during its deliberations and it was replaced by an amendment, which, to all intents and purposes, moves the work required to recommend persons for appointment to these posts to the commission itself. I am still not satisfied with that approach. An amendment to that effect which I moved on Report Stage in the Dáil was defeated. However, I am minded to revisit the concept of a senior committee for precisely the reasons the Senator has outlined.

I still have a number of issues with the amendment. There appears to be no lay involvement from the new commission in this arrangement. I accept that a TLAC representative is provided for. Under the Senator's view of the commission, there would be no lay chair at that point. The question, therefore, of a lay chair being part of the new committee would not arise under this scheme. No lay involvement whatever from the commission is somewhat challenging and problematic.

The senior judicial appointments advisory committee contained in the Government Bill as published, which did not find favour with the Dáil, was to comprise the Chief Justice, the lay chair of the commission and the Attorney General. Perhaps the Senator might like to comment on that composition of a high-level senior appointments group. I acknowledge the success of such a group in the context of recent appointments to senior positions. I invite the Senator to explore possibilities of the Seanad further examining a high-level group with a view to reach-

ing agreement, but acknowledging my disposition not to depart from what all Senators know - whatever about agreeing with - is Government policy.

While we can take the composition of the committee in the first instance, amendment No. 90 broadens considerably the posts to which the committee would make recommendations. I accept the importance and the differentiation of the three top judicial posts - Chief Justice, President of the Court of Appeal and President of the High Court - as distinct from ordinary members of the High Court or other judges, albeit that they are senior in office.

The Senator wishes to broaden the scope of these recommendations to cover all appointments to the Court of Appeal and Supreme Court. Having regard to the importance of these positions, they would be relatively few as a proportion of total appointments, but they are important. On Second Stage I referred to the reduction to just three names in the number of recommendations the Minister receives and to the fact that the legislation will cover the matter of the elevation or movement of a serving judge to a higher court. These are important issues which we must not lose sight of and which might not necessarily be catered for fully in the Senator's amendment, if I was disposed to accept it. I am not indicating that I will accept it but that there are aspects of these amendments which I am minded to subject to further exploration. That is why I am pleased to have the opportunity to listen to the points the Senator has made.

Under his arrangement, much of the original Bill will be lost, as it was the intention of the Government that ordinary judicial appointments to the two most senior courts would be for the commission to recommend. That would not survive the Senator's amendment. Not all appointments to the Court of Appeal or to the Supreme Court are serving judges. Some have been appointed straight from practice and I am sure that will continue, for good reason. Ultimately, I am not convinced that we should scuttle the reforming aspects of this Bill by leaving important appointments to the Court of Appeal and the Supreme Court and the elevation of serving judges outside the remit of the new commission. I am prepared to give the matter further consideration and to take further advice on it. I would be happy to hear the views of other Senators on this.

Subsection (7) of the Senator's amendment provides that not just all members of the superior courts may be informed of a relevant vacancy but that this extends to other persons as well. Other provisions provide for a maximum of three recommendations but not in any order of preference, the stipulation being that the Government shall first consider for appointment what will be described as recommended persons. I will continue to listen to the Senators on that. I will come back on Report Stage with considered amendments that will seek to address the concerns about senior level judicial appointments. At the same time, however, I cannot have a situation where the import of the Bill is, in effect, emasculated.

Senator Ivana Bacik: Amendment No. 90 is a more substantial and significant amendment than the other amendments in this group and I am at a loss as to why my amendment, No. 91, is included.

Deputy Charles Flanagan: I did not realise amendment No. 91 was in this group.

Senator Ivana Bacik: I am quite happy that it would not be dealt with in this group because while it is a proposed amendment to section 44, which is also the subject of amendment-----

Deputy Charles Flanagan: Can we separate it?

An Cathaoirleach: It has been agreed that they will be discussed together. We can deal

with them and the Minister can come back to it.

Deputy Charles Flanagan: If Senator Bacik wishes to separate it, I do not have a difficulty with that, subject to the agreement of the House.

Senator Ivana Bacik: I am happy to separate it.

An Cathaoirleach: Okay. We will deal with the other three amendments. Is it agreed that amendment No. 91 will be dealt with separately from amendments Nos. 78, 79 and 90? Agreed. It should not make any difference to the overall situation.

Senator Ivana Bacik: Yes, it does not make any difference. Amendment No. 91 is better dealt with along with amendments Nos. 86 and 87, both of which refer to gender balance in appointments. That appears to be the more appropriate grouping.

Senator Michael McDowell: I agree.

Senator Ivana Bacik: I will discuss amendment No. 91 when we reach amendments Nos. 86 and 87.

On amendment No. 90, the Minister has indicated a willingness to move on this given that there was provision for a similar senior level judicial appointments committee in the original version of the Bill. That is welcome. If Senator McDowell's amendment or some variation of it was accepted, our amendment No. 91 does not arise as it simply becomes a different type of procedure. I support Senator McDowell's amendment. Amendment No. 91 deals with a separate issue and can be discussed with amendments Nos. 86 and 87.

Senator David Norris: I support amendment No. 78. The objective is to narrow the focus and scope of the Bill at this point and, in the case of an appointment of an ordinary member of the High Court, to ensure the person has an appropriate knowledge of the decisions and "an appropriate knowledge and appropriate experience of the practice and procedure, of the High Court". Curiously, the Bill refers to an appropriate knowledge and so forth as I just said, but it refers to the Supreme Court first. It refers to the Supreme Court, the Court of Appeal and the High Court. The High Court, where this person will be officiating, is put last, almost as an addendum. Senator McDowell's refocusing of attention on the practice and experience of the High Court is appropriate.

I also support him regarding Attorney General being prohibited by law, under the sword of Damocles of committing a criminal offence, from informing the Government of the long list. That seems to be quite extraordinary. It would deprive the Government of critical information. The Government will be deprived of critical information about this appointment and will surrender its rights to a body where the majority of the members may not have any great knowledge or expertise in this area at all. I strongly support Senator McDowell on this.

There is another matter on which I support him. The Minister referred to seeking expressions of interest on the part of eligible persons who wish to be considered for appointment to that office. How do they know that they wish to be considered for this office? How can the commission tell from whom expressions of interest should be sought? Subsection (7) of Senator McDowell's proposed new section states:

The Committee shall, for the purposes of making a report under subsection (2)—

(a) inform all members of the Superior Courts of the vacancy and invite any such member to express an interest in being appointed to the judicial office mentioned in subsection (2),

(b) publish any circular or advertisement as it considers appropriate inviting any other person eligible for appointment to the judicial office mentioned in subsection (2) to notify the Committee expressing an interest in such an appointment.

That is the way to do it. First, all the members of the superior courts are informed. As an addendum, I used the word "demean". It was slightly mischievous but when one is talking about superior courts, one is talking about superiority, and if one is going down, one is demeaning oneself. It seems that if one is seeking to attract the interest of people, one should first inform the members of the superior courts. They are the individuals who are critically and principally involved. Second, one should "publish any circular or advertisement as it considers appropriate". That is the way to attract people, rather than using some vague means of contacting individuals who, as far as I can understand it, have a wish that has not yet been expressed.

Senator Gerard P. Craughwell: The Minister referred to the reforming aspects of the Bill. He picked up quickly on Senator McDowell's word, "outsiders", and chose to put his own slant on it. The Senator had a different slant so language is clearly important.

If there is a vacancy and ten or 15 people apply, they have to be assessed to progress through the selection process. We have no idea how they will be assessed or who will assess them. Three recommendations are to be brought before the Cabinet, which is to make the appointment. The Cabinet does not have to accept any one of the three. If the Attorney General's hands are tied, as was the case in respect of section 27, he or she will have no input whatsoever into the appointment. If we untie the Attorney General's hands and the Cabinet says it is not happy with any of the three applicants and asks the Attorney General for an opinion and, on receiving it, makes an appointment, what in God's name is transparent about any of the process? The public will never know who applied. They will never know how the applicants were assessed and short-listed, that the three on the short-list were rejected by the Cabinet, or the reason for that. We will end up with the system we currently use to appoint judges. I cannot see anything reforming in this. The more we go through this Bill, the more I despair over it. Why are we pursuing it at all? It is deeply flawed. My colleague Senator McDowell, who is an expert in the area, says he believes it is unconstitutional. I said when discussing this with the Minister some weeks ago that if no one tests this in the Supreme Court if and when it is passed, I am mindful to test it myself. I do not believe the President will sign it anyway.

Senator Michael McDowell: I refer the House to the proposed section 44 in our amendment. May I explain the context?

An Cathaoirleach: If I heard the Minister correctly, he is prepared to get further advice and rethink some of the points raised before Report Stage. I would like the Senator to bear that in mind.

Senator Michael McDowell: I appreciate that but I want to make one point very clear to the Cathaoirleach. Committee Stage is where this has to be thrashed out. When we get to Report Stage, it will be a speech for and a speech against, followed by a speech for and a speech against, and that will be it.

An Cathaoirleach: I am not trying to stymie the Senator. I am just reminding him.

Senator Michael McDowell: Unless it reverts to Committee Stage, there is no real engagement, just speeches for and against.

Deputy Charles Flanagan: I am not using this as a device. I accept what the Senator said and I invite him to proceed.

Senator Michael McDowell: I am very cautious of the Report Stage procedure. I do not like it at all. I realise one can recommit to Committee Stage but I would prefer to address all the principles-----

Deputy Charles Flanagan: I do not have a difficulty with that. The Senator and I are around here a long time. I will not engage in any sharp practice, if that is what he is implying.

An Cathaoirleach: I was trying to be helpful.

Senator Michael McDowell: I appreciate that but, on the other hand, I am not willing to let go the lead of the dog-----

Deputy Charles Flanagan: That is what the Senator is entitled to do. Whatever about other amendments-----

An Cathaoirleach: The Senator will be on a shorter leash on Report Stage.

Senator Michael McDowell: That is certainly true.

Deputy Charles Flanagan: Whatever about my disposition as far as other amendments are concerned, I assure the Senator that I am keen to engage with him on these amendments. Given his experience and expertise, I am keen to listen on these amendments because they are of great importance in the context of the Bill. Whatever about anything I might have said on previous occasions about the length of the Bill or the length of the debate, I am keen to engage here. I am not in any way anxious to curtail or stymie debate on these amendments. It is not that I would be allowed to do so in any event.

An Cathaoirleach: Senator McDowell has the floor.

Senator Michael McDowell: I appreciate that the Minister has indicated a degree of openness of mind on this issue. It is clearly understandable in the context that he ended up leaving the Dáil with a provision in this respect with which he did not enter the Dáil.

Subsection (8) of our proposed section 44 refers to the committee constituted by the section for all senior promotional appointments within the superior courts:

> The Committee shall as soon as practicable make a report to the Government when requested by the Minister in accordance with *subsection (2)*, and shall include in its report—
>
> (a) the names of such persons as have expressed an interest in appointment to the judicial office mentioned in *subsection (2)*, and
>
> (b) the names of any such person or persons (not exceeding three in any case) whom the Committee recommends for such appointment.

Subsection (9) of the proposed new section states: "In advising the President in relation to the appointment of a person to a judicial office to which this section applies, the Government

shall first consider for appointment those persons whose names have been recommended to the Government by the Committee in a report furnished to the Government under the provisions of this section." This was, and is, an effort to create visibility for the Government regarding what it is doing in the context of a senior appointment. First, it re-enacts the JAAB procedure whereby the Government should first consider the recommended list. That is probably as close as one can sail to the constitutional wind in asking the Government to pay attention to the report of the body. What we have in mind is that the names of persons who have expressed an interest should be the subject of knowledge of the Cabinet.

Let me make a point that I do not believe is widely understood. On a good day, if everybody became enthusiastic, a large number of people - perhaps 30 to 60 - could express an interest in being appointed as an ordinary member of the High Court. My experience was that when vacancies in the Supreme Court were advertised, the number of practitioners who expressed an interest was tiny. They were countable on one hand, or none. Few people would waste their time filling out the forms unless they were serious contenders. Of course, a few nutcases put in applications from time to time but, ignoring them for the time being, only a handful of serious contenders would have asked the JAAB to be considered.

6 o'clock

Progress reported; Committee to sit again.

Irish Nationality and Citizenship (Naturalisation of Minors Born in Ireland) Bill 2018: Second Stage

Senator Ivana Bacik: I move: "That the Bill be now read a Second Time."

I welcome the Minister of State, Deputy Stanton, to the House. I also welcome our guests arriving in the Gallery from the Migrant Rights Centre Ireland and the Immigrant Council of Ireland to hear this important debate.

On behalf of my Labour Party colleagues, Senators Ó Ríordáin, Humphreys and Nash, I move this important and sensible Bill that seeks to regularise the position of the small number of children living in Ireland who were born here and who have been resident here throughout their lives but face an uncertain legal future and, in some cases, the threat of deportation. The situation of the children has been highlighted recently in a number of cases, notably with the threatened deportation of a young nine-year-old boy, Eric Zhi Ying Xue, from Bray who was born in Ireland and who is in fourth class in St. Cronan's national school. I will speak a little more about that case, which has been widely publicised and written about.

Our Bill would regularise the position of young children such as Eric. It would not restore an automatic right to birthright citizenship. It would not go back to the position prior to 2004. This is because we are conscious a referendum was passed in 2004 to remove birthright citizenship, in other words entitlement to citizenship upon birth. That referendum was opposed by the Labour Party and I am very proud of the stance my party took in 2004. We predicted that the passage of the referendum would lead to the type of cases we are seeing arise. We also opposed the referendum on the basis there was no evidence whatsoever it was necessary and because it was in breach of our commitments under the Good Friday Agreement, as a result of which

Article 2 of the Constitution was amended to declare it is the entitlement of every person born on the island of Ireland to be part of the Irish nation.

Prior to the Good Friday Agreement being put to the people, the Labour Party specifically asked that no legislation be proposed by the Government to impose restrictions on the entitlement to Irish nationality and citizenship of persons born in Ireland. Notwithstanding the Government's commitment, in 2004 we saw a referendum put to the people. There was certain proffering of no more than anecdotal evidence at best, and certainly no substantial evidence was offered, as to why such a referendum was necessary to remove an automatic birthright entitlement to citizenship. That referendum is best described as opportunistic. Having said that, it was passed and we are not seeking to change the situation or restore it to what it was prior to 2004. Rather, we seek to make a sensible, compassionate and relatively moderate change to address the key situation of injustice for those children born in Ireland who have lived here for a substantial period of time or for all of their lives and who still face deportation because of the referendum.

The referendum was implemented through the Irish Nationality and Citizenship Act 2004. However, that was not the only legislation that could have been passed, and it is important to point out to colleagues the constitutional referendum in 2004 was to insert a new Article 9.2°. This Article enables the Oireachtas expressly to legislate for citizenship. The effect of the referendum was not to deny for all time a right to birthright citizenship or birthright plus residence but rather to enable and empower the Oireachtas to legislate on it. The entitlement to legislate is what we seek to use in the Bill. Clearly, we do not need a referendum to regularise the position of the small number of children who have been most egregiously affected by the change in the law in 2004.

The other point about the 2004 law was that prior to the passage of the referendum the Minister already had the power to deport the non-national parents of Irish-born children even where those children were Irish citizens. The change to the law simply meant that in future the children could also be deported. Subsequent to this we passed a children's rights referendum, and it is in the spirit of the children's rights referendum and our obligations under international children's rights measures that we are putting forward the Bill.

All of us in the House are conscious that deportations can take place legally in Ireland but they tend to take place at the end of a lengthy asylum application process. Our processes have been very lengthy to date. The processes can take years to determine in which a child may be born, raised and educated here. The Bill seeks to regularise the situation and build on the entitlement of the Oireachtas to legislate under the Article 9.2° provision inserted to the Constitution in 2004. It would make three simple changes to our existing naturalisation law. It is not a fundamental change. Normally, someone applying for naturalisation must have a period of one year's continuous residence in the State immediately before the date of application plus a total residence of four of the eight immediately preceding years. The Bill would reduce this requirement, recognising we are speaking about children, and change the four year requirement to two years. Effectively, it would require three years' residency for an Irish-born child to be able to apply for citizenship. The Bill would also enable a child to apply irrespective of their parents' legal status. In calculating the period of residence the Bill would waive the requirement that the parent or child would have had permission to remain during the period of residence in the case of an Irish-born child. The Bill represents a sensible and compassionate approach to regularising the position of Irish-born children who have spent years of their childhood resident in this country but who face an uncertain future and, in some cases, the threat of deportation.

The principles behind the Bill have public support. Of course, we are open to amending it were the Government to agree not to oppose it on Second Stage. Recently we have had very successful collaborations with Departments where Labour Party Bills have not been opposed on Second Stage and were subject to amendment subsequently. We know there is public support for change of this nature. In the most recent edition of *The Sunday Times*, a Behaviour and Attitudes poll showed that 71% of the people believe those born in Ireland should be entitled to citizenship. I was very disappointed to learn today through the media that the Government proposes to oppose this Bill and not allow it to go through to Committee Stage. It is particularly disappointing because in recent months we have seen individual Fine Gael Ministers, including the Minister for Health, Deputy Harris, from the Wicklow constituency of Eric Zhi Ying Xue, intervene with the Minister for Justice and Equality seeking permission to remain for their constituents on a discretionary, humanitarian leave to remain basis. We do not believe it is good enough that individual Ministers are seeking to get around or ameliorate the effects of the 2004 referendum for children living in their constituencies in respect of whom a campaign is being waged by their school, community or family. It is simply not good enough that children in this very precarious and vulnerable situation would be subject to an *ad hoc* system of discretionary leave to remain.

The Government's statement on this, which was not provided to me but which I learned of through the media, refers to the current discretionary system being adequate. It is not and I do not think the people in the Gallery would accept it is adequate that children would face a discretionary system of entitlement to remain.

It is also a disappointing response from the Government considering that it, and indeed successive Governments, have always fought for the rights of undocumented Irish people living in America.

Senator David Norris: Hear, hear.

Senator Ivana Bacik: Senator Billy Lawless has been a proud champion of the rights of the Irish in America over many years, and I am proud that he is here to support our Bill because it is utterly consistent with Government policy in respect of our own migrants for many generations.

I am conscious, and I know the Minister will be also, that there are at least two cases currently before the courts on the issue of children's right to remain in Ireland. They have been born and, through no fault of their own, have grown up and been resident here and yet still face deportation. Therefore, we know these cases are causing legal as well as human problems. That is another reason we say the Government should agree to this Bill on Second Stage and work with us on workable amendments, if it believes it can be improved on, to ensure we see a better legal system in place for these children and their families.

The Government suggests also that a Bill such as this would mean we would be out of line with other EU countries. I take strong issue with that. I am grateful to the Migrant Rights Centre Ireland for its briefing, which I have circulated to all colleagues, along with our own briefing. The Migrant Rights Centre Ireland points out that in 24 of 27 EU member states have regularisation programmes to enable remediation of the situation of children who are undocumented. In Luxembourg, for instance, it is where a child has completed at least four years of compulsory schooling while in many other countries it is a stated number of years in school and-or proof of residency over that period. These sorts of mechanisms are commonplace in

other EU countries. In Ireland, we were out of line with other EU countries for many years in failing to provide asylum seekers with the right to work.

Senator Niall Ó Donnghaile: Hear, hear.

Senator Ivana Bacik: We have been held up internationally on that basis. I am very glad the Government has moved on that and I pay tribute to the work done by the Minister previously as Chairman of the Joint Committee on Justice and Equality on which Senator Conway and I had the pleasure of serving for some years. In that capacity, the Minister was very conscious to ensure the rights of persons here in direct provision and to ensure improvements to and reforms in our immigration system. I know the system is being made more efficient and more effective and we are seeing fewer incidents of the long delays we have seen in the past. That should also offer the Government a strong incentive not to oppose this Bill and work with us in bringing forward similar legislation because it clearly is a strong incentive to Government to ensure a fair, efficient and effective process whereby children will not languish in an uncertain legal situation for many years while asylum applications are being processed through a lengthy system.

I urge the Minister and colleagues on both sides of the House to support this important legislation.

Senator Kevin Humphreys: I welcome the Minister to the House. I also acknowledge his previous work of which I have always been an admirer. I ask him to work with the Labour Party on this legislation, which is very important. Discretion is not good enough. It is not good enough for a child to be dependent on whether the Minister, Deputy Harris, or the Minister, Deputy Flanagan, represent his or her constituency in terms of discretion to allow him or her to stay. What happens if that child is in a DEIS school or in an area of disadvantage and does not have friends with influence to access a Minister who might act with discretion? On many occasions, I have made very strong arguments for undocumented people who have been in Ireland for a long time but because of their background or because they work in the retail sector in low-paid employment, they got a very poor hearing. It is not good enough that a child born in this State and going to school here would constantly wait for a knock on the door from An Garda Síochána to tell him or her that he or she must go. What if the child does not have power, influence, a circle or a network to run an effective campaign to get a Minister, if there is a Minister based in his or her constituency, to exercise discretion? That is no way to treat a child. In 2016, the UN Committee on the Rights of the Child criticised Ireland's immigration system for failing to protect the needs of undocumented children and failing to adhere to the UN Convention on the Rights of the Child.

I do not know whether the Minister has to deal with cases like this but it is disheartening when one is approached by someone, especially when he or she has spent some time in Ireland. When it is a child it is even worse. As an undocumented child moves into education or into employment, he or she will be treated as second class and will be exploited and abused in the workforce. That is not acceptable.

Each year on St. Patrick's Day Irish politicians travel to America and make representations for the undocumented Irish. They work, as they should, to ensure that Irish citizens who have been in America for a long time get some acknowledgement. For Members of this House to not support this Bill would be hypocritical. We are talking about basic, fundamental human rights for children. A situation where it depends on whether a Minister lives in the constituency cannot continue. This must be done through legislation. This Bill provides a formal process for a

child born in this State. It is by no means liberal, because it is constrained by the constitutional amendment arising from the 2004 referendum. It is the bare minimum we can do. I would prefer if it went much further and if it was possible to re-run that referendum.

Senator Ivana Bacik: Hear, Hear.

Senator Kevin Humphreys: I campaigned against that proposal. The lies articulated during that referendum were despicable and it was the forerunner of what we have seen with Trump in the United States. There was no evidence to show that thousands, or even hundreds, of immigrants waiting to run to Holles Street Hospital to have their child so that they might become citizens of Ireland.

Senator Aodhán Ó Ríordáin: I thank the Immigrant Council of Ireland and the Migrant Rights Centre Ireland for being here this evening. Their advocacy and lobbying shows the best of our country and what it means to be Irish. I am bitterly disappointed at the Government's reaction to this Bill, which I genuinely did not expect, but I will start on a point of unity. No mainstream political party has ever done this. Immigration never comes up in general elections. The race card has only been played once during my political career. That was in 2004 during an unnecessary referendum. It was a despicable gesture by the Fianna Fáil-Progressive Democrats Government of the day. I remember it, as do other candidates who ran in the local elections held on the same day. I remember reports of African-Irish families being booed at polling stations. I swore when I got elected to the city council on that day that I would never forget the emotions I felt during that referendum campaign, which my party and others on the left stood against.

The Bill does not overturn the result of that referendum. It does not give automatic citizenship rights to Irish-born children. What it does is allow that a child born on this island, that is, in Ireland, North or South, has the right to citizenship after residency of three years. As has been said, if the Government is opposing this, what the Minister for Health, Deputy Harris, did in Wicklow was a lie and what the Minister for Justice and Equality, Deputy Flanagan, who was in this Chamber only moments ago, did in Laois was a lie. They are well able to accept the applause of their constituents when it comes to a popular campaign around an individual who was facing deportation. However, when it comes to regularising the situation and having legislation to underpin the rights of all children in that situation, regardless of whether they can run a media campaign and regardless of how influential they are, they are turning it down.

Despite all these launches relating to children's rights for the next five years and all this talk about a new republic, about getting up early in the morning and about a republic of opportunity, what opportunity are we handing to a child who is eight years old, Irish-born, knows no other country but Ireland and who faces deportation? The only chance they have is if they have a campaign group that is willing to go to a local Minister, who might step in and save the day on an individual basis.

What disappoints me most is that this is happening despite the Seanad having been really progressive, across all parties, Government parties included, on issues such as direct provision and advocating for the rights of undocumented workers. All of us have collectively called out the hypocrisy of going to the White House and advocating for undocumented workers in the United States and advocating for the rights of dreamer children. Dreamer children are dealt with in the Bill before the House. How dare we suggest that Trump is not doing the right thing when it comes to dreamer children and taking them away from their families, when this is ex-

actly what we are dealing with here? We are dealing with dreamer children. We are dealing with children whose position here needs to be regularised. What the Government is stating is that they are not important enough, that they do not have access or influence and that it will do this on an individual basis but not collectively.

I did not want to make this contribution. I wanted to make a contribution that would unify the House. I wanted to say that we, as Irish politicians, are better at this and that the 2004 referendum was a blip, a once-off mistake that involved the playing of the race card and something that should not happen again. The Government has an opportunity now, if it changes its mind, to regularise the situation of Irish children and to ensure that their schoolmates are not looking around themselves at an empty chair in the classroom and wondering why this so-called republic is sending them to countries of which they have no knowledge. I urge all Members to back this Bill.

Senator Martin Conway: I acknowledge my colleagues in the Labour Party for bringing forward this Bill. We began dealing with the legislation relating to judicial appointments at 2 p.m. However, what the Labour Party is trying to achieve in the Bill before us is far more important.

I acknowledge those in the Visitors Gallery, who obviously believe in what is proposed in the Bill. We have been here many times, as Senator Ó Ríordáin and others stated, speaking about the issues relating to people who come to this country for refuge and a safe haven. In recent years, there have been incremental improvements in areas such as direct provision. I welcome the Minister of State, Deputy Stanton, who has personally overseen what I would describe as a transformation in this area, particularly in the context of direct provision. The vast majority of the recommendations of the McMahon report have been implemented. While we all have issues with elements of direct provision - there are aspects of the system that we absolutely do not like - it is only fair to acknowledge that a lot has happened to improve direct provision, particularly in terms of reducing the time people have to wait for decisions on their applications for permission to remain.

If the Government is opposing the Bill, it is obviously doing so for reasons that I suggest are not in any way disrespectful or that run counter to what people are trying to achieve here. There are probably legal reasons for this and I am sure the Minister of State will outline them in due course. I would much prefer the Government to work with the Bill but if the Minister of State commits to coming back to the House with other or alternative legislation in order to achieve what people are seeking to do, I would be happy.

As a country, Ireland has a far better record in this area than some of its European neighbours. In terms of children being facilitated and treated properly, this country is in a far better position and we can hold our heads high when compared with other countries. However, I accept that we have a long way to go. I also worry about the whole area of discretion. I welcome what happened in the case of those two children who happen to live in the constituencies of Ministers. I am sure that was not the reason for their difficulties being resolved and I am sure that the cases that were made were appropriate. However, I would like to see every child who is in that position, regardless of whether there is a campaign group to facilitate, support and advocate for him or her, to be able to benefit from the same discretion. Discretion is not a bad thing; it is a very powerful weapon. We have seen how discretion has been used in many appropriate cases by institutions such as An Garda Síochána over the years. I would not necessarily remove the word "discretion" because it can be used in an extremely positive way, as we have seen in

the two cases to which I refer.

With regard to Senator Billy Lawless' work in America, I have been very involved in lobbying for the undocumented Irish in the same way that I have been very involved in lobbying for the undocumented in this country. I will not be accused of hypocrisy by anybody because my track record over the past eight years in this House speaks for itself. Senator Lawless has done phenomenal work. I remember being in Washington at the time of the Kennedy-McCain Bill. Unfortunately, that came apart at the 11th hour. Many subsequent attempts to deal with this matter have also come apart in the same way. I would like to think - I would be fairly confident in saying this - that the Irish Government and this State's record in dealing with the undocumented is far more impressive than that of the United States. We are miles ahead in terms of how we treat people when compared to how they are treated in the United States, and that is not just today but over a number of years. When people get their green cards in the US, the world is their oyster and they are treated phenomenally well. However, in comparison with the US, we have a good record in terms of dealing with the undocumented. There are many Irish people in the US who can thank Senator Lawless for the work he has done to assist them. It is wonderful that he is in the House because he brings an influence, a knowledge and an expertise that informs us for the better.

I do not know if we will be supporting the Bill. We will wait to hear what the Minister of State has to say.

Senator Aodhán Ó Ríordáin: Kick him under the table there, Martin.

Senator Martin Conway: However, all our goals are the same in this regard. Being in government is unfortunately not as easy as being in opposition. There may very well be reasons, technical, legal or other why it cannot happen. We all need to strive to achieve the same result.

Senator Lorraine Clifford-Lee: I am happy to say Fianna Fáil is supporting this Bill on this Stage. My colleagues have made some excellent points. There is obviously a problem here. There are children living in this country who were born here and go to school here and who identify as Irish. Through no fault of their own, they have fallen through the cracks. It is not good for Senators to say we have a great track record in this country in regard to undocumented people compared with other countries because we do not. We have an abysmal record. Many people came here during the boom years in good faith. They got work permits and engaged in economic activity. They were very much needed, wanted and embraced. When the recession hit, they were no longer able to get work permits and they fell through the cracks but their lives went on. They met their partners, married, had children and now they face this uphill battle and threat of deportation. It is outrageous and a disgrace that people have to depend on having a Minister in their constituency or on their own skills as individuals to mount a campaign. Many people would not have the language skills or the confidence or the cute backstory necessary for a public campaign. It is very unfair that we allow a very small but significant cohort of people to live with this constant threat over their heads.

It is disgraceful if the Government opposes the Bill. Perhaps there are problems with the Bill but I would urge the Minister to work with the Labour Party, which brought it forward, and with other Senators. It is a very important topic. We should be working together to get a solution to this. As Senator Ó Riordáin pointed out, immigration has never been an issue for any mainstream political party. Therefore, it is incumbent on us to work together to reach a

solution that will help a small number of families. It is important for them and the communities they live in. They are in schools, sports clubs and play very important roles. For our nation to develop and stand among our European colleagues, we should be able to say we are a welcoming country and we embrace people from other countries who are contributing economically, socially and culturally to this country and their communities. They see Ireland as their country.

We need to be making progress on several fronts. The asylum system is not fit for purpose to say the least. For people to stand up here and say we can hold our heads up high on direct provision-----

Senator Martin Conway: Yes we can.

Acting Chairman (Senator Gerard P. Craughwell): The Senator should speak through the Chair.

Senator Martin Conway: It is directed at me specifically.

Senator Lorraine Clifford-Lee: While some aspects of the McMahon report have been implemented the meatier ones have not.

Senator Martin Conway: They have.

Senator Lorraine Clifford-Lee: These are things that need to be considered. The length of time it takes for people to pass through the asylum system because of a lack of resources from the starting point has allowed children grow up and go to school, form friendships, learn our language and engage in sports clubs and different community activities. We need a radical overhaul of everything but this would be a welcome first step.

There may be issues that Fianna Fáil will want to tinker around with as the Bill progresses but we are very willing to work with the Government because the spirit of this Bill is very noble and we need to run with that. Let us all work together to let the people in the Visitor's Gallery, the people at home watching this and those who depend on us see something significant happen here tonight.

Senator Martin Conway: On a point of order, I would like to respond to the direct attack on me at the beginning of that speech.

Acting Chairman (Senator Gerard P. Craughwell): I am afraid the Senator may not.

Senator Martin Conway: It was totally inappropriate.

Acting Chairman (Senator Gerard P. Craughwell): Senator Conway should please resume his seat.

Senator Martin Conway: The Senator should go to England and America and inform herself.

Acting Chairman (Senator Gerard P. Craughwell): The Senator should resume his seat. I call Senator Lawless.

Senator Martin Conway: The Senator should inform herself. She is a disgrace.

Senator Billy Lawless: I welcome the migrant groups and thank them for all they do for

immigrants in this country. As an Irish citizen and American citizen, I am very proud that this is one of the few countries in Europe that does not have an anti-immigrant party. Long may that last.

On 11 June 2004 the Irish people voted in favour of an amendment to our Constitution that in my view, both then and now, was a very unnecessary change. I greatly welcome Senator Bacik's Bill which does not seek to overturn the will of the Irish people but instead reflects a less onerous regime for those categories of minors born on the island of Ireland who no longer have an automatic entitlement to citizenship because of the legislation which followed the 2004 referendum. Section 15(*c*) of the Irish Nationality and Citizenship Act 1956, which was amended in 1986, long before the citizenship referendum, includes a criterion that must be met before the Minister can in his or her "absolute discretion" grant an application for citizenship, that a person applying for citizenship must be resident in Ireland for one year immediately before the date of the application. During the eight years "immediately preceding that period" the applicant must have accumulated a total residence period "amounting to four years". When combined with the requirement of residency one year before the application, that amounts to a five year residency requirement. If I understand Senator Bacik's Bill correctly her proposal is that the combined residency requirement be changed to three years-----

Senator Ivana Bacik: Correct.

Senator Billy Lawless: -----for minors born in Ireland and that minors born in Ireland, rather than the non-national parents of minors born in Ireland, could themselves independently apply for citizenship if they meet the criteria.

Senator Ivana Bacik: Correct.

Senator Billy Lawless: If I also understand the position correctly, this is not possible under the current legislation where only the non-national parent or guardian of the Irish born minor can apply. Perhaps Senator Bacik might elaborate on how this might work in practical terms. How would a minor born in Ireland who meets the amended criteria actually make this application? At no stage that I am aware of was the argument put to the people of Ireland in 2004 that this State wanted to deprive persons born on this island to non-EU national parents of an entitlement to be Irish and to be part of our State and nation. Yet that is precisely what the legislation which followed the 2004 amendment brought about. Even taking the arguments put forward at the time that the purpose of the referendum was to free up our maternity hospitals overblown with non-EU national parents looking to play the system or preventing them from obtaining automatic residency or citizenship entitlements, the practical effect of the referendum was to change neither of these concepts. No one was ever told that what the State really wanted to do was to reserve the absolute right to deport a nine year old who was born in Ireland to a Chinese mother to a country he had never set foot in. Thankfully, at least in this particular case, largely due to publicity, the Minister for Justice and Equality now appears to show clemency.

Like the Labour Party Senators who have proposed this Bill I would like Ireland to go further. The amendment we inserted in the Constitution in 2004 is worth reading into the Official Report. It provides that "[n]otwithstanding any other provision of this Constitution, a person born in the island of Ireland, which includes its islands and seas, who does not have, at the time of the birth of that person, at least one parent who is an Irish citizen or entitled to be an Irish citizen is not entitled to Irish citizenship or nationality, unless provided for by law." Perhaps we do not even need another referendum to make Ireland a more compassionate country for

the people born here. I will allow the legally trained Members of this House to comment but it seems to me that the effect of the law enacted after the referendum does not reflect where the people stand with respect to how they believe persons born in this State should be treated. It would seem these laws can and should be changed. I firmly agree with the objective of the Bill to enable minors born in Ireland to apply for citizenship in their own right and equally to reduce the cumulative residency requirement they have to meet from five years to three years. It is a proportionate step in the right direction. I totally agree with Senator Humphreys. Advocates of the undocumented Irish in the United States are having a tough time as a result of the toxic attitude of the present Administration towards immigrants. At least the children born to undocumented Irish in the United States are automatically US citizens.

Senator Niall Ó Donnghaile: Hear, hear.

Senator Billy Lawless: Surely we can do the same thing here. I hope the Bill and the recent high profile cases of Irish-born children facing deportation encourages the Government to revisit the laws that followed the 2004 referendum.

Senator Niall Ó Donnghaile: I welcome our visitors to the Public Gallery who are here to listen to the debate on the Bill. I commend and support those in the Labour Party group who proposed the Bill. Sinn Féin will support the passage of the Bill on Second Stage.

Like a number of previous speakers, we in Sinn Féin opposed the 2004 referendum. Over the past number of years, we have begun to see the toxic outworking, which many of us alerted the then Government to, and the very negative ramifications of the race to the bottom in 2004 which, as Senator Ó Ríordáin stated, resulted, tragically and shamefully, in the race card being put front and centre of political life in the State. It is not just a stain on the politics of the State but unfortunately for many people it is coming home to roost in the most negative way.

I am disappointed by the Government's stance if it is the case it will oppose the Bill. It is not normally the custom in the House to oppose legislation like this on Second Stage. Senator Conway alerted us to the potential for legal concerns around it although I am not sure how credible that is. Even if it is, we tend to work collaboratively and positively together to try to get legislation through.

At its heart this is about cherishing, protecting and defending children who are born here when their families come to live in Ireland. I do not want to attack Senator Conway but it is worth putting on the record that I fundamentally disagree with him on the Government's record on direct provision and support for vulnerable migrant families, and children in particular. The points have been made. There is no point in getting into a ding-dong around that. The Bill does not overturn the 2004 referendum although in many ways I wish it did because it was a stinking vote and is a blot on the Constitution and the political and social structure of the State. I am delighted that the vast number of us in the Chamber are alert to that and ready to stand up and argue against it even now.

I will briefly refer to the positives I see in the Bill. It is about protecting Irish children, that is children who are born of this nation. It utilises the language of the Good Friday Agreement which is always a positive thing. It is as succinct as it can be, which we do not always get when it comes to legislation in the House. It seeks to do exactly what it says on the tin.

While the Bill is succinct, the complexities of the citizenship issue are not so succinct. They are a live and intrusive problem in many instances in countless people's lives right across all

of the Thirty-two Counties. I happen to be of the view that creating citizens is positive and progressive. The more we seek to grant citizenship and empower Irish citizens it will benefit us and stand us in good stead in the long run. These children who are born here are as Irish as us and we are as Irish as they are. We should enact ways that cherish them in a much more proactive and accessible way.

I have a number of questions on the outworking of the legislation in terms of its application and its reference to Good Friday Agreement language such as "the island of Ireland". I engage with many families, for example Lithuanian families in Dungannon who are perhaps working in food production, whose children attend the local Gaelscoil. They play for the local GAA club and identify as Irish, as they would. They want to avail of Irish citizenship in the same way as someone who comes to live in Galway, Cork or Dublin would.

It is the same in south Belfast where I had the privilege of visiting the Belfast Polish school, which is a Saturday school in the city, when I was Lord Mayor. I met with one child who was attending the local Gaelscoil. She was speaking Irish at the Gaelscoil, Polish at home with her mother, Russian at home with her father and English out on the street with the children she played with. In the midst of all that enriching diversity and the benefits the child will inevitably have, she identified as Irish and wanted to avail of Irish citizenship. Perhaps, in the spirit and the word and letter of the Good Friday Agreement, the benefits of the proposed legislation will apply right across the Thirty-two Counties.

I do not know how much time I have left but I will make my final point. We need to look at the broader issue of citizenship because we have instances in the North - I do not want to digress to much from discussing what the Bill seeks to do - where people who identify as Irish, and are Irish under the Good Friday Agreement, are being taken through the courts by the British Home Office for trying to assert their Irish citizenship in line with the Good Friday Agreement. When they apply to the British Home Office for residency visas for their partner or spouse from the US, they have to renounce British citizenship that they have never held. It is obviously in breach of the Good Friday Agreement and is being tested in the court at present. We need to be careful we do not treat people who were born here and have lived here for a long time differently from others or that we act as if there is some kind of second class or substandard form of citizenship. Perhaps it is a debate for another day. I welcome the Bill. I support what the Bill seeks to do. I am disappointed and I hope at this late stage the Government will consider changing its mind.

Acting Chairman (Senator Gerard P. Craughwell): Senator Higgins has eight minutes.

Senator Alice-Mary Higgins: Senator Black is first and I will take the next slot.

Acting Chairman (Senator Gerard P. Craughwell): Will Senator Black take the full eight minutes?

Senator Frances Black: Yes.

Senator Alice-Mary Higgins: Will there be a second round?

Acting Chairman (Senator Gerard P. Craughwell): Say that again.

Senator Alice-Mary Higgins: There is a second round.

Acting Chairman (Senator Gerard P. Craughwell): Okay.

Senator Frances Black: I welcome the Minister of State to the Chamber. I am delighted to be able to speak strongly in favour of this important Bill. I commend Senator Bacik and the Labour Party Senators for their work on bringing it forward. I also welcome the guests in the Public Gallery who have worked very hard on the issue.

The Bill proposes a modest, humane, compassionate change and I urge my colleagues across the House to support it. It seeks to provide a pathway to regularise the position of the small number of undocumented children in Ireland who, despite having been born and raised here, are denied citizenship and risk deportation because of their status. It is not acceptable in a modern, democratic society as recent, high-profile cases have made absolutely clear.

Some speakers have already touched on the case, which was extensively discussed last month, in which the State sought to deport a nine year old boy from Wicklow to China despite the fact he was born and raised in Ireland and has spent his entire life here. He goes to school in St. Cronan's in Bray and it was really heartening and inspiring to see his friends and classmates rallying behind him and opposing what was happening. Those kids could see a clear injustice. They understood how cruel and inhumane it would be to take this boy from his home, friends, school and life and send him to the other side of the world to a place he has never been. It rightly shocked so many of us and it provided a big impetus for change. It highlighted a problem in our system and our job as legislators is to fix it. There is an extreme callousness and heartlessness in the policy as it currently stands and it is something people are realising as these cases continue to make headlines. After the situation in Bray became public, more than 50,000 people signed a petition calling for the deportation to be halted on humanitarian grounds. Those people recognise that Ireland is Eric's home, that he belongs here, and that no one benefits from his deportation.

Just last week, a Behaviour & Attitudes poll showed that more than 70% of people believe that those born in Ireland should be entitled to citizenship. This figure is important as it demonstrates how people are viewing the human cost of our current policy and asking for change. This modest, sensible Bill is an important step in that direction. It deals with young people who have spent their entire lives in Ireland and who are as much a part of the rich fabric of this country as any of us.

In this spirit, I want to say a special word of thanks to the Migrant Rights Centre Ireland, MRCI, which has done Trojan work on this issue, especially through the Justice for the Undocumented campaign. In particular, I commend this young, paperless and powerful youth group, which comprises young undocumented people living here and campaigning for change. They are represented in the Public Gallery tonight. In my work as a Senator I have been privileged to meet them on several occasions and they are an incredible group - smart, funny, talented, dedicated and committed to changing their country for the better. Ireland is their home, they want to improve it and this country is so lucky to have them. They have spoken out bravely about the trauma of growing up undocumented in Ireland. It is heartbreaking to hear descriptions of the mental stress that comes from hiding irregular migration status from friends, family and public authorities and the stigma associated with it. No child should have to go through this. They talk about their aspirations to get on and achieve in life, but many avenues are needlessly and cruelly blocked off to them. One member of the group spoke about the feeling of knowing that, no matter how hard one works and how many points one gets in his or her leaving certificate, third level education is just not an option. They launched a powerful, inspiring short film last night, and I urge my colleagues to watch it and to hear in their words why the system as it stands is just not right.

We recoiled in horror when US President Donald Trump outlined plans to cancel the famous dreamers regularisation programme in the US, but no comparable system exists here. At the moment, the only legal process available to these children is to seek humanitarian leave to remain, but this is a deeply flawed system. There is no clear criteria or process involved and it is not fair on the people involved or on the Minister. As a member of the Joint Committee on Justice and Equality, I was recently asked to carry out a review of Ireland's migration policies. One of the key recommendations to come out of that process was the need for a transparent, fair regularisation scheme that would allow undocumented people, both children and adults, to come forward and regularise their status. I acknowledge progress has been made on this recently, and I commend the Minister of State on his commitment to continue working on this, but I urge him to take heed of the research produced by MRCI and other organisations outlining how we can make these systems fairer and more humane. We have seen other EU states relying on clear criteria like numbers of years in school and proof of residency and that is something we should also examine. It puts the best interests of the child and young person first and rightly prioritises their education, overall development, well-being, and rights.

In 2016, the UN Committee on the Rights of the Child observed that our immigration system had failed to address the needs of undocumented children, in light of our obligations under the UN Convention on the Rights of the Child. In its review, it emphasised that: "all children are entitled to the full protection and implementation of their rights under the Convention", and that these rights must be "guaranteed for all children under the State party's jurisdiction, regardless of their migration status or that of their parents". It went on to directly call for a legal framework with clear, accessible procedures to regularise the status of children and their families in irregular migration situations. Ireland needs to report on its compliance with the convention by 2020, and I would appreciate it if the Minister of State could give some indication on how the Government intends to respond to these concerns.

I would like to briefly mention the case of Nonso Muojeke in Tullamore, which also made headlines recently. It was a similar situation, in that his classmates rallied against a deportation order that was clearly unjust and I was glad that the case was resolved. However, while the same arguments made against the deportation in Bray last month applied, in that he had spent his childhood in Ireland and grown up there, the fact that he was brought to Ireland at 2 years of age means that he still will not qualify for citizenship based on his place of birth. That makes it clear that more needs to be done on this issue, and I urge the Government to follow up on this excellent Bill with concrete proposals that can help all undocumented children living in Ireland. It should not be up to young children and their school friends to plead for decency. The State has a legal and a moral obligation to ensure that clear pathways exist for these children, and that they can live happily and exercise their rights. I am so delighted to support this Bill as an important step in that direction. I thank the Senators who have tabled it and commend it to the House.

Senator David Norris: I had a guest at lunch today. She is the widow of a school friend of mine. She is English and she spoke about attending a citizenship ceremony when she achieved Irish citizenship. She spoke about it with tremendous passion and said it was one of the most moving days of her life. She was surrounded by people from Asia, Africa and Europe and this meant so much to her. It is in that human context that we have to view this important legislation.

In 2004, there was a mean-minded, despicable referendum, of which I, as an Irish citizen, am deeply ashamed. It was an appalling thing to do. Among the provisions in the referendum,

it stated, "Notwithstanding any other provision of this Constitution, a person born in the island of Ireland, which includes its islands and seas, who does not have, at the time of the birth of that person, at least one parent who is an Irish citizen or is entitled to be an Irish citizen is not entitled to Irish citizenship or nationality, unless provided for by law." There are a couple of things we can say about this. First, the phrase, "unless provided for by law", is an open invitation to the Oireachtas to enact such legislation and that is what we are doing tonight.

Second, it is interesting that the phrase, "Notwithstanding any other provision of this Constitution", is intended to qualify Article 2 of the Constitution following the Good Friday Agreement, which states: "It is the entitlement and birthright of every person born in the island of Ireland, which includes its islands and seas, to be part of the Irish nation." What does this mean? How can somebody be part of the Irish nation while, at the same time, be denied citizenship? It is a contradiction in terms and a complete nonsense. The fact is that this change in the law simply means that the Government and the Minister can deport children.

We hear the Government all the time saying that we must bear in mind the best interests of the child when bringing in legislation. How is it in the best interests of a child that it be deported to a country that it does not know? That is also a nonsense.

Section 3, which deals with humanitarian leave to remain, is not a solution to this. A child or the parents cannot operate this section. It is triggered exclusively at the whim of the Minister. It is clear that the current system has not been put in place to address the needs of undocumented children or their families. That is not the intention.

Reference was made to other countries and we were told that 23 or 24 of the EU27 have provisions for regularisation. In Luxembourg, there is a mechanism in law to regularise children and young people and their parents before they turn 21 if the child or young person has completed four years of compulsory schooling. In France, there are a number of regularisation mechanisms and provisions in law and policies that entitle children to regularise their status at 18 years of age based on private and family life. The criteria focus on the years of residency and schooling. There is a mechanism in law in Norway that regularises children on the basis of strong humanitarian grounds in practice and regularises undocumented children who have resided there for more than four and a half years and who have attended one year of school in Norway.

7 o'clock

Even in the United Kingdom, there are provisions for regularising undocumented children. We have to face the human situation. Imagine the mental stress faced by undocumented children in this situation, children who have become aware of their parents' lack of legal status. This protection, which D.H. Lawrence called the overarching rainbow of the parents' love, is fractured by this.

Acting Chairman (Senator Diarmuid Wilson): I understand you are sharing time with Senator Nash. Is that correct?

Senator David Norris: With whom?

Acting Chairman (Senator Diarmuid Wilson): Senator Nash.

Senator David Norris: Senator what?

Acting Chairman (Senator Diarmuid Wilson): Senator Nash.

Senator David Norris: I did not know that.

Senator Gerald Nash: I will come in the next phase. That is fine.

Senator David Norris: I was not asked, so I would have made provision and speeded up. How long have I got?

Acting Chairman (Senator Diarmuid Wilson): My understanding is-----

Senator Gerald Nash: I will come in on the next phase.

Acting Chairman (Senator Diarmuid Wilson): If you are sharing, you have to conclude in 30 seconds.

Senator David Norris: Have I two minutes and 30 seconds?

Acting Chairman (Senator Diarmuid Wilson): No, you have to conclude in 30 seconds.

Senator David Norris: I am looking for some injury time because there was an interruption. I am going to take it anyway, no matter what happens.

Acting Chairman (Senator Diarmuid Wilson): You can continue.

Senator David Norris: What is the Minister of State's response to the observations of the United Nations Committee on the Rights of the Child, which was strongly critical of this country? Reference has been made to the situation of Nonso Moujeke in Tullamore. This is an extraordinary thing. It showed the young people of Ireland, the children of Ireland, knew more than the Government of Ireland, because they roused themselves up and protested. The entire school of 600 or 700 young people stood up in defence of that young man who was not born in this country, and thank God they prevailed.

How does the Minister of State propose to address the issue of children and young people growing up undocumented in Ireland? Would he be open to more comprehensive legislation that introduces a permanent regularisation for all undocumented children and young people based on numbers of years at schooling in Ireland? In other European countries, as I have indicated, young people are regularised. Would the Minister of State consider a solution like this in Ireland? Could he outline a timeframe for dealing with this situation? How has he responded to the criticism from the United Nations committee?

This is an excellent Bill but it does not go far enough because it does not deal with the situation of people who are not born in this country, like Nonso Moujeke. This is something which we really need to deal with and the people of Ireland have already spoken with passion on this issue.

Senator Michael McDowell: I support this Bill and it should be given a Second Reading. It is well-intentioned and addresses an aspect of our current law which needs to be addressed by the Oireachtas. I want to put a number of matters on the record. Firstly, in 2002, the Fianna Fáil-Progressive Democrats programme for Government stated that we would deal with the situation that then existed, that any person born on the island of Ireland, in no matter what circumstance and no matter where or whatever, became entitled to Irish citizenship. The programme for Government stated that it would be dealt with by whatever means, legislative or constitutional, as was required. It was clearly signalled in advance and a commitment to

consult the Opposition parties was put into that programme. Let us remember that that is the origin of that referendum. At the time it was not accused of being mean-minded or based on lies or propaganda, but it was to bring Irish law into conformity with the laws of the rest of Europe on these matters.

France had a *jus soli* entitlement to citizenship but it operated in a very different way. French children could be deported and told they could come back when they were 18 years of age. Ireland, on the other hand, had a Constitution which provided that the family had rights separate from the individual. In Ireland, therefore, family rights combined with absolute citizenship based on *jus soli* effectively meant that - this was found by the courts - unless there were overwhelming reasons, no family who had a child born in Ireland could be deported in any circumstances. That was the law as it emerged.

It has been suggested on a number of occasions in this House that the referendum was mean-minded, but it was not. Some 80% of Irish people voted for it and if the matter was put back to them again, I dare say 80% of the people would vote to keep it as it is. The reason is that the issue is looked at when shorn of emotion. It is not sustainable in a Europe without borders to have a situation where one must admit people to live in one's territory on the basis of European law, but where one's state is the only member state of the European Union which cannot say a person's status there is unlawful and he or she must go, if in the interim, a child has been born. When I was Minister for Justice, Equality and Law Reform - the Minister of State, Deputy Stanton will know this - I left that Department in circumstances where it was anticipated that a new immigration and nationality Bill would be passed in which the entire process of considering applications to remain in this country, either on humanitarian grounds or on refugee-asylum-seeking grounds, would be accelerated and decided in rapid order by a new procedure. Unfortunately, that legislation never came to pass and the result is that we have had unconscionable delays in dealing with the situation of people seeking asylum in this country.

Perhaps the situation has improved, and I hope it has. We must recall that likewise, when I was Minister for Justice, Equality and Law Reform, the accumulated number of applications which were then not being addressed had reached such proportions that - perhaps people might think about this when they use the phrase mean-minded - I introduced, against considerable opposition, a scheme whereby those who were in the queue, so to speak, to seek asylum were given a way out of that queue and given a right to remain in Ireland because of the delays. Between 15,000 and 18,000 people availed of this path to citizenship at the time. I want to put on the record that that measure was humane and decent. Senator Ó Ríordáin can get emotional in this House, and I could turn on emotion just as fast as he can if I wanted to, but I know the situation described to the people was accurately described to them. I know that the masters of the maternity hospitals made representations to Government to say that the situation untenable, despite all the claims now that it did not happen. I also know, and this is important, that the Government at the time said to the people that in the inevitable result of case law in Ireland and in the European Union, with the Chen and other cases, would be that we would as a matter of European and Irish constitutional law combined, be in a position that we would not be able to deport any family who had a child in Ireland because they would have had European rights and Irish constitutional family rights. The combination of all these events was going to make Ireland's position unique in Europe as a place where we had no right to exclude people at our borders, and at the same time guaranteed *jus soli* to an extent that no other European state admits. I want to put all of that on the record.

When we come to Eric's case, it is a matter for ministerial discretion at the moment. I wel-

come what Senator Bacik has proposed, which is that there is a pathway for someone to move the Sword of Damocles, which is discretion, away from someone and to give some pathway to seeking permanence and some degree of predictability. No child should be in the position of Eric, no matter what has happened or what the cause of the delay is, where a child at that age is effectively threatened with deportation to a country he or she has never been in. I agree with Senator Conway in one respect. Discretion is not a bad thing in these matters. One will come across situations where apparently identically cases are radically different. In the end, under our citizenship and nationality law, a Minister is given discretion. Senators may recall Olukunle, the student who I had to bring back from Nigeria to do his leaving certificate examinations. Most of these cases arise from a situation where a more or less mechanical process arrives at one decision and discretion has to be applied to reverse it. That should not be the case. As the Minister of State knows, every ministerial discretion is subject to judicial control. I believe Senator Bacik's Bill is timely and appropriate and there has to be a mechanism for children in these circumstances to enter into a process where discretion will be exercised rather than just sit in a limbo for years, wondering if a knock will ever come at the door. That is not appropriate and it is the situation that Senator Lawless is dealing with in America. It is unjust and inhuman and we have to provide for it.

The effect of that referendum was to vest in the Houses of the Oireachtas total responsibility for our citizenship laws to deal with it in any way it likes. That is not mean-minded but democratic.

Senator Alice-Mary Higgins: I will move to the Bill shortly. I will address the 2004 referendum first since it has been discussed. This was the first campaign that I was involved in after my return from America, where I was a migrant for many years. In the US, many of my fellow migrants had formed relationships and had children, and some were working to regularise their status. Many migrants, whether documented, undocumented, legal, or illegal, including fellow Irish migrants, knew that their children would at least be guaranteed a basic level of security and entitled to citizenship in the country that they were born. Their child, born in America, would have the same rights, entitlement and chance of a life there and to contribute to that country as any other child born there. That was a very important principle. It was quite a shock when I came home to Ireland and saw that the State was moving away from that principle. It is very different from the tradition in the rest of Europe. Ireland won its status as a republic. It was a referendum that made us less of a republic because it took away from the simple principle of a republic which is different from the historical origins of many of our close colleagues who we work with in Europe in that we came to democracy as a republic with a basic principle of equality. It was not something that we grew towards but was part of the founding of our State in 1916 and, according to the programme for commemoration of the first Dáil for next year, the first duty of the State is to all children. That is what Ireland was as a republic and it was diminished by that referendum.

I disagree with my colleague that people did not talk about concerns of it being racist at the time.

Senator Michael McDowell: They did.

Senator Alice-Mary Higgins: They did, absolutely. I worked for an anti-racism project when I came back which produced educational materials that were meant to be used in a small context and we were overrun with requests for them. One of the documents we produced with the Comhlamh anti-racism project was called "Myths and Facts" and was about asylum seekers.

We talk about showing emotion. This referendum was loaded with the emotion of fear. There was an intensive use of myth and significant fear was built up at the time.

I found an email that I sent in 2004. Some of the myths and misinformation related to concerns that the EU was requiring us to hold the referendum. The EU did not require that, much as it has no problem with our recommendations on the route to citizenship. There is a variety of routes to citizenship across Europe. We should be concerned to ensure a race to higher and better standards throughout Europe rather than a race to the bottom. That was not a concern at the time. The masters of the hospitals clarified this. I wrote that as for the supposed overrun in our health services, the masters of the maternity hospitals stated clearly that they did not ask for a referendum but for more resources and that the cause of the crisis in maternity hospitals was years of Government cutbacks and closures. I said that Ireland's health service was highly dependent on the immigrant health professionals whose children would be negatively impacted. That is what we wrote and it was known at the time. I was on the doors during the referendum. In that same email, I wrote that the tide was turning as people considered the implications but I did not know if there was time for the tide to turn enough. It did not turn enough but I think it has since. We know that surveys now show that 71% of people believe those who are born in Ireland should be able to grow up and live in Ireland. We have also seen the tide turn in other referenda which have taken place since then. I put it to the Minister of State that regardless of the referendum, which we cannot rerun-----

Senator Michael McDowell: Why not, if the Senator believes in it? Why not rerun it?

Senator Alice-Mary Higgins: I would be happy to rerun it but we do not need to wait for that.

Acting Chairman (Senator Ned O'Sullivan): Senator Higgins has the floor.

Senator Alice-Mary Higgins: Another emotion which was used and activated during that referendum was hate. We saw an increase in hate crimes. An Amnesty International report at the time highlighted that African women were the largest target of hate crimes. We had numerous reports of attacks on pregnant African women in our country. That increased following the referendum and during it

Senator Michael McDowell: Rubbish.

Senator Alice-Mary Higgins: That was the context. We move forward now. The tide has changed. The proposed legislation respects the 2004 referendum and its spirit. As everyone in the House has acknowledged, it includes the right to provide for a route to citizenship and that is still open to us. It also reflects some understanding of the children's rights referendum which we have had since then. The principle of the children's rights referendum was that each child has rights inherent in themselves. The debate on the 2004 referendum was focused on the immigration status of a parent. The children's rights referendum we had since shows that the people of Ireland believe children have inherent rights and should be able to access them. It would be compliant with the 2004 referendum and in the spirit of the children's rights referendum if the Minister of State were to accept this Bill. Others have spoken about a few key issues, including the 2015 UN recommendations on the rights of the child. I point to Ireland's conventions on statelessness. Ireland has signed up to a number of conventions on statelessness and we consistently put the children who are born here, who are Irish but not citizens, in danger of being children of no state.

Senator Michael McDowell: That is not true.

Senator Alice-Mary Higgins: It depends on the status of their parents and on whether their parents are undocumented. There is a concern. There has been an identified risk of statelessness which needs to be addressed and which this legislation would help. I agree with my colleague on one issue. Discretion is good; I do not have a problem with discretion. There is a role for it in humanitarian leave to remain. It is important that it be exercised but it is not adequate for these purposes and it places an unfair burden on the child. The Bill deals with children who are aged four or five. They will not be in a position to engage in campaigns and so on. I would like this to apply from birth but it is reasonable to apply from the age of three when children enter preschool or childcare facilities with other children. The campaigns have demonstrated that when children are insecure in their status in a school, it is bad for all the children in that school. An atmosphere of inequality is created and children respond on a core level to the inequality.

Acting Chairman (Senator Ned O'Sullivan): I ask the Senator to conclude. We are running out of time.

Senator Alice-Mary Higgins: I have come to my final minute.

Acting Chairman (Senator Ned O'Sullivan): The Senator is well beyond her final minute. She is a minute over at the moment.

Senator Alice-Mary Higgins: I will conclude. That inequality is damaging to children and it creates an insecure and unequal environment in school. Bearing in mind that decisions should be made within three years anyway, the Bill would allow that any child who is over three years of age and is starting to attend school could do so on an equal basis with other children. I urge the Minister to seek high standards. I ask him to reconsider and to support the Bill. Immigration does not cause xenophobia. A lack of constructive integration and inclusion mechanisms is what we need to address. I commend the Bill to the House and look forward to its return on Committee Stage.

Acting Chairman (Senator Ned O'Sullivan): We have new speakers offering and I remind Members that the Minister of State has to conclude after Senator Bacik. I have to be strict on time. Next is Senator Gavan.

Senator Ivana Bacik: I think it is only five minutes per speaker once the group leaders have spoken.

Senator Paul Gavan: I will not need five minutes. I just want to say a few words on an important Bill. I congratulate my colleagues in the Labour Party for bringing it forward. I am genuinely surprised at the Minister of State. I have had dealings with him and found him to be an honourable man. I am surprised that he will not work with us on facilitating this Bill. Unfortunately, it is not the first time recently that we have seen Fine Gael isolated on a topic like this. It is significant that there is broad cross-party support and support among Independents for this issue. I am shocked.

According to the Migrant Rights Centre Ireland, MRCI, whose representatives I welcome to the Gallery, there are currently between 2,000 and 5,000 children with no status in this country. Where is the humanity in that? I remember the 2004 referendum. Senator Lawless spoke particularly well on the matter earlier; I was watching the debate from my office. It was basically a racist referendum. Let us call it for what it was. In fairness, it was a blip because this country

has a good record. Thankfully we have not got extremist, far-right politics here at this time. Only last week, however, I saw Fine Gael's sister party in Hungary, Fidesz, practising far-right politics, locking up children in cages. It is in the same European parliamentary group as Fine Gael. It is absolutely shocking.

What signal does Ireland send in terms of decency and humanity if we turn our backs on these children? What is the danger? In the short time I have been a Member of this House, I have always found that the responses from the Department of Justice and Equality in particular to be so deeply conservative. They are so firmly on the side of not giving an inch, regardless of humanity. All of us know that the idea of leaving it to ministerial discretion is just not good enough. If we believe in being a proper republic of opportunity and equality, how can it be left to a Minister's discretion whether a child can remains in the country and has rights like the rest of his or her classmates? It is absolutely appalling. I ask the Minister of State to think again.

This is not the side of history he wants to be on. This is not the side of right. I had some sympathy for the Minister of State's party colleague, Senator Conway, when he was speaking earlier. I could see that his heart was not in it and that he could not understand why Fine Gael is not supporting the Bill. The message the Minister of State will send this evening if he continues to oppose it is that he and his Government are turning their backs on these children. I am shocked because that is not where politics should ever be at. It will be embarrassing for Ireland if we do not pursue this law. If it is not perfect, then it should be amended on Committee Stage. All of us across the Seanad apart from Fine Gael are asking the Government to work with this law to make a better republic and to assist these children, who are the real victims. This is completely unnecessary. There is no threat posed to the State by enacting this law. It is a really sad day. I mean it well when I say the Minister of State is better than this. I urge him to listen again and think again.

Senator Gerald Nash: I am glad my colleague, Senator Conway, is back in the Chamber. I have great time and respect for him and have known him for a long time. It is not very often that I disagree with him fundamentally. Senator Conway said earlier that discretion is not a bad thing, but a system that is based entirely on discretion is a bad thing. That is the reality of the situation we have now. It makes for bad decisions, bad precedent and inconsistency.

Residency status in Ireland should not be determined by the parish pump. It should be determined by the Parliament. That is what we are trying to do this evening. If a neighbour on my street in Drogheda got into a situation like this and his or her child was to be deported, he or she would be bunched. He or she would be in a very difficult set of circumstances because there is no Fine Gael Minister in Louth. It is one of the few constituencies in the country where, under this new politics arrangement, no Minister exists. My neighbours would not be able to develop a campaign to appeal to a Minister.

I was looking earlier at the Democratic Programme, a foundational document published on the day of the first sitting of our national Parliament in 1919. We will celebrate that centenary in January. The document was written by the then leaders of the Labour Party. It states: "It shall be the first duty of the Government of the Republic to make provision for the physical, mental and spiritual well-being of the children, to secure that no child shall suffer hunger or cold from lack of food, clothing or shelter, but that all shall be provided within the means and facilities requisite for their proper education and training as Citizens of a Free [...] Ireland."

Our attitude to children falls short in many respects but I cannot find a greater example of

falling short than this one. It is outrageous that we are in this position. Senator Bacik and my Labour Party colleagues propose a very considered and balanced solution to a key problem. If the Minister of State allows the Bill to progress to the next Stage, we will work with him and his colleagues to finesse it and address any technical issues. The problem, however, is that the issues the Minister of State or his officials may have are not just theoretical or technical but fundamental. It pains me to say that because I have always known the Minister of State to be a compassionate and humane public representative. I know many of his colleagues to be the same.

I have a very clear recollection of the 2004 constitutional amendment. I was speaking to my colleague, Senator Ó Ríordáin, about it earlier. That was my second local election. I won a seat from Drogheda corporation on Louth County Council in 1999 and defended it successfully in 2004. Much of that election debate and the canvassing campaign was about addressing invented issues. People felt they had free reign to debate issues in a dog-whistle way. They felt they had licence to do so because of the referendum.

I have listened very intently to Senator McDowell, the former Minister for Justice, Equality and Law Reform, who introduced that constitutional amendment. His contention is that the ambition of the referendum was to develop a framework whereby we could properly regulate citizenship, residency and so on. That is what this Bill is trying to achieve. Unfortunately, we had to wait 14 years to respond as a Legislature. That was an awful campaign. I remember people holding views that did not hold water at all, for instance that migrants were coming to this country because they were getting free cars or were getting their cars insured. Young women were said to be getting their hair braided for free. It was nonsense that did not stand up to the slightest scrutiny but people felt they had a licence to expound those kinds of views. They were views I had not heard before and that were stoked up because of the referendum, which appealed to the lowest base instincts of what I thought would be a minority of people. We know, however, that the vast majority of people supported the referendum. If I had the opportunity, I would propose that the referendum result be overturned and the conversation changed. We have not yet had that opportunity but we may in the future. In the meantime, we should make the best use of the opportunities we have in Parliament to address some of the key problems we face as a society, namely, providing for citizenship and residency rights for children who were born in this country and who have nowhere else to call home. Their home is Ireland, which should remain to be the case, and their legal situation should be supported and protected by laws passed in Parliament, rather than being influenced by the parish pump.

Senator Gerard P. Craughwell: I worked as a teacher in further education for 25 years. One of the most significant problems I saw was undocumented children who had achieved high results in the leaving certificate but who had to attend further education colleges because they could not afford to pay the non-national fee at university. When Senator Bacik asked if I would support the Bill, my first thought was that it would be like everything else she proposes in that it would have a human rights element, a fairness element and a justice element. It has all of those. I am proud to support the Bill. For the people in the Gallery, I hope we will pass it and I do not see any difficulty in getting it past Second Stage tonight. If the matter goes to a vote, I am sure we will win. The Minister of State would do himself proud were he to say that he will accept the Bill and will see us again on Committee Stage.

Senator Niall Ó Donnghaile: The Minister of State should go for it.

Senator Ivana Bacik: The Senator is putting it up to the Minister of State.

Senator Gerard P. Craughwell: I received a tweet earlier in which I was informed that Senator Bacik is trying to overturn the decision of a constitutional referendum. Said tweet contains many other assertions I will not relate to the House because they are far from complimentary. One tiny part in the relevant amendment to the Constitution states "unless provided for by law". It is open to the Government, therefore, to change the law. No child has a choice where he or she is born, but every country has a responsibility to ensure those born within its boundaries are looked after and provided with health and education. It is in our Constitution that they must be provided with education. I can see no reason for anybody to oppose the Bill, particularly as it will put something right in the simplest possible way. I agree with Senator Nash that, if push comes to shove, we will have to revert to a referendum. Must we do so?

The tools to put an extreme injustice right are within the Government's armoury. I ask the Minister of State to consider that and to save the Government the embarrassment of rejecting the Bill. He should tell us he will see us again on Committee Stage, at which point we can sort out the technicalities and any problems that arise.

Minister of State at the Department of Justice and Equality (Deputy David Stanton): As Minister of State at the Department of Justice and Equality, I am pleased to be here on behalf of the Minister, Deputy Flanagan, who conveys his apologies. I acknowledge the work of the Labour Party in preparing this important Bill and, in particular, the work of Senators Bacik, Ó Ríordáin and Nash. This is an important issue and I commend them on raising it and giving us the opportunity to debate it.

The Government decided to oppose the Bill but I stress that this does not mean it is not open to a debate on the issues the Bill seeks to address. It is fair to state that the Bill would constitute a significant change of policy and would have far-reaching implications, some of which may be unforeseen, that need to be worked out before we decide to change the law. My Government colleagues and I would be happy, therefore, to engage in such discussions but, in view of the absence of any pre-legislative scrutiny of the proposals before the House, the Government feels it cannot support the Bill for a number of reasons. The Department received notice of the Bill last Wednesday only and, as a result, we have had only a week to examine it. Government Bills take much longer and the heads of the Bills must be sent to every Department for recommendations and observations. We must also submit Bills to the relevant committee for pre-legislative scrutiny. Private Members' Bills, on the other hand, do not have to go through that kind of scrutiny. Although we had less than a week to consider a Bill, we identified a number of issues which give cause for concern.

For context, Ireland has one of the least onerous paths to citizenship in the EU in terms of the qualifying period and the process of obtaining citizenship. A distinction must be made between residency rights and citizenship, but some Senators confused the two in their contributions. No EU member state grants automatic and unconditional citizenship to children born in its territories to foreign citizens. Ireland has fewer obstacles to naturalisation in the law for those potentially qualifying than most European countries, with straightforward residency requirements and the absence of formal language, civic knowledge and economic resource requirements. Ireland requires five years of residence in the country in the past nine years, including one continuous year prior to application. Other countries have significantly longer qualification periods.

The existing citizenship laws are based on lawful and reckonable residency of the parent or parents. Approximately 27,000 children were granted citizenship under these rules from 2010

to date, some 2,700 of whom were born to European Economic Area, EEA, nationals, while 24,000 were born to non-EEA nationals, which is a large number. The vast majority, therefore, were born to non-EEA nationals, which demonstrates in real terms the results of effective compliance with our present pathways to lawful citizenship. Furthermore, another 25,000 people were granted citizenship in Ireland since 2010. I acknowledge what Senator Norris said about citizenship ceremonies. I have attended a number of them and they are emotional and amazing. I recommend that Senators attend one of the ceremonies to see the changes that have been made in the methodology of granting citizenship.

The purpose of the Bill is to introduce new rules to provide for citizenship by naturalisation of any child born on the island of Ireland regardless of the status of the parents, their method of entry to the State or the length of time unlawfully present. It also removes the requirement for an Irish-born child to be granted permission to reside in the State for the proposed period prior to his or her application. The proposed amendment could have the effect of reintroducing a route for individuals who had a child born on the island of Ireland to secure immigration permission and subsequently citizenship, despite not having permission to be in the State when the child was born. This would put Ireland out of step with all other EU member states, a move which would require careful consideration before it could be contemplated. If a minor successfully applies for citizenship in his or her own right, attendant rights will apply to his or her parents and siblings, as will the status of leave to remain. As a result, there are other implications of which we must be aware beyond those of the child.

The twenty-seventh amendment to the Constitution was introduced in response to the scenario in which non-EEA nationals arrived in the State with the intention of giving birth to gain the benefit of Irish citizenship for their newborn child and derived rights of residency for family members as a result. The subsequent legislation addressed major difficulties that arose at that time and the Bill provides an incentive for those living in an irregular situation to continue to do so to accrue reckonable residency for the purposes of naturalisation of the child. I remind Senator Clifford-Lee that it was Fianna Fáil which brought that legislation in following the referendum. Let it be put on the record that we are dealing with Fianna Fáil legislation.

Senator Bacik referred to the Bill as dealing with a specific cohort of minors in the State but the Bill will not deal with minors in the State today only. It will also change the law for the future.

On the risk to women, prior to the passing of the 2004 citizenship referendum, as was mentioned the masters of the three maternity hospitals in Dublin outlined the difficulties they were having during this period, with increasing volumes of late-presenting mothers whom they had not seen in an antenatal capacity. The identification of this route to citizenship also risks opening up avenues for the further exploitation of women who are forced either to travel here in the late stages of pregnancy or to conceive as a route to guaranteeing citizenship and residency for a wider cohort of family members. This does not, therefore, concern only the child. Where parents and children are living in the shadows for a sustained period of time and are not known to the relevant State agencies, the potential for harm to the child in such a vulnerable situation is increased. These serious matters need to be fully contemplated and I do not believe that any legislation should facilitate this risk. We need a long, deep debate on these matters. In reply to Senator Lawless, we are moving on the issue of the undocumented and have just announced a new scheme to regularise students who came here up to 2011. The scheme will also impact on any family member. It is open for application now and it is estimated that approximately 5,000 former students will qualify. We are making changes and we are not inflexible.

On the question of legal migration, Ireland provides for many non-EU and non-EEA citizens to migrate here and Ireland benefits greatly from this migration economically, socially and culturally. This morning, I attended an event on integration and inclusion with local authority members. The Minister for Justice and Equality has discretion to deal with each case before him on its merits and he frequently exercises it in favour of a child and his or her family where claims are made to stay in the country. On average, the Minister deals with two or three cases per week seeking permission to remain, which he assesses based on the facts presented. Many Deputies, and Senators on all sides of this House, make representations to the Minister to use his discretion and he examines the facts of every case carefully. There are statutory mechanisms in place to allow the parties in every case to make representations to the Minister in support of their claim and that of their children. Senator Bacik sees such discretion in negative terms.

Senator Ivana Bacik: I do not.

Deputy David Stanton: However, the Government sees it as an important mechanism to allow bona fide special cases to be addressed.

Senator Ivana Bacik: On a point of order, I certainly do not see discretion in negative terms. Like many others, I have sought discretion but I want us to build a whole system.

Deputy David Stanton: In that case, I withdraw that remark. Citizenship laws in this State not only have an impact on this country but also impact our fellow member states, as any citizen of Ireland has the right to travel and work freely within the EU, along with attendant family residence rights. No other member state currently offers birthright citizenship on the terms proposed in the Bill.

Senator Lorraine Clifford-Lee: On a point of order, those rights only attach to workers. There is free movement of workers but a child cannot be a worker so it does not impact on other European countries.

Acting Chairman (Senator Ned O'Sullivan): That is not a point of order.

Deputy David Stanton: The Bill, if enacted, would also change the rules significantly for Irish citizenship entitlement in Northern Ireland. Currently, one parent must be an Irish citizen or be entitled to claim the same for the child to qualify for Irish citizenship, or one parent must have been lawfully resident on the island of Ireland for three out of the previous four years. The Bill could be seen to encourage persons, whether legally or illegally resident in the UK, to travel to Northern Ireland to have a child and then remain there for three years to gain Irish citizenship for that child and, consequently, EU citizenship and its attendant rights without having entered the Republic of Ireland.

Senator Niall Ó Donnghaile: It is in the Good Friday Agreement.

Deputy David Stanton: This outcome could result in the UK introducing or considering the introduction of measures in response, which could have further east-west or North-South impacts. Any wider political ramifications for Ireland's relationship with the UK, including on the operation of the common travel area and, potentially, with the EU on how Irish citizens born in Northern Ireland access benefits as EU citizens, the Good Friday Agreement, and the draft withdrawal agreement on the UK's withdrawal from the EU, would need to be carefully considered.

Senator Niall Ó Donnghaile: That does not mention our rights.

Acting Chairman (Senator Ned O'Sullivan): The Minister, without interruption.

Deputy David Stanton: To be frank, I would be aghast at a proposal that we would amend our citizenship laws without any discussion or dialogue with authorities in Northern Ireland and Britain despite the clear impact north of the Border,-----

Senator David Norris: Who would the Minister discuss this with in Northern Ireland?

Senator Niall Ó Donnghaile: We do not have to be subservient. The Good Friday Agreement is clear.

Deputy David Stanton: -----in Ireland and on the broader UK jurisdiction. If the proposed amendment was permitted by the House, and had the direct consequence of attracting more people to the State to seek to achieve residency status through the birth of a child here, the consequential strain on State services, including existing immigration provision, housing, education, medical services and welfare, would need to be carefully assessed. There are many rights in the protection process for people who come here to look for asylum. This Bill primarily impacts on those here illegally, giving them superior rights within three years if they seek protection. It also gives rights to illegal UK immigrants in Northern Ireland who were never in this country. I wish to flag that it is not intended to bring forward a money message in this regard because of the costs that would accrue.

Our ability to offer solidarity, which is frequently urged on Government by Members from all sides of this House, to other member states in dealing with emergency humanitarian crises and to third countries hosting large refugee populations, could be reduced, if not severely curtailed, due to the unquantifiable increased demands on State services as a result of this Bill being brought into law. The refugee protection programme will welcome 4,000 people to Ireland, people who are fleeing conflict and a real and serious risk to their lives. Anyone qualifying for refugee status under that scheme will be eligible for citizenship in due course.

Our steps to regulate our immigration procedures during volatile times have served the country well. Our exercising of rights under our immigration processes has ensured that thousands of children have been granted citizenship and that will continue to be the case for all who respect the fair and accessible pathways provided by Government to enter and live in this State. The Minister exercises his discretion to protect not just the State but women, children and their families. This House should be proud that we continue to prioritise the direction of available resources towards vulnerable people in the greatest need as they flee conflict throughout the world.

In summary, the proposed Bill has profound implications in a wide number of areas, including Northern Ireland, the UK, the EU and national immigration laws and services. In effect, it breaks the bond that currently exists between the residency status of parents and the granting of citizenship to the child of non-Irish parents and changes that to a situation where the child is automatically granted citizenship after a stated period. This is without any reference to the immigration status or legal presence in the State of the parents. If the Bill is enacted, Ireland would be out of step with the entirety of the EU. This would create a major attraction for non-EEA nationals in other EU member states, particularly those there illegally or with non-reckonable residency, to come here to have their child. Such persons could, in turn, return to the original EU member state as soon as the child had been granted citizenship, and their parents a residency

permission, thus circumventing the immigration laws of these EU member states.

Senator Lorraine Clifford-Lee: That is not correct. There is free movement of workers, not children.

Deputy David Stanton: I am referring to people in the EU illegally. There are similar impacts on Northern Ireland and the common travel area, including North-South and east-west impacts, which would need to be carefully considered. Amending immigration law has wide-ranging implications and benefits from a detailed analysis of the implications, including broad consultation with all impacted parties and the NGO community. To consider such a fundamental change to our citizenship laws without engaging in such consultation is not an approach that this Government can accept. I reiterate that the Government is open to a considered discussion on the issues but cannot accept a Bill that has been drafted in the absence of such a discussion. We need to discuss this seriously but, in accordance with the reasons I have put forward, the Government cannot support this Bill. We are happy to discuss what we can do to assist people in the situations referred to earlier.

The Minister's discretion only comes into play when the individual has failed all independent vetting of their right to be here or have avoided compliance with the many legal pathways available to live and work here. Senator Clifford-Lee mentioned the McMahon report and 98% of its recommendations have been completed. We have all started on the recast directive, the conditions of which are liberal, and we are encouraging people in the asylum protection process to apply for work where they are eligible to do so. It is difficult to match the people who have a right to work with jobs but I am examining ways to do that because it will benefit people. We have been working hard to improve the accommodation people are offered. There has been increased demand in recent weeks for people looking for protection so we are trying to open other places. In response to Senator Dolan's point, all children from Poland, Lithuania and so on have full EU rights here.

This is a serious issue, which deserves serious consideration. We have only had the Bill for less than a week but, even in that time, we have highlighted matters of major concern, as I have outlined. I am really interested in debating this further to see how we can explore these issues but unfortunately the Bill as presented is not amendable and is not workable in our view.

Senator Alice-Mary Higgins: On a point of order, I want to put on the record-----

Acting Chairman (Senator Ned O'Sullivan): Is it a point of order?

Senator Alice-Mary Higgins: Yes. I want to put on the record that it is inappropriate that a money message would have been flagged at this point. It is, of course, at the discretion of the Ceann Comhairle-----

Acting Chairman (Senator Ned O'Sullivan): This is not a point of order.

Senator Alice-Mary Higgins: It is because we were told-----

Acting Chairman (Senator Ned O'Sullivan): It is an opinion.

Senator Alice-Mary Higgins: -----a money message is not relevant to this House and the intention was stated-----

Acting Chairman (Senator Ned O'Sullivan): I allowed the Senator a lot of latitude. She

has gone a minute and a half over and we are up against time. I call on Senator Bacik to reply to the debate. She has five minutes.

Senator Alice-Mary Higgins: I simply want it noted that it is at the discretion of the Ceann Comhairle as to whether a money message is even needed. It is a poor indication of bad process.

Acting Chairman (Senator Ned O'Sullivan): No further interruptions.

Senator David Norris: I would not bank on that.

Senator Ivana Bacik: I thank the many colleagues from across the House who spoke to express their strong support for this important Bill.

Senator Paul Gavan: Hear, hear.

Senator Ivana Bacik: I include Senator Conway, who was quite supportive in his speech despite speaking for the Government party. However, I must express my serious disappointment in the Minister of State's speech, his opposition to the Bill, and the most inappropriate and indeed scare-mongering language in his speech, with which I take serious issue.

Senator Paul Gavan: Absolutely.

Senator Ivana Bacik: The speech is peppered with innuendo and imputations of bad faith, malice and of people coming to the State with the intention of abusing our system. That is the language that is used throughout the speech.

Senator David Norris: Hear, hear.

Senator Paul Gavan: Hear, hear.

Acting Chairman (Senator Ned O'Sullivan): One "hear, hear" is enough.

Senator David Norris: Hear, hear.

Senator Ivana Bacik: I am being suffocated with kindness and support.

Acting Chairman (Senator Ned O'Sullivan): They are using up your time as well.

Senator Ivana Bacik: I think the language here borders on the Trumpian. There have been references to the President of the US and his views on immigrants. I would be very concerned about this language. I do not see any welcome or compassion in the Minister of State's speech. I see a conspiracy theory underlying it, suggesting that any sort of concession to compassion in our immigration law would operate as a pull factor or attraction to the many people hovering at our borders. That is scary language and I take serious issue with it. I am really disappointed in the way the Minister of State's speech throws everything including the kitchen sink at this - Northern Ireland, the Good Friday Agreement, the EU, all our relations with everyone. I just cannot agree with what he said.

It is true that the Government had a week to read it but it is a very short Bill. It is a Private Members' Bill on which we are very happy to work with the Minister of State and the Department on amendments, including substantial amendments if necessary. In the view of the majority of the House, as I hope will be evidenced in the vote, the Bill deserves support because it

seeks to address this specific situation for the small number of children whose position deserves to be regularised. We sought to draft a Bill that would be in keeping with existing immigration legislation. The three-year period is a sensible measure that mirrors the provision in section 6A of the consolidated immigration Acts.

I would love the Bill to go further. We thought it was a modest proposal and many have said as much. I would like to rerun the 2004 referendum and am very proud of the stance the Labour Party took in opposing it. In the immediate term, we need to address the situation of children born here who have been resident here throughout their lives and for at least three years. We need to regularise their position. Of course the Bill could go further. It could address the situation of those not born in Ireland. Others have referenced the case in Tullamore. The Bill represents a first step and sets out sensible and modest conditions that would really assist the small but significant number of families and children affected. I again express my gratitude to Senator Lawless for his support. As he said, we can work with the Government on making amendments to the Bill if necessary. Under Article 9.2 of the Constitution, we are explicitly empowered to provide by law for citizenship laws.

I also wish to respond to a couple of specific queries. In response to Senator Ó Donnghaile, yes, the island of Ireland is provided for throughout the immigration laws and our Bill is drafted in keeping with the legislation more generally. Senator Lawless asked about the child making an application. We are simply looking to amend section 15(3) so that the parent is not considered as the child. The parent might still of course make the application on behalf of the child. It is simply to decouple the legal status of applicant and child.

In response to Senator Black, like her, I want to acknowledge the brilliant launch of the short film last night by the youth project with the Migrant Rights Centre of Ireland. It is really showing the way forward for those young people. In response to Senator McDowell's speech, I am delighted that the architect of the 2004 referendum is supporting our Bill. That deserves some positive note from the Minister of State and the Government.

Senator David Norris: Hear, hear.

Senator Ivana Bacik: I disagreed fundamentally with the motivation behind holding the referendum and I disagree with Senator McDowell's description of the motivation, as I disagree with the Government's depiction of the background to the 2004 referendum. I still say it was a dog-whistle referendum - no doubt about that. It was opportunist. However, I am grateful to Senator McDowell for expressing his support. As he said, this is a sensible way to regularise the position. None of us is against the exercise of discretion. There is clearly a place for discretion. Like many colleagues, I have sought the exercise of discretion in respect of families and individuals. However, as Senator Nash said, a whole system cannot be built on discretion. We need a structure in place to deal with the small number of children who are affected and are currently facing such severe uncertainty.

Senator Gerard P. Craughwell: Hear, hear.

Senator Ivana Bacik: To finish on a very personal note, I was a candidate in the European elections in 2004 and I remember very clearly the appalling rhetoric that was used against me personally, against many of us, and against anyone who did not have an Irish name. I am very proud of the fact that my grandfather came here in the 1940s-----

Senator Lorraine Clifford-Lee: To Waterford.

Senator David Norris: Hear, hear. Waterford Glass.

Senator Ivana Bacik: -----and made an enormous contribution to the State through re-founding Waterford Glass and giving employment to many people in Waterford over many decades. Let us be positive about what migration has done.

Senator David Norris: It is a pity he shot the archduke first.

Senator Ivana Bacik: That was a previous relative and he did not shoot him. On a serious note, inward migration is greatly beneficial to this country and has been. Our emigrants have made massive contributions in the US, as Senator Lawless will tell us, in London and all across the world. We need to be positive and welcoming but I do not see any of that from the Government's side. I am very disappointed about its response but I hope we will have enough votes in the House to ensure the Bill passes Second Stage. I thank colleagues for their support.

Acting Chairman (Senator Ned O'Sullivan): We will soon find out.

Question put:

The Seanad divided: Tá, 23; Níl, 16.	
Tá	Níl
Bacik, Ivana.	Burke, Colm.
Black, Frances.	Burke, Paddy.
Boyhan, Victor.	Butler, Ray.
Clifford-Lee, Lorraine.	Buttimer, Jerry.
Craughwell, Gerard P.	Byrne, Maria.
Daly, Mark.	Coghlan, Paul.
Daly, Paul.	Conway, Martin.
Davitt, Aidan.	Feighan, Frank.
Devine, Máire.	Hopkins, Maura.
Gavan, Paul.	Lawlor, Anthony.
Higgins, Alice-Mary.	Lombard, Tim.
Humphreys, Kevin.	McFadden, Gabrielle.
Lawless, Billy.	O'Donnell, Kieran.
Mac Lochlainn, Pádraig.	O'Mahony, John.
McDowell, Michael.	Reilly, James.
Nash, Gerald.	Richmond, Neale.
Norris, David.	
O'Sullivan, Grace.	
O'Sullivan, Ned.	
Ó Donnghaile, Niall.	
Ó Ríordáin, Aodhán.	
Warfield, Fintan.	
Wilson, Diarmuid.	

Tellers: Tá, Senators Ivana Bacik and Kevin Humphreys; Níl, Senators Gabrielle McFadden and John O'Mahony.

Question declared carried.

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

Senator Ivana Bacik: Next Tuesday.

Committee Stage ordered for Tuesday, 27 November 2018.

An Cathaoirleach: When is it proposed to sit again?

Senator Jerry Buttimer: Maidin amárach ar 10.30.

The Seanad adjourned at 8.15 p.m. until 10.30 a.m. on Thursday, 22 November 2018.