



DÍOSPÓIREACHTAÍ PARLAIMINTE  
PARLIAMENTARY DEBATES

**SEANAD ÉIREANN**

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

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## SEANAD ÉIREANN

*Dé Céadaoin, 28 Samhain 2018*

*Wednesday, 28 November 2018*

Chuaigh an Leas-Chathaoirleach i gceannas ar 10.30 a.m.

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*Machnamh agus Paidir.*  
***Reflection and Prayer.***

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### **Business of Seanad**

**An Leas-Chathaoirleach:** I have received notice from Senator Maria Byrne that, on the motion for the Commencement of the House today, she proposes to raise 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 Martin Conway of the following matter:

The need for the Minister for Education and Skills to outline when construction work will begin on the new community school in Ennistymon, County Clare and the anticipated date of completion.

I have also received notice from Senator Diarmuid Wilson of the following matter:

The need for the Minister for Communications, Climate Action and Environment to consider implementing regulations to ensure the responsible use of social media.

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

The need for the Minister for Justice and Equality to update the House on the role of data controllers in community closed circuit television schemes.

The matters raised by the Senators are suitable for discussion and will be taken now. Senator Gallagher has withdrawn his matter which I had selected for discussion.

### **Commencement Matters**

#### **Eye Care**

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

**Senator Maria Byrne:** I, too, welcome the Minister of State. I am concerned about the provision of eyesight tests for children in primary and secondary schools, especially given that nowadays children spend an awful lot of time on consoles, iPads, phones and other forms of digital media. According to a report launched recently by a cancer society, there are concerns

that children are developing digital myopia or short-sightedness as a consequence of the amount of time they spend on digital platforms. The Government needs to consider this because, as the old saying goes, one's health is one's wealth. One's eyesight is of particular importance. When I was going to school, people did not think about their eyesight very much. The issue was never highlighted. People did not realise there were concerns about the importance of eyesight. Something needs to be done to make sure children will receive all of the care and attention they need to protect their eyesight.

**Minister of State at the Department of Health (Deputy Jim Daly):** I thank the Senator for focusing on this important issue and giving me an opportunity, on behalf of the Minister for Health, to address the issue of eye testing for primary school children. A child's vision continues to develop until about the age of eight years. Vision surveillance and screening are conducted by hospital paediatric teams, public health nurses and general practitioners, depending on the stage of development, to identify children with a visual impairment or eye conditions that are likely to lead to visual impairment in order that a referral can be made to an appropriate eye care professional for further evaluation and treatment. Vision screening is carried out under the guidance of the HSE's national screening and surveillance programme, Best Health for Children Revisited. Children have their eyes checked at birth by the paediatric team in the hospital. Their eyes are also checked by a public health nurse during the neonatal visit and the GP during the two and six-week visits. Children have universal access to an ongoing vision surveillance programme provided by the public health nursing service until they commence school. The purpose of the vision screening children undergo when they enter school is to detect amblyopia, the reduction of visual acuity in one or both eyes, usually in an otherwise normal eye. It needs to be identified and managed before the age of eight years. A child who has a vision issue detected during preschool or primary school screening receives a HSE service provided by community ophthalmic physicians or a hospital until the age of 16 years. All children are eligible to have an eye examination and receive treatment until the age of 12 years. If the parents of a child have a medical card, the child will be eligible to have an eye examination and receive treatment until he or she is 16 years.

The HSE published the report of the primary care eye services review group in June 2017. The review group determined that there was a need to move from the management of all referrals by community ophthalmic physicians to a model centred on primary eye care teams. The report recommends that such teams be based in primary care settings, with optimum accommodation, facilities, equipment and resources. Each team will provide services along care pathways, as set out in the report, for children and adults and work in an integrated fashion supported by an IT patient management system. This will ensure hospital services are focused on patients who require more specialist diagnostics or treatments.

Further to a recommendation made in the review group's report, the HSE is in the process of agreeing an addendum to the community ophthalmic services scheme to allow children aged eight years and over to be seen by their local community optometrist. The HSE is in the process of establishing primary eye care teams in south and west Dublin and further developing a team in north Dublin. The report recommends that all routine sixth class screenings, including the colour vision test, be discontinued as there is little clinical evidence for providing visual screening for children in sixth class. Data have shown that very few or no new cases of eye diseases such as amblyopia are detected at that stage. Most countries no longer undertake school exit screening. Instead, screening is undertaken at an earlier age to ensure children with eye diseases are identified at the earliest possible stage and can access treatment services.

**Senator Maria Byrne:** I thank the Minister of State. While I understand what he has said, I continue to be concerned about the amount of screen time to which children are exposed. The cancer society has shown that screen time is linked not only with short-sightedness but also cancer. This issue must be kept on the agenda because children are destroying their eyesight. There should be an awareness campaign or other measure to highlight to children and parents the damage caused by excessive screen time. Screen time should be limited because it is affecting children's eyesight. The report was published in 2017, but all Members would agree that screen time has increased since then. I have seen many children sitting in a corner for hours on a phone or playing games on a screen while their parents are otherwise occupied. That needs to be monitored.

**Deputy Jim Daly:** I have many strong views on screen time for children. When discussing the matter, I always point out that adults must be aware of their own screen time and the example they set for children in the home and elsewhere. I accept the Senator's point that it poses a risk to children's eyesight. Screen time may also affect children's social, language, communication, typing and writing skills and even their dexterity. It presents a myriad of challenges. It is an ongoing challenge in my area of mental health of which I am very conscious. The discussion of the issue in any forum, be it here in the Seanad or elsewhere, is always welcome as it affords an opportunity to make parents acutely aware of its potential physical, mental and holistic dangers.

I recently met representatives of Facebook regarding screen time and they told me that Facebook is moving towards making children aware of the amount of time they spend on screens. Many of us receive updates on our phones regarding our daily screen time, which is a welcome step towards acknowledging the problem. Some people would be frightened by how much time they spend staring at a screen. Physical eyesight will suffer as a result of such excessive usage. I am not aware of any links to cancer and would need to see concrete evidence of a relationship in that regard before pursuing the issue further. There is no doubt that screen time poses a challenge in terms of eyesight and other areas of which we must be aware. I thank the Senator for highlighting this issue.

### **Schools Building Projects Status**

**Senator Martin Conway:** I welcome the Minister of State, Deputy Jim Daly, to the House. I raise a very important issue relating to education in Ennistymon, County Clare. The debate on a community school for the area has been ongoing since I was in school there in the late 1980s and early 1990s. There are three schools in Ennistymon, namely, the CBS, the vocational school and Scoil Mhuire, all of which do an excellent job in providing educational opportunities to young people. I and others of my generation went to school there and did exceptionally well.

The problem relates to the schools' infrastructure. The buildings are many decades old. Pupils must commute from one school to another in order to optimise their choice of subjects and ensure they have the opportunities available to other students. That is done in inclement weather conditions such as those currently being experienced in County Clare, where it is pouring rain. The children must move from one school to another in order to study subjects such as history, science, woodwork and so on. The pupils of the three schools are criss-crossing the town of Ennistymon.

I was delighted at the Government announcement in 2013 or 2014 that funding for a state-of-the-art, purpose-built community school to amalgamate the three schools was being provid-

ed. An amalgamation committee of which I was a member was in being for several years prior to that. It included Oireachtas representatives for the area and the trustees, boards of management and principals of the schools. Since the funding announcement, the project successfully went through the planning process.

People want to know when building will commence and when students will be able to enrol in the new facility. The process has been going on for a long time. The money is available and planning permission has been granted. When will construction commence and when can enrolment begin?

**Deputy Jim Daly:** On behalf of the Minister for Education and Skills, Deputy McHugh, I thank the Senator for raising this matter as it provides the Minister with an opportunity to outline to the Seanad the current position in regard to the major building project for the new amalgamated post-primary school in Ennistymon in County Clare. The project will deliver a new post-primary school to cater for 650 pupils, as well as a new primary school on the site. It is currently at stage 2b, which is detailed design of architectural planning and includes the application for statutory approvals and the preparation of tender documents. Planning permission has been received for the project.

The Department of Education and Skills has recently given authorisation to commence the pre-qualification of main contractors and reserved specialists for the mechanical and electrical works with the aim of establishing shortlists of appropriate candidates who can successfully undertake the respective works. Pre-qualification usually takes between eight and 12 weeks to complete. When pre-qualification is complete and the stage 2b report has been finalised and approved, the project will be progressed to tender stage. Tender stage usually takes between seven and eight months to complete.

This school is being delivered as part of a wider batch of projects which benefit from using a professional external project manager to co-ordinate the respective design teams on each building project. This method combines traditional delivery with project manager support using existing design team procedures, careful and rigorous programming and constant review to achieve the best possible timeframe. The Department meets the project manager monthly to review the progress of all of the projects. The normal quality and cost control requirements inherent in the design team procedures and the Department's design guidelines continue to apply and design teams must meet those established standards. This project is included in the six-year programme to go to tender and construction in 2019 to 2021.

**Senator Martin Conway:** The pre-tendering process is taking place as we speak or is about to take place and will take eight to 12 weeks. When that is completed, the tendering process and identification of a suitable contractor will take seven to eight months. Is it reasonable to expect that construction will begin on the site in 2019 and the first enrolment of students will be in September 2021?

**Deputy Jim Daly:** The information I have been given by the Minister indicates it takes up to 12 weeks for the pre-qualification stage and seven to eight months for tender. I cannot give a definitive timeframe because one must always consider events, dear boy, events. I am very familiar with such projects. Clonakilty Community College is on my doorstep and is slightly ahead of the project in Ennistymon as the tender is about to be opened. It has been through the stages that the Ennistymon project must undergo and in that case the two stages took two or three months more than the estimated 12-month period. This project may be lucky but, realisti-

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cally, construction will begin in 12 to 15 months based on the information I have been given, subject to the caveat that unforeseen events may arise.

**Senator Martin Conway:** The fact that there is a timeline-----

**An Leas-Chathaoirleach:** The Senator is out of order.

**Senator Martin Conway:** -----is very good news with which people in Ennistymon will be delighted.

**An Leas-Chathaoirleach:** I cannot allow the Minister of State to reply further. Senator Conway is satisfied with the reply he received.

### **Social Media Regulation**

**Senator Diarmuid Wilson:** I welcome the Minister of State to the House. I raise the issue of social media and its responsible use. As all Members are aware, social media is a great enabler of mass communication in the modern world. We are able to keep apprised of events from all over the globe. We are awash with communication options such as Facebook, Twitter, Snapchat, YouTube and everything in between. Friends, families and neighbours are able to stay in contact over what were previously insurmountable distances. People from anywhere can connect with anyone to share their interests and ideas. A video put up on YouTube in Cavan today can be admired around the globe in seconds. The sense of global connectedness is the wonder of our age. Social media has also been a great benefit to many entrepreneurs and small businesses who can advertise to markets they never knew existed while not breaking the bank. The cost of maintaining a social media presence is minimal. If one chooses paid advertising, one can spend as much or as little as one's budget allows.

However, social media clearly has a darker side. We have seen the effect of foreign social media in election campaigns. Anyone can create a fake account. Many people believe they can say or do anything without being traced. This has opened the door to cyberbullying, racial and misogynistic abuse, threats, intimidation and slander.

I want to raise the case of Eamonn Mulvaney who goes by the stage name of Eamonn Jackson. In the past, he was a director of his family's dog-breeding business. This is a properly licensed and regulated state-of-the-art establishment, creating employment in County Cavan. As a result of a television documentary regarding a puppy farm, allegedly in County Cavan, this up-and-coming country and western star with no connection to that particular business has become the target of an orchestrated campaign to destroy him and his family. Venues where he was due to play have been contacted by individuals using various forms of social media. They have been intimidated and, in some cases, threatened. This has resulted in hundreds of Mr. Jackson's performances being cancelled at short notice, including a recent tour of the United Kingdom. This has cost Mr. Jackson hundreds of thousands of euro and put in jeopardy the livelihoods of the ten people employed by him in the music business.

An example of the type of social media messages he receives personally every day consists of a banner with a special offer of a free necklace. However, it shows two nooses. They have caused Mr. Jackson not only financial loss but significant mental strain. This innocent man, trying to establish himself in the country music industry, and his family are suffering. Despite



his many attempts to contact the social media outlets and the Garda Síochána, he continues to receive these types of messages.

I do not like raising issues like this and naming people in the Chamber. However, Mr. Jackson asked me to do so. He has made contact with me, as well as my colleague, Deputy Brendan Smith, to highlight what is going on with the hope that something will be done about this before it has serious consequences and not only financial ones.

**Deputy Jim Daly:** I thank the Senator for submitting this Commencement matter. We are all aware of the benefits that the online world can bring for communication, education, reducing the cost of services and of doing business. Today it is hard to imagine a world without the Internet or smartphones. With all of the benefits that the online world brings, we are all becoming increasingly conscious of the risks it presents for ourselves and our children. It is noteworthy that of the three Commencement matters being taken this morning, two relate to this issue.

Online safety is a priority for the Government. The online safety and security of all citizens, especially of the most vulnerable groups, including children, is one of the most important challenges we face as a society today. In July, the Taoiseach launched the Government's first Action Plan for Online Safety for 2018 to 2019. This document presents a whole-of-Government approach to the issue of online safety. It contains 25 actions to be implemented or substantially progressed by the six key Departments, namely the Departments of Communications, Climate Action and Environment, Justice and Equality, Business, Enterprise and Innovation, Children and Youth Affairs, Health, and Education and Skills.

Some examples include in the area of mental health, examining the feasibility of hosting online therapeutic interventions and creating a pilot mental health hub in a primary care centre to provide remote online counselling services; requiring schools to consult on the use of smartphones; developing and publishing a resource on *webwise.ie* for schools to deliver Internet safety awareness evenings to parents; developing online safety resources for parents of preschool age children; developing guidance on appropriate amounts of screen time for each age group; and implementing the revisions to the audiovisual media services directive which will require video sharing platform services, such as YouTube, to have measures in place to protect all users, but especially minors, from harmful audiovisual online content uploaded by users.

A sponsor group, with membership from the six Departments involved, will oversee implementation of the plan. The group is finalising its first progress report. We have also established the national advisory council for online safety, chaired by the Minister of State with responsibility for natural resources, community affairs and digital development, Deputy Canney, with membership from a wide range of stakeholder groups, including NGOs, industry, academics, Departments and Government agencies. The council has held two meetings since being established in September. It is tasked with providing advice to the Government on online safety issues; identifying emerging issues where Government intervention may be warranted, including in future iterations of the Action Plan for Online Safety; and inputting to the development of clear and easy to understand online safety guidance materials for all Internet users, including targeted material for children and young people, persons with learning disabilities, parents, and older people.

The council will publish a progress report, which in subsequent years will become its annual report in advance of Safer Internet Day on 5 February 2019. The action plan also commits the Government to working with the Oireachtas Joint Committee on Communications, Climate

Action and Environment to explore the issues arising in the Digital Safety Commissioner Bill 2017. The committee has commenced its detailed scrutiny of the Bill and the Minister for Communications, Climate Action and Environment attended the first hearing on 25 October 2018. Departmental officials also attended a subsequent hearing on 6 November 2018.

The Minister expressed the view at the meeting of 25 October that self-regulation of online platforms may no longer be appropriate. However, for the Oireachtas to legislate in this space, we will have to ensure the legislation is robust, effective and meets the urgent public policy need to protect all online users, especially children. The Minister has sought the advice of the Attorney General on the legal issues which the Bill presents and he has also asked his officials to examine the Bill in detail.

There are several legal issues with the Bill, as currently drafted, which would need to be overcome, including the lack of a definition of harmful digital communications and the proposed extraterritorial role for the Irish courts. I welcome that the committee has indicated that it intends to engage with a broad range of national and international stakeholders as it considers the draft legislation. Online safety is an incredibly broad and complex area with a diverse range of stakeholders involved. The risks which the online world presents vary from the most serious form of criminal behaviour to harmful or hurtful comments, sometimes perpetrated by children themselves. The Action Plan for Online Safety takes account of the fact that no one single action can mitigate all of these risks and, in some areas, better or more easily accessible guidance and resources for parents or teachers will be more appropriate and effective than seeking to impose legislative measures. The Government is committed to delivering on all of the actions in the Action Plan for Online Safety and to the preparation of the next action plan, preparations for which will commence before the end of 2019.

**Senator Diarmuid Wilson:** I thank the Minister of State for his reply. While I appreciate he could not refer to the case I outlined as he was not aware of it, I ask him to take what I have said about it back to the Minister, Deputy Bruton. I assure him that my party will support the legislation when it is brought forward. It is important that it be speeded up and brought before us as soon as possible. On the particular case, I will continue to raise the issue in this House until a satisfactory conclusion is reached. There are between 200 and 260 people involved. If necessary, I will name them and give their IP addresses publicly in this House, if that is what it takes, but I do not want to go down that road. I will also send a letter to the Garda Commissioner containing the documentation I have available, including screenshots of the foul messages sent and threats made, including to his life, to the man in question, Mr. Eamonn Jackson.

**Deputy Jim Daly:** As the Senator will appreciate, I am not familiar with the case. As such, I will not comment on it. All of us, as politicians, both personally and professionally, are aware of the issue. Most of us have experienced it on a personal level.

**An Leas-Chathaoirleach:** Some of us have suffered because of it.

**Deputy Jim Daly:** There is no doubt that some have suffered because of it. Some politicians are known more widely than others, but I understand many have endured it. Exactly as the Senator said, we have encountered victims of online bullying. People can hide behind their anonymity, parade behind various guises and engage in a free-for-all. I have spoken previously about this matter and believe strongly every publication should have a person responsible and that everybody needs to be identified in some shape or form. If I was to send a letter tomorrow



to the editor of any local newspaper and decide to take aim at anybody, I could remain anonymous by having it stated underneath “name and address with the editor”. However, the editor of the publication would have a responsibility to know who I was and could not allow the letter to go through without it. Likewise, most politicians are aware that when someone talks to a radio station, it must always ring the contributor because it is responsible. While I could talk on a show as Joe from Drumcondra, even though my accent might give me away, or use any name I wanted, and while I would be entitled to my anonymity, the provider of the platform would have to know who I was and take responsibility. We have it in the radio and newspaper space for all publications, but we do not have it in the online space. I have had good engagement on this issue with the Data Commissioner. One of the biggest challenges, from a legislative point of view, which is what the Senator is talking about, is that there are no boundaries. It would, therefore, be difficult to enact effective legislation, even if one could achieve an EU-wide consensus on the issue, on which I have engaged with the commissioner, because of the nature of the worldwide web, but I am sure we could do more than what we are doing.

### **Message from Joint Committee**

**An Leas-Chathaoirleach:** The Joint Committee on Agriculture, Food and the Marine has completed its consideration of the following motion:

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.

*Sitting suspended at 11.05 a.m. and resumed at 11.30 a.m.*

### **Order of Business**

**An Cathaoirleach:** I apologise for being slightly late. I was meeting a French delegation, which had to be done. We were trying to reverse Brexit but we did not succeed.

Before I ask the Leader to outline today’s business, I welcome Mrs. Máire Ardagh to the Chamber. Her late husband, Seán Ardagh, was a Member of the other House for many years. We were great friends and I understand there will be a tribute to him in the other House later following his sad passing. Ms Ardagh is extremely welcome to the Chamber. I am honoured to be here to welcome her.

I ask the Leader to outline the business for the day

**Senator Jerry Buttimer:** The Order of Business is No. 1, Health Insurance (Amendment) Bill 2018 - Committee and Remaining Stages, to be taken at 12.45 p.m. and adjourned at 1.30 p.m., if not previously concluded; No. 2, Judicial Appointments Commission Bill 2017 - Committee Stage, resumed, to be taken at 1.30 p.m. or on the conclusion of No. 1, whichever is the later, and to be adjourned at 6 p.m., if not previously concluded; and No. 3, Private Members’ business, the Control of Economic Activity (Occupied Territories) Bill 2018 - Committee Stage, to be taken at 6 p.m. and to be adjourned after two hours if not previously concluded.

Senator Ardagh has to leave the Chamber soon. I welcome Mrs. Máire Ardagh to the Public Gallery and thank her for her contribution to Irish public life. She was very generous in giving us her late husband, Seán, who, as the Cathaoirleach said, was a thorough gentleman and a good

friend to many of us in the House. I had the pleasure of knowing him. We shared office space in Leinster House 2000 and we had many a chat over a cup of coffee. He was a very helpful, courteous and professional gentleman. Mrs. Ardagh's daughter is continuing the good public service in this House as leader of the Fianna Fáil group. We thank Mrs. Ardagh and remember Seán Ardagh today.

**An Cathaoirleach:** We will call on the lady in question, Senator Catherine Ardagh.

**Senator Catherine Ardagh:** This morning we learned of a very tragic incident in Castleblayney where a young man in his 40s was killed while sitting in a stationary vehicle. A garda has been injured. It is not fatal but he had very serious injuries to his head and limbs. I convey my sympathies and those of the Fianna Fáil group to the family of the victim who was fatally injured and to the garda in question. It is a serious, crazy tragedy. The details are unbelievable.

The second issue I wish to raise concerns a Barnardos report, according to which 37,000 children are on waiting lists across the country for various treatments, including mental health treatment, disability treatments, speech and language therapy and physiotherapy. I met an alliance of DEIS school principals from the Ballyfermot area. They stated categorically that such treatments needed to be provided in schools if they were to benefit children directly. I call for a debate on DEIS school funding. The DEIS model was introduced by a Fianna Fáil Government, specifically by my colleague, former Deputy Mary Hanafin. The model has been successful. In the 1980s the primary school retention rate in disadvantaged areas was only 80%. It is now over 90%. Despite its success, the model is outdated. Funding for DEIS schools has not increased and their pupil-teacher ratios have not improved, even though they have in mainstream schools. Alongside the debate about the DEIS model, we should discuss providing treatments such as speech and language therapy, occupational therapy and psychological support in mainstream schools in order that children can have direct access to them, instead of the system relying on their parents to bring them to appointments.

I congratulate our colleague, Senator Ruane, on winning the non-fiction book of the year award at the An Post Irish Book Awards last night. It was a major achievement. More than 100,000 people cast their votes for her book. I congratulate her on behalf of the Fianna Fáil group.

**An Cathaoirleach:** I would like to be associated with those remarks about Senator Ruane's fantastic achievement in winning one of the top five book awards. It is a great tribute to her. We should be proud to have her in this Chamber.

**Senator Jerry Buttimer:** Hear, hear.

**Senator Billy Lawless:** I, too, congratulate Senator Ruane on her fantastic achievement. She is a great addition to the House.

I also congratulate Joe Schmidt, Johnny Sexton and the rest of the Irish rugby team on winning the coach, player and team of the year awards, respectively. It was an unbelievable achievement. Senators may not know that in my sport Dominic Casey from Skibbereen was last week voted world rowing coach of the year. We have had a bunch of firsts in recent weeks.

**An Cathaoirleach:** A good west Cork man.

**Senator Billy Lawless:** The Cathaoirleach has it.

I inform the House of a proposed reciprocal visa deal that would allow Irish citizens to apply for E-3 visas as part of new immigration legislation before the US House of Representatives. As the Bill is due to be voted on this evening, it is fingers crossed. The visas would come from the unused portion of the 10,500 E-3 visas currently allocated to Australia which has never used its full allocation. It could allow us up to 5,000 visas per year in perpetuity. As under the current law, the spouses and children of the new visa holders would not count against the cap. Their spouses would also be allowed to work. The Bill would require visa holders to have a third level education or its equivalent. It is a two-year renewable work visa. Ireland has been disadvantaged since the US Immigration and Nationality Act 1965 which inadvertently choked off Irish emigration to the United States. The last time Ireland received a new visa allocation was in the early 1990s under a scheme initiated by former Congressman Bruce Morrison. There has been disappointment on immigration legislation previously, particularly in 2007 and 2013 when we came very close to having it, but I am cautiously optimistic in welcoming the new Bill, given that the President, the homeland security chief, Speaker Ryan's office and Congressmen Jim Sensenbrenner and Richard Neal are pushing it forward today during the lame duck session. Deputy Deasy and I have been working tirelessly in the background with Democrats and Republicans to ensure there is complete and bipartisan support for the initiative. It is my ardent hope that, in addition to creating a future flow of Irish emigrants to the United States, many of the undocumented Irish will also qualify for the scheme.

**Senator Rose Conway-Walsh:** I welcome Mrs. Ardagh to the Visitors Gallery. I hope she will have a nice day.

On behalf of the Sinn Féin team in the Seanad, I congratulate Senator Ruane on her wonderful achievement.

Most of all, I wish to discuss broadband provision. The Cathaoirleach referred to meeting a French delegation. I hope he congratulated the delegates on the fact that a French billionaire owned our national telecommunications company which was sold off by the people sitting to my left. First, we had the Australian spectators. Now, we have a Frenchman, all of which has left us in this state. We must ask a couple of questions. Will the State be open to a legal challenge because of the debacle that is the tender process, for example, the 18 meetings held and the way in which the process has been conducted? There is also the fact that 300,000 households were hived off to Eir, rendering it more difficult for the rural broadband programme to be viable. While I do not disregard the report, it does not cover everything. As it is not a legal opinion, we need to get one. Above all, we need to know when the process for the 542,000 households without broadband will start and finish. We, in rural Ireland, are fed up with the semantics and announcements. Last night I started to count the number of announcements of broadband services. I gave up at 76, but I am sure it could have run into the hundreds. Fianna Fáil and Fine Gael-led Governments have announced broadband services time and again, but they have never delivered. I am not just raising the issue because of the people and businesses without broadband. I am also raising it because of the thousands of jobs we have lost during the years because we do not have proper broadband or telecommunications infrastructure. We have a Minister for Rural and Community Development who announces every LEADER programme grant going, in which he had no hand, act or part and who portrays the illusion that everything is wonderful and fantastic in rural Ireland-----

**Senator Michelle Mulherin:** It is Government funding.

**Senator Rose Conway-Walsh:** -----but he never mentions the thousands of jobs that have

been denied to people living in rural Ireland or the thousands who have been forced to emigrate because this infrastructure has not been provided. Shame on all of your houses. We want to know when we will have broadband in rural Ireland. We deserve to have it as much as anyone else. We are sick and tired of the semantics, presentations, spin and every other antic. We want broadband now as we want to be able to communicate. We want the telecommunications infrastructure that we deserve.

**Senator Paul Gavan:** Well said.

**Senator David Norris:** I join others in congratulating my Trinity College Dublin colleague, Senator Ruane, on her remarkable achievement in winning a major literary award. My autobiography was nominated some years ago, but it did not get anywhere.

**Senator Jerry Buttimer:** It was a great read.

**Senator David Norris:** Yes, but it was banned by RTÉ because of the use of the word “prick”.

**Senator Jerry Buttimer:** RTÉ did not appreciate it.

**Senator David Norris:** Obviously, people had not read the Bible and realised it part was a quote from the Acts of Paul. How we have declined in our religious education.

*(Interruptions).*

**Senator David Norris:** On Sunday I took the opportunity at the last moment to visit the metal soldier at the Fusiliers’ Arch at St. Stephen’s Green. It was remarkable. There was a large crowd of people who were respectful and dignified. It showed the significance of the Irish reaction. Those who threw red paint over a war memorial and wreaths were stupid and ignorant. It is pretty much as low as one can get. The response of the people was interesting. In light of the fact that it drew out this response, it was a good thing.

Regarding broadband, I am glad and interested in the fact that Deputy Naughten has been completely vindicated and cleared, as it appears. A very careful and very tightly crafted regime was instigated, however, and it appears that not all those measures were complied with. This raises a question about this regime, which will have to be looked at again and either enforced or dropped. There is no point in having a regime in place if it is not implemented.

**Senator Frank Feighan:** I also welcome Máire Ardagh to the House. I knew her late husband, Seán. He was a gentleman and in opposition would always offer a smile and a “hello” and was always very helpful. Mrs. Ardagh should be very proud of her daughter, Senator Catherine Ardagh, who is well regarded in this House. It is great to see that line continuing.

I also congratulate our colleague, Senator Ruane. We are all very proud of her. She represents our House in a unique way. The literary award she won last night was a great achievement for her. It was also a great night for the Seanad.

I listened to Senator Lawless’s contribution and I thank him for all the work he has done on Capitol Hill. It is hugely important and relevant. The Senator, Deputy John Deasy and many others have articulated the issue of the undocumented Irish in their own way, in a nice way, behind the scenes and without escalating the matter. I appreciate that and I hope their efforts work out.

I listened to Senators talking about broadband. The will make an observation, although I normally do not enter into political discussion. Sinn Féin is an all-Ireland party and any time I go across the Border I cannot get 2G, 3G, 4G or 5G. I get general packet radio service or GPRS. While we have done a great deal on broadband, we can do an awful lot more. I would like to know what the difference is in connection rates between the Twenty-six Counties and the North of Ireland, where Sinn Féin is in government. It is easy to blame people. I could be proved wrong, but any time I go across the Border I wonder why I can only access GPRS because we stopped using it here 15 or 20 years ago. Perhaps we should stand back and think before we say these things but perhaps I am wrong.

The Hauntings Soldier in St. Stephen's Green was an absolute joy and galvanised the opinion of a great number of people in remembrance of the relatives of the 200,000 Irishmen who served in the First World War. It was wonderful to see. While we have a memorial garden in Islandbridge, perhaps now is the time to have a permanent statue of a smaller size of the Hauntings Soldier in St. Stephen's Green. I saw a recent poll showing that up to 60% of people thought that would be a good idea and were in favour of it.

**Senator Robbie Gallagher:** I extend my deepest sympathy to the family of the young 40 year old man who lost his life tragically in Castleblayney town last night. I understand he is a family man with two young children and was at work when the tragedy happened. I can only for a minute think what that family is going through at present and the pain and suffering that lies ahead of them. The time of year and the fact that he leaves behind young children make it even more heartbreaking. I am sure the thoughts and prayers of everyone in both Houses are with the family at this difficult time. I also extend my best wishes to the young garda who was involved in the incident and is very fortunate to be alive this morning. He was very brave in carrying out his duties and put his life on the line doing his job. This illustrates yet again the dangers the men and women of An Garda Síochána face daily. There is probably no other occupation whose members put their lives on the line every time they put on their uniform, and we are all deeply indebted to the Garda. Our thoughts and prayers are with the garda involved and all other gardaí in County Monaghan. I hope he makes a speedy recovery.

The other issue I wish to touch on briefly was raised by Senator Lawless. I refer to the undocumented in the US. I compliment Senator Lawless on the great work he has done in this regard. He has been a fantastic ambassador for all our Irish brothers, sisters and cousins who find themselves undocumented over there. They go through great pain and suffering, particularly when a loved one passes away and they have a big decision to make as to whether to go home for the burial. I compliment Senator Lawless on the work he has done and the many other political voices from across the political divide who have worked on this area. I hope the vote this afternoon goes well and there will be hope for the people in America who would like to legalise their position and be able to come home whenever the need arises.

**Senator Victor Boyhan:** I welcome Mrs. Ardagh to the Chamber.

There are five pillars of Rebuilding Ireland, namely, addressing homelessness; accelerating social housing; building more homes; improving the rental sector; and utilising existing housing stock but also, and more important, lands zoned for housing. My focus is on how we will get on with building these houses but, more important, the Land Development Agency. In September, the Government announced it would establish a land development agency but as of today we have no underlying legislation or funding for this major initiative. We do not even have a memorandum, schedule or general scheme setting out what will happen. Will the Leader



find out from the Minister what the intention is regarding the Land Development Agency? It is an important body. City and county councils are asking what is happening with the agency in the context of tackling the five pillars of Rebuilding Ireland. It is therefore important we have a progress report on Rebuilding Ireland because it is an ongoing process. I would like a particular focus on the Land Development Agency and the legislative arrangements surrounding it.

I take on board what Senator Ardagh said about the Barnardos report. We all received a copy of it yesterday or today. It is an important report and the facts it points out are shocking, particularly in the very detailed infographic attached to the report. If we are to have a debate, however, I would like if we could broaden it out to include the very positive Government strategy for young children and their families which the Minister for Children and Youth Affairs, Deputy Zappone, circulated today to every Member of the Oireachtas. While we can acknowledge there are shortcomings, we must also look at the very positive things in this document, which will have arrived on everyone's desk today. There is a lot of meat and positivity in it. It is a longer plan for the next five to ten years, but we should have a debate both on the Barnardos report and the Minister's views on this visionary document.

**Senator Michelle Mulherin:** I welcome the report of the independent auditor, Peter Smyth, which gives a clean bill of health to our national broadband plan and processes. It is now imperative we drive on to see delivery of high-speed broadband on the ground. What we are attempting here is unprecedented in terms of State intervention to ensure that all households have access to high-speed broadband. I ask that the new Minister be invited to the Chamber to set out how we will proceed from here.

I raise one significant point in this regard. Affordability for households must be at the heart of the new national broadband plan. If householders cannot afford to pay for the broadband service once the Government rolls it out, it will be a disaster. It is in the Government's interest that every household avails of a broadband service. The reason I caution the House in this regard is that Eir has rolled out and offered broadband to 200,000 households under its commercial rural deployment plan, which comes under the national plan for the roll-out of high-speed broadband, but only one in seven of these households has taken up the offer. If we do not make broadband affordable for households, we will not have broadband and we will waste billions in taxpayers' money. This is an essential element of the broadband we need to deliver in the future. I ask that the Minister be invited to the Chamber as soon as possible in order that all these issues can be clarified.

*12 o'clock*

**Senator Paul Gavan:** I want to join with others in congratulating our colleague, Senator Ruane, on her well-deserved award for her excellent book yesterday. It is a significant achievement and it is absolutely right that it should be recognised in the Chamber today.

I rise once again, more out of despair at this stage, to raise the issue of University Hospital Limerick. I have raised the appalling industrial relations situation at the hospital on several occasions over the past several months. As a result, I get more and more correspondence from hospital staff who are in despair. Yesterday, one nurse told me in a letter which touched me that nurses are running out of the hospital. We all know how hard it is to hire nurses. However, nurses at this hospital are actively seeking employment elsewhere and are leaving in droves. The reason is the complete lack of people management from the human resources department in the hospital.

The nurse told me in her letter that she rang six different people in human resources but none



of them would help her as they said it was not their area. She tried to raise a grievance regarding other issues with her line manager but she would not acknowledge them.

The week before last the hospital also recorded the 10,000th person on a hospital trolley. It has the worst hospital trolley crisis anywhere in the country. We have a hospital management which does not function or is not fit for purpose. It consistently fails to address bullying, turning a blind eye to it and, as a result, the hospital is losing skilled nurses. Three colleagues of the nurse who wrote to me have already left over the past few months.

I am calling for a specific debate on University Hospital Limerick. Surely we should all be able to agree that this situation cannot continue. It goes beyond funding and is due to a complete incompetence at management level. It needs to be addressed. We cannot keep waiting for something to fix itself. It will not. Matters continue to get worse by the day. We urgently need action on this issue.

**Senator Grace O’Sullivan:** I too would like to congratulate my Civil Engagement colleague, Senator Ruane, on her award last night for her autobiography, *People Like Me*. That is the sweet part of my message this morning. The second part is sour, however.

On Monday, the first tranche of €100 million for the urban regeneration and development fund was announced. Of that, €6 million was announced for the new pedestrian bridge that will form a key part of the north quays development in Waterford city. This is a development which will alter the face and the infrastructure of the city, providing housing, jobs and renewable energy for an urban centre which has long been neglected. While this investment is welcome, it is considerably less than the €20 million requested by Waterford City and County Council. While discussing this issue with constituents and other interested parties, all agreed that Waterford could not hope to claim such a high proportion of the total disbursement due to the political optics of such a decision. Understandably this has been met with distress and concern in the city this week. People are concerned that if funding can fall short from particular revenue streams, it could endanger the entire project.

Considering the size, scope and importance of this development, incorporating significant changes to Waterford city’s transport, energy and other infrastructure, do we need to reconsider how such large-scale projects apply for funding from central government? Waterford City and County Council has made applications for co-financing to other funds, including the climate action fund. We are optimistic about a positive result. However, does the Government think that large-scale strategically important projects such as this need a dedicated investment fund to access? It would be a fund that would include funds for transport infrastructure, climate and energy adaptation and more. In order to provide greater funding certainty, the administrative burden of application could be lowered to ensure such co-funding can be delivered in a coherent and strategic manner rather than in an *ad hoc* way as we have seen.

The regional assemblies could, with some modification, be the perfect bodies to consider and apply for such an approach, especially under the metropolitan areas strategic plans. Considering the extreme disappointment and concern the drip-drip funding approach has created in Waterford, I would like to hear from the Leader and the Government how the existing system could be better adapted to such projects to enable them to succeed with certainty and efficiency.

**Senator Maria Byrne:** I welcome Máire Ardagh to the Gallery. I served with her on a regional assembly for several years. I know her late husband, Seán, will be honoured today in

the Dáil. I am sure there will be a nice tribute to him.

I congratulate Senator Ruane on her award yesterday. She has been commended by nearly every Member on her well-deserved award. I wish her all the best for the future.

I am disappointed that Senator Conway-Walsh has left the Chamber because she was side-swiping at the different regeneration funding announcements recently made. I certainly welcome the €3.8 million allocation for the Murroe community field project last week

**An Cathaoirleach:** A Senator who has left the Chamber should not be referred to. I believe Senator Conway-Walsh has other engagements. Senator Byrne can broach the topic but not refer to her while she is absent.

**Senator Maria Byrne:** I apologise and withdraw it. Businesses in Murroe have closed down. With this construction project, a significant number of jobs will be created in the village. The village will also be developed as the driver of the area. The all-weather pitch will benefit all the villages in the surrounding area.

We have further investment in urban regeneration developments. Funding has been given to the Georgian area in Limerick to get people back living in the city centre. It will assist in getting Limerick to be the driver for the mid-west. All of these announcements are positive. The fact they have been announced for different towns, villages and urban areas around the country is to be most welcomed. It is not a gimmick but part of the Ireland 2040 project. During the recession many of our towns, villages and urban areas were decimated. We have to drive forward and develop them.

**Senator Jennifer Murnane O'Connor:** I congratulate Senator Ruane on winning the non-fiction book of the year award last night. We are very proud of her.

I welcome Senator Ardagh's mother to the Gallery. We are all proud of her as she does a great job as Fianna Fáil leader in the Seanad. Máire herself was a councillor and mayor of south Dublin.

I want to impress on the Minister of State at the Department of Health with responsibility for older people that the Government is not doing enough for the elderly. Will he and the Department address the challenges in properly meeting the care needs of our oldest people? It is failing to deliver a sustained and significant increase in home care support. This week a Fianna Fáil Private Members' motion was put forward in the Dáil. It was based on what I and my party colleagues are hearing on the doorsteps from families of older people who are struggling to provide care for their loved ones.

Long-term demand for care is continuing to grow. We now have the scandalous situation of 6,200 people waiting for their home care packages to be approved. I know from speaking to families that they are being put through great hardship in applying for and also getting the packages. Another area which I constantly raise is the carer's allowance application. People can wait from between three to eight months for the allowance which is unacceptable.

We need to have proper support in place as we are living longer. We need to be helping older people and those with disabilities, affording people if they wish the opportunity to grow old and remain in their own homes. Last week, Fianna Fáil published the Housing (Adaptation Grant for People with a Disability) Bill 2018. The Bill will provide for a decision to be made

on a housing adaptation grant within four weeks from the receipt of an application to a local authority. This is crucial. The reason I brought up these two issues today, namely, the motion and the Bill, is that this is a society where all are living longer and we need to make sure that every area is covered, from carers to grants, home care packages or whatever. We need to make sure that all of these packages are agreed. I seek the full support of the Seanad on these proposals today because they will be crucial for people in the future.

**Senator Tim Lombard:** I acknowledge the wonderful contribution and the achievement by Senator Ruane last night and I acknowledge our guests in the Gallery. I also acknowledge a guest of mine in the Gallery. There is a daughter of a former Senator here in the Gallery. Dinny Eoin O'Sullivan was a Member of this House from 1965 to 1969 and I wish to acknowledge the presence of his daughter and his grandson here.

We have seen significant investment by the Government, in particular, in the past week, and it is important that we should acknowledge it. The rural regeneration fund, the urban fund and, today, the climate action fund are all important steps forward in Ireland's goal towards rebuilding itself to the proposed Project Ireland 2040 model. On the rural regeneration fund, €2.1 million has been made available in my home town of Kinsale for a library. It is significant funding for a worthy cause. That is the kind of investment that we need to see come into towns. It is the funding that we have lacked for the past decade. It is an example of the vision of the Government.

This morning saw the announcement of the significant climate action fund. Something I have been chasing for a long time is the significant investment required for the electric vehicle charge network and this morning we saw considerable movement towards that. With ESB Networks and its partners, €10 million is being put in place for a significant roll-out of electric vehicle charging points throughout the country. That is an example of the ambition, drive and potential that the Government has shown in the past few months and it is important that we should acknowledge it. Unfortunately, there has been somewhat negative commentary in the House today. It is important that we go forward and promote these projects and come up with further new innovative projects for society in order that we make sure, on the climate change issue, that we become carbon friendly but from the rural regeneration point of view, that we can reinvigorate our towns, which is badly required.

**An Cathaoirleach:** I call the Senator of the moment, Senator Ruane.

**Senator Lynn Ruane:** I wish to acknowledge the Homeless World Cup team, which I hosted yesterday in the Members dining area. I thank all who dropped in and said, "Hello". I acknowledge the Ministers, Deputies Ross and Eoghan Murphy, who spent a considerable amount of time with them in the dining room yesterday, all in our efforts to win them over to help us support the Homeless World Cup team and the Irish street leagues to bring the World Cup to Ireland in 2021. Yesterday constituted our unofficial request, I suppose, to the parties and to the staff in the Departments who can support such a bid to bring the Homeless World Cup to Ireland.

The Irish street leagues have operating for more a decade. They have played a significant contribution to the re-integration of those who have often been ostracised within their own communities and have experienced homelessness and addiction. Last year, when I went to watch the women try out for the Women's Homeless World Cup team, I was struck by the fact that I noticed some familiar faces who played alongside me in Sundrive Park when I played for

Lourdes Celtic as a kid. In growing up in working-class communities and experiencing addiction and other challenges, their amazing talent was sidelined and they never got to fulfil their full potential as the amazing footballers that they were. I acknowledge the teams that visited yesterday. Hopefully, we can get behind the bid to have the World Cup here. We do not need the Aviva Stadium as it is a street league. A football and Smithfield will do but we need to raise significant funds. I acknowledge them and how well they did in the World Cup, winning the bowl.

I thank everybody who has congratulated me today. Last night, I was quite shocked to hear my name. I was in a category with former President Mary Robinson and thought there was no way I would win. The book is not only about me. It is about my community, stuff that we have experienced and stuff I thought would not be accepted by wider society. I thought I would have a fight on my hands. It was not only acceptance of me and my story but a considerable win for my community to have our experiences, narrative and story as told by someone like me, who felt a huge responsibility to tell it in a respectful way, to have the book acknowledged and to have our histories acknowledged in this way.

**An Cathaoirleach:** I am sure it will be the first of many.

**Senator Niall Ó Donnghaile:** Déanaim comhghairdeas leis an Seanadóir Ruane. I saw on Senator Ruane's Instagram this morning that she is feeling a bit delicate, and rightly so. The Senator has earned it. I hope all of our congratulations and commendations at least go some way to help the Senator. Well done, and fair play.

I will start by expressing my disappointment at yesterday's decision by the Cabinet to allocate the State's two additional European constituency seats to Dublin and Ireland South. The House will be aware there has been a longstanding request that the two additional seats would be allocated northwards. There is no legal or constitutional impediment on the Government taking that decision. It would stand by and affirm the Taoiseach and the Government's commitment that citizens in the North would not be left behind.

We have all agreed on a cross-party basis that we must be steadfast, clear and coherent in ensuring that there is no diminution of rights as a result of Brexit and no undermining of the Good Friday Agreement. This would have been an ideal way, certainly, the first opportunity in a practical and tangible way, and probably, when all is said and done, in quite a modest way, for the Government to live by that commitment. Given that the existing seats in the State would not have been undermined, I do not see where anyone would have any political or even electoral opposition to that. I am very disappointed.

The Government should review this decision, particularly in the context of the clear legal advice that there is no barrier to such a decision. Quite a number of states across the EU allocate panels and constituency seats to citizens outside of their particular jurisdiction. There will be much disappointment. The House will remember just a few weeks ago that over 1,000 civic leaders from within Northern nationalism wrote to the Taoiseach again and pleaded with him not to relent and to remain steadfast in defending our rights.

The most disappointing aspect is that while these seats have been taken away from us, this vote has been taken away from us. We can all agree that the most basic entitlement of any citizen is the right to elect representation. While that has been taken away from us by the British Government, it seems by the decision taken at Cabinet yesterday that the Government here is

rubber-stamping that decision. It is an unfortunate decision. It is the wrong one. Hopefully, the House may, through the Leader, have an opportunity to hear directly from the Taoiseach on the issue of Brexit and the next steps before the end of this term.

**Senator Ned O’Sullivan:** It was nice to see Mrs. Máire Ardagh here this morning. I had the privilege of serving in my first term here with her late husband, Seán. I found him very helpful to me, and a pure gentleman. Mrs. Ardagh herself was a politician in Dublin South and was mayor of South County Dublin. Of course, her son, Mr. Charlie Ardagh, was also a councillor and the Fianna Fáil leader here, of whom we are proud, Catherine, completes the circle.

I am delighted to congratulate our colleague, Senator Ruane, on a considerable personal achievement for her, winning the An Post non-fiction book of the year award last night. “Where will this woman stop?”, is the question I ask. It is a fair achievement for any politician to be able to write a book with no fiction in it. I have read the book and it is a wonderful read. Senator Ruane has come from very difficult circumstances to achieve so much in such a short lifetime. As I say, what will that woman do next? Well done, Senator Ruane.

Finally, I would like to be associated with the remarks of Senator Lawless this morning on the prospect of additional visas for Irish emigrants. Senator Lawless has put a significant amount of work into this through his many contacts across the USA, along with the designated special envoy, Deputy Deasy. I also pay tribute to Senator Mark Daly, who held this brief before me. He also has a lot of contacts throughout the United States. I do not have the benefit of that level of contact-----

**Senator Niall Ó Donnghaile:** Not yet.

**Senator Ned O’Sullivan:** -----but I do pledge my support, that of the Fianna Fáil Party and, I am sure, of all Members here, in a non-partisan way. It is very hard to second-guess what another House of Parliament will do. We cannot second-guess what will happen in Westminster and neither can we second-guess what will happen this evening in Capitol Hill, but we hope for a very good outcome. I will leave it at that.

**An Cathaoirleach:** Before I call the Leader, I acknowledge the presence of family members of the late great Senator Dinny Eoin O’Sullivan, as he was affectionately known. He was almost from my own neck of the woods. His daughter and grandson are very welcome here. I hope they will enjoy the visit and that Senator Lombard does not lead them too much astray. I wish them a good day here.

I wish to clarify the position on No. 2, the Judicial Appointments Commission Bill 2017, Committee Stage (resumed), which is to be taken at 1.30 p.m. or on the conclusion of No. 1. No. 1 is to conclude at 1.30 p.m. anyway. The Bill will be adjourned at 6 p.m. I take it that, irrespective of anything else, the Judicial Appointments Commission Bill will start at 1.30 p.m. and conclude or adjourn at 6 p.m. I call the Leader to respond.

**Senator Jerry Buttimer:** I hope it will conclude, a Chathaoirligh.

**An Cathaoirleach:** It is out of my control.

**Senator Jerry Buttimer:** It is in the control of some who are not here in the House. On a very sad note, I join the Members of the House who offered their sympathies to the young man who was tragically killed in Castleblayney this morning. On my own behalf and that of the Fine



Gael Party in the House, I offer our sympathies to his family and pay tribute to a member of An Garda Síochána who demonstrated, in his act of heroism, the service members of An Garda Síochána do day in and day out. Like Senator Gallagher, I remember him and his family in our prayers and thoughts.

I warmly welcome Marie and Salvi O'Sullivan to the House and thank them for being here. We all remember Dinny Eoin O'Sullivan and the work that he did. In a different way Marie is continuing the great service and tradition. They are very welcome and I thank them for being here.

On my own behalf and on behalf of the House I warmly congratulate our colleague and friend, Senator Ruane, on her magnificent victory last night. I would love to have heard her speech. I congratulate her on her wonderful award. Her book is a wonderful testament to her courage, strength, perseverance and vision. She is an inspiration to many. I am not sure where Senator Ned O'Sullivan wants to put her in the future, but from a political point of view I hope we can keep her off our panels or constituencies wherever we run. I wish her every success and thank her most sincerely.

Senator Ardagh raised the issue of the Barnardos report that was published yesterday. I would be happy to have the Minister come to the House to discuss the issue. The Government is committed to improving services and supports for all young people, especially in the area of speech and language therapy. On Monday I and other Members of the Oireachtas met representatives of the special needs schools in Cork. It is important that we would have a review of the Curc report in terms of the allocation of funding and the model of special needs schools and special needs education. Significant investment is being made by the Government.

Sometimes Members of the House accuse me of being political but they should reflect upon the decade that we lost because of the reckless management of the country, which drove people away, cut services and curtailed development. That is the Fianna Fáil legacy and they should reflect upon that. That is the reason this Government and the previous one are investing €1.81 billion in health and personal social services. An extra €150 million will be provided next year for disability services to bring the funding to almost €2 billion in total for disability services, along with increased funding of €2.5 million for the provision of 100 new therapy posts. I accept we have backlogs and difficulties, but from listening to some Members, one would imagine the Government was not spending any money on people who need it. We will continue to invest and I will continue to advocate. We will have a debate on the report.

I commend Senator Lawless on his work on behalf of the undocumented Irish emigrants in the United States. Like Senators Feighan and Gallagher, I hope that today is not another false dawn and that the work of Deputy Deasy and others on Capitol Hill, on both sides of the aisle, Republican and Democrat, will bring good news. As Senator Lawless said, the E-3 visa Bill would allow us to benefit from the lack of take-up by Australians. I hope today's vote is a successful one. I wish all involved every success.

Many Senators referred to broadband. They included Senators Conway-Walsh, Feighan, Mulherin, Lombard and Gavan. I remind Senator Conway-Walsh that in all of the contributions the Sinn Féin Party made about broadband, never once did it offer a solution. Sinn Féin Members go back to the fact that Fianna Fáil sold Eircom, which we all agree was a mistake, but they never put forward a solution as to how we arrive at full broadband coverage. I have always found Senator Gavan to be fair minded.



**Senator Paul Gavan:** Likewise.

**Senator Jerry Buttimer:** In the north of our country 50,000 people have no basic broadband service. That is 7% of properties with no broadband coverage. It is the highest of any region within the United Kingdom.

**Senator Paul Gavan:** Will Fine Gael be running?

**Senator Jerry Buttimer:** Hold on a second. Senator Gavan should let me finish.

**Senator Paul Gavan:** Is Fine Gael running candidates?

**Senator Jerry Buttimer:** Senator Gavan should let me finish.

**Senator Paul Gavan:** That is a no then.

**An Leas-Chathaoirleach:** The Leader should be allowed to speak.

**Senator Jerry Buttimer:** That includes the areas of Fermanagh, Omagh and mid-Ulster. A total of 100,000 properties have no access to super-fast broadband. I accept that 540,000 properties in this jurisdiction need to get broadband. That is the reason the Taoiseach has said that is a priority. When the Government came into power in 2016, a total of 1.2 million or 52% of properties had access to high-speed broadband, and today the number has increased to 1.7 million or 74% of premises.

**Senator Paul Gavan:** The Fine Gael Party is not running enough candidates. Fine Gael is a partitionist party. That is the problem.

**An Leas-Chathaoirleach:** Order, please.

**Senator Jerry Buttimer:** One can use the typical Sinn Féin-----

**Senator Paul Gavan:** Come up and join us, Leader.

**An Leas-Chathaoirleach:** Members should please speak through the Chair.

**Senator Jerry Buttimer:** That is the typical Sinn Féin response. When its members do not want to hear the real news, they throw out the usual mantra that is given to them from west Belfast.

**Senator Paul Gavan:** Come up and join us.

**Senator Jerry Buttimer:** A total of 1.2 million in 2016-----

*(Interruptions).*

**Senator Jerry Buttimer:** Gabh mo leithscéal.

**Senator Ned O'Sullivan:** We just ignore them.

**Senator Jennifer Murnane O'Connor:** We will just let them continue on with what they are doing.

**An Leas-Chathaoirleach:** The Leader should continue with his response.

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**Senator Jerry Buttimer:** Some of Senator Ned O’Sullivan’s colleagues did not do so last week. The Government is committed to reaching the 540,000 premises that require broadband services. That is the reason we are determined that broadband will be rolled out. I am amused at Senator Conway-Walsh being able to tell us the number of announcements. She should look at her own party’s achievement in the North, where the party will not even go into government and its elected MPs will not even take their seats in Westminster.

**Senator Paul Gavan:** No, we will not take our seats in Westminster.

**Senator Jerry Buttimer:** Then this morning Senator Ó Donnghaile came in looking for more seats for the European Parliament. It is hypocrisy at its best.

**Senator Paul Gavan:** Says the chief abstainer.

**Senator Jerry Buttimer:** It is hypocrisy at its best.

**An Leas-Chathaoirleach:** Order, please.

**Senator Paul Gavan:** When will the Leader run out of views on the North?

**Senator Jerry Buttimer:** The difficulty-----

**Senator Paul Gavan:** Fine Gael are abstentionists.

**Senator Jerry Buttimer:** The difficulty Sinn Féin has is that when it suited its political narrative, its members went into the Dáil, Seanad and European Parliament, and when, having opposed every European treaty since we joined the EU, they discovered that Europe was good for Ireland, they suddenly became pro-Europe. In fairness, Sinn Féin is doing some U-turns.

**Senator Paul Gavan:** You need to check our party policy, Leader.

**Senator Jerry Buttimer:** I have checked your party policy.

**Senator Paul Gavan:** No, you have not.

**Senator Jerry Buttimer:** I have, indeed.

**Senator Paul Gavan:** No, you have not. You are an old spoofer.

**An Leas-Chathaoirleach:** We are not going to settle this matter through the Order of Business.

**Senator Jerry Buttimer:** Perhaps the Sinn Féin Party would prefer to have no broadband so its members can keep coming in here and berating the fact that while we have made significant improvement, we have more to do.

Senators Norris and Feighan made reference to the issue of the Hauntings Soldier monument located near the Fusiliers’ Arch in St. Stephen’s Green. The desecration of the monument was a disgrace. I agree with Senator Feighan that we should erect a memorial of some type of scale and I concur with the remarks made by both Senators this morning.

Senator Boyhan raised the issue of Rebuilding Ireland and the Land Development Agency. The Bill is going through pre-legislative scrutiny and the Minister aims to publish it by year’s end.

Senators Mulherin, Byrne, Lombard and Grace O'Sullivan raised the issue of the urban regeneration and development fund totalling €2 billion that was announced last Monday. The fund will ensure that large urban towns located outside Dublin are rejuvenated. As many as 80% of the projects and 85% of the moneys have been allocated to the regions and beyond Dublin. The first phase of the allocations has been announced. I understand the frustration expressed by Senator Grace O'Sullivan because I know that a number of projects in Cork were not included in the scheme. I am heartened by the fact that a new phase will begin in February. As Senator Lombard referenced, an announcement was made today about the rural regeneration fund, climate action fund and disruptive technologies innovation fund and is part of Ireland 2040. I confirm that Ireland 2040 seeks to create, in a climate-friendly way, sustainable development in all parts of the country but, in particular, outside of Ireland. Today's announcement of a climate action fund amounting to €500 million will drive many projects. I assure Senator Grace O'Sullivan that I will invite the relevant Minister to come to the House to discuss the fund.

Senator Gavan raised the issue of the University Hospital Limerick. He will appreciate, notwithstanding my next comment, that I do not have a role in industrial relations and neither does this House. A Commencement matter might be the way forward for him. In terms of the points that he made, and I have made my point before, one cannot tolerate or condone bad work practices. I am not saying that everything that he has said is as presented and I am sure that the management concerned would have a different viewpoint. I am not familiar with the issue but there are industrial relations mechanisms within the State that should be utilised. Again, it is important that we have the debate.

Senator Murnane O'Connor raised a very important issue concerning older people. However, she did not recognise the additional 550 care packages that have been announced by the Minister for Health and the Minister of State at the Department of Health, Deputy Jim Daly. She did not recognise the extra €4 million in aids and appliances that is being made available. She also did not recognise the fact that the Minister of State, Deputy Jim Daly, and the Minister of State at the Department of Housing, Planning and Local Government, Deputy English, hosted a very important conference on housing for older people at Farmleigh House in Dublin last week. I am happy to invite the Minister for Health to the House to discuss the matter.

For the benefit of Senators Grace O'Sullivan and Lombard who raised the matter of climate action, I intend to invite the Minister to come here next week to discuss climate change and I shall confirm the date. I assure them that the Minister will come to the House to discuss climate change.

I commend Senator Ruane on her very positive initiative that occurred yesterday. I am sorry that I could not be in the House on that occasion. It is important that we recognise that sport brings people together and gives them an identity whether they are homeless or international soccer or rugby players.

Senator Ó Donnghaile raised the issue of the additional constituency seats in Europe. I find it ironic that Sinn Féin seeks more seats when its party members will not take their seats in Westminster or go into government in the North. He failed to recognise that the Government established an independent commission, chaired by Mr. Justice Haughton, and made a recommendation to Government. As Senator Gavan knows, in terms of electoral boundaries for local government, Dáil or Europe, the independent commission is comprised of many eminent people including the Clerk of the Dáil, Clerk of the Seanad and others, to name but a few, and they sit

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independently to make a recommendation. I do not believe that I have ever seen a Government reject an independent review or report, and I did not think it was going to happen yesterday.

I think I have addressed the remarks made by Senator Ned O’Sullivan and I hope I have not left anybody out. Again, I welcome our distinguished guests to the Gallery. I thank everybody for their warm words of acknowledgement and affirmation for Senator Ruane. We are very proud of her and congratulations.

**An Leas-Chathaoirleach:** So say all of us.

Order of Business agreed to.

*Sitting suspended at 12.35 p.m. and resumed at 12.45 p.m.*

### **Health Insurance (Amendment) Bill 2018: Committee and Remaining Stages**

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

Sections 1 to 4, inclusive, agreed to.

#### NEW SECTION

**Senator Máire Devine:** I move amendment No. 1:

In page 6, between lines 47 and 48, to insert the following:

#### **“Amendment of section 3 of Voluntary Health Insurance (Amendment) Act 1996**

**5.** Section 3 of the Voluntary Health Insurance (Amendment) Act 1996 is amended by the addition of the following subsection after subsection (3):

“(4) The Board shall furnish the Health Insurance Authority and the Minister for Health with a yearly report on the increases in premiums of private health insurance due to Risk Equalisation Rates.””

This amendment is intended to aid in figuring out how costs are going and whether there has been overcharging. The amendment was intended to add some checks and balances to make the Bill more robust. Following a parliamentary question from Deputy Louise O’Reilly which was answered on 27 November, I will withdraw the amendment. However, I ask that the Minister of State consider options to improve checks and balances in respect of health insurance hikes as a result of risk equalisation. The reply from the Department of Health said that it was making such checks, but they did not seem robust enough to me. I withdraw this amendment in order to let the Bill go through.

Amendment, by leave, withdrawn.

Sections 5 to 8, inclusive, agreed to.

Title agreed to.

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

*Sitting suspended at 12.40 p.m. and resumed at 1.30 p.m.*

**Judicial Appointments Commission Bill 2017: Committee Stage (Resumed)**

SECTION 35

Debate resumed on 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.”.

- (Senator Michael McDowell)

**Minister for Justice and Equality (Deputy Charles Flanagan):** According to the Order of Business, we are due to conclude this debate at 6 p.m.

**Acting Chairman (Senator Catherine Noone):** That is correct.

**Deputy Charles Flanagan:** I wish to give notice of an urgent Topical Issue matter submitted in the Dáil, which may or may not be accepted. I may seek leave to go to the Dáil for about 15 minutes at or around 5 p.m.

**Acting Chairman (Senator Catherine Noone):** The Leader’s office will sort that out before 5 p.m. if necessary. Senator McDowell has the floor on amendments Nos. 78, 79 and 90.

**Senator Michael McDowell:** I have said most of what I wanted to say about the whole question of the sitting Judiciary being required to apply to a body which is not the Government for consideration to be appointed to positions in the Supreme Court or Court of Appeal or to the presidencies of those courts. I will ask the Minister a simple, factual question. As I understood it, a procedure was recently put in place whereby judges who were interested in promotion to vacancies which were arising or had arisen could inform either the Secretary to the Government or the Attorney General in writing of their interest in being so promoted in order that their names would be put before the Cabinet. Is it proposed that this procedure be discontinued from now on as amounting to some kind of canvassing or will it continue under this legislation? If it is proposed that it be discontinued, there would be certain implications arising from that. It is an informal arrangement with no legislative basis, which seeks to address the problem of sitting judges writing long letters to politicians extolling their own virtues. I have no problem with that. Members of the Judiciary do not have to do a sales job on themselves to members of Government. For this reason, the new arrangement under which they indicated to the Secretary to the Government their willingness to serve in a position which was vacant or about to become vacant was put in place. Is this system still in existence? If so, will it be ended if the requirement that every judge apply to the judicial appointments commission for every promotional vacancy comes into place?

**Senator David Norris:** The first two amendments in the group, amendments Nos. 78 and

79, narrow the criteria an applicant must satisfy to be recommended for a judicial position. The amendments also remove references to courts higher than the High Court to accord with the subsequent amendments concerning senior judicial officers. Amendment No. 90 is more comprehensive. It reintroduces the Government's original section and extends the senior judicial appointments process to ordinary members of both the Court of Appeal and the Supreme Court. It codifies the procedure the Government has adopted in respect of recent senior court appointments and it follows that this process should continue on a statutory basis. These proposed amendments are fundamental to safeguarding against the weakest elements of the Bill in its current form, which, as currently drafted, would involve 16 members of the judicial commission appointing the Chief Justice, the President of the Court of Appeal, the President of the High Court and all ordinary members of the Supreme Court and the Court of Appeal.

The process of appointment by the Government to all the aforementioned positions in the past two years or so has been to include the president of the appellate court, the Attorney General and the chair of the top level appointments committee. This process has been used to appoint the current Chief Justice, new ordinary members of the Supreme Court, the President of the Court of Appeal and new ordinary members of the Court of Appeal. For most litigants, the Court of Appeal will be their last opportunity to have a case heard, with only cases of exceptional importance ending up in the Supreme Court.

The High Court, District Court and Circuit Court are bound by the decisions of their superior courts. This includes the Court of Appeal with regard to the Supreme Court. Decisions made by the Supreme Court and the Court of Appeal are of fundamental importance to the rule of law in this State, and the officeholders of these courts bear enormous responsibility as to how the law is both interpreted and applied. The Government in its wisdom deemed that it was appropriate at a bare minimum for the Chief Justice, the President of the Court of Appeal and the President of the High Court, all of whom are members of the Council of State, to be appointed by a separate senior judicial appointments committee. This proposal was voted out of the Bill in Dáil Éireann. The Government proposes that the Chief Justice, Attorney General and chairperson of the judicial commission recommend the appointment to these offices rather than the 16-member judicial commission, which is how the law will currently operate if enacted as the version passed by Dáil Éireann.

If the Government accepts the principle that the appointment process for the roles of Chief Justice, President of the High Court and President of the Court of Appeal requires a more fussed consideration than the process involving a motley crew of 16 commission members where all of these officeholders are either members of the Supreme Court or *ex officio* members of the Supreme Court, it is difficult to see why it would object to ordinary members of these courts also forming part of the separate senior judicial appointments committee process. It is essential that such a senior judicial committee not comprise a sitting member of a court, for example, the Chief Justice, having a role in appointing his or her successor or a person to serve alongside him or her on the Supreme Court. The same consideration should apply for the Court of Appeal, where the President of the Court of Appeal should have no role in appointing his or her successor or members to serve alongside him or her.

It is clear, therefore, that the senior judicial committee must be broadened so that, at all times, there are existing senior judicial officeholders capable of providing an assessment of the capabilities of a particular candidate for these exceptionally high offices, allied to the Attorney General and the lay representatives, such as the chairperson of the Top Level Appointments Committee, TLAC.



Another essential component of these grouped amendments is the plainly obvious proposal that persons deemed suitable for recommendation to the High Court ought to have an appropriate knowledge of its decisions and appropriate knowledge and experience of its practices and procedures. It would be a nonsense to appoint people who had no knowledge, practical experience or wisdom in these matters. It is obvious that they must. It is unfathomable how the Government could view these qualities as unnecessary components for a 16-member judicial appointments commission to consider when recommending candidates for appointment to the Judiciary. These are the core skills that a suitable judge might possess.

I wish to point out my great disappointment that there are more members of the public in the Gallery than there are Senators in the Chamber during the passage of this extremely important Bill. I would like to welcome our visitors. They can see now the way the process goes - it is the same two or three Senators all the time on every Bill.

*(Interruptions).*

**Senator Anthony Lawlor:** Wherever Senator Norris is.

**Senator David Norris:** I am getting a kind of strong weakness-----

**Acting Chairman (Senator Catherine Noone):** For a quorum.

**Senator David Norris:** -----that is inclining me to ask for a quorum so that our pearls of wisdom should not be thrown before artificial swine.

**Acting Chairman (Senator Catherine Noone):** I thank the Senator for such a dramatic and interesting introduction to the quorum.

**Senator David Norris:** Thank you.

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

**Acting Chairman (Senator Catherine Noone):** Senator Norris was in possession.

**Senator David Norris:** I had just concluded my remarks.

**Acting Chairman (Senator Catherine Noone):** Does the Minister wish to respond?

**Deputy Charles Flanagan:** Yes. I acknowledge the importance of the amendments.

*(Interruptions).*

**Acting Chairman (Senator Catherine Noone):** Can we have quietness in the House, please?

**Deputy Charles Flanagan:** The subject matter of the amendments is receiving every consideration in respect of how to deal with an important issue which has been raised by Senator McDowell, in particular, but which has also been supported by other Senators. I do not wish to repeat points I made on the last occasion. I will respond directly to the issue raised by Senator McDowell on expressions of interest. There is a procedure under which it works whereby a sitting judge makes it known that he or she wishes to be considered for a further assignment. I do not like using the word "promotion" in talking about the courts, but we all know that we are

talking about an assignment in moving from one court to another.

**Senator Michael McDowell:** It is appointment to a more senior position.

*(Interruptions).*

**Acting Chairman (Senator Catherine Noone):** The Minister to continue, without interruption, please.

**Senator David Norris:** What did the Acting Chairman say? I could not hear her.

**Acting Chairman (Senator Catherine Noone):** The Senator could not hear me because all Senators were talking. I called for the Minister to continue, without interruption.

**Senator David Norris:** I see.

**Deputy Charles Flanagan:** It is often to a position of greater seniority. Under the Bill, the proposal is that there will be one route and that each applicant for a position will go through the appointments commission, not in the manner that obtains with the JAAB, where sitting judges do not go before it. I acknowledge that under the new regime, the President of each court will not only be a member of the commission but will also have a very influential role in the deliberations of the committee. What I am giving consideration to, as I said on the last occasion, is having a senior appointments commission that would deal with what Senator Norris described as exceptionally high office. He is right because they are positions of exceptionally high office. I have a difficulty with Senator McDowell's amendment in so far as subsection (7) is concerned. What the Senator intends to achieve under the amendment is broader than what was mentioned previously and would go beyond what I am keen to explore. I also understand from Senator Norris that he might regard the parameters of subsection (7) as being somewhat broader than he might envisage.

**Senator David Norris:** Is it about informing all members?

**Deputy Charles Flanagan:** No. It involves an amendment that would be significantly broader than what I regard as exceptionally high office, the positions of Chief Justice, President of the Court of Appeal and President of the High Court. In the amendment Senator McDowell wishes to encompass all senior appointments or all appointments that might be regarded as senior, which would be too broad. I want to reflect on the matter further. I want to give it scrutiny, which is what I have been doing, and also want to take advice on it. I am keen to frame an appropriate amendment to the legislation on Report Stage which would allow for the type of senior officials' committee that worked particularly well in the case of the recent appointments of the Chief Justice and the President of the Court of Appeal. It is a vehicle that could also be used in the case of the President of the High Court. They are the three most senior positions and the three exceptionally senior positions mentioned by Senator Norris. In its current guise, I am not prepared to accept amendment No. 90 which I regard as being the amendment within the group that carries a broader array of reforming changes than previous amendments and that carries more weight.

**Senator Michael McDowell:** I am grateful to the Minister for saying as much as he did, but I wanted to know whether the procedure for signifying willingness would continue or be prohibited.

**Deputy Charles Flanagan:** It will be prohibited.

**Senator Michael McDowell:** That is the point. The only channel of communication for an ordinary judge of the High Court to the Government will be via the judicial appointments commission.

**Deputy Charles Flanagan:** Yes.

**Senator Michael McDowell:** I am teasing it out, but if that is the case, it means what I said on other occasions about other amendments must certainly be true in this instance. The Government will effectively be kept in the dark on the sitting judges who are willing to serve in the Court of Appeal or the Supreme Court. The Minister is effectively saying it will be unlawful for anybody to communicate his or her willingness, other than by making an application to the commission.

**Deputy Charles Flanagan:** Yes.

**Senator Michael McDowell:** I believe that is unconstitutional, but it is a contrived opinion of mine. To me, there is absolutely no excuse. Senator Bacik has just arrived in the Chamber.

For her information, I point out that the Minister has clarified that once the Bill comes into operation, it will be prohibited for a member of the Judiciary to communicate to the Government his or her willingness to accept promotion or appointment to the Court of Appeal or the Supreme Court and the only method of communication with the Government by a sitting judge regarding a willingness to serve in that way would be by making an application to the commission. I believe that is manifestly unconstitutional. The Government has not merely a right, but a duty to consider all people, particularly sitting judges, who are eligible to serve and willing to accept an appointment to one of those courts. It is manifestly unconstitutional to set up an advisory commission, which turns into a censorship device such that the Government is prohibited from knowing that a particular judge is willing to serve on either of those courts.

One of the fundamentals of the Constitution is that it is an executive function of the Government to advise the President on such matters. It is not merely a right; the Government has a duty to do so. The Government must consider its options, but in order to do so it must be informed of what those options are. One cannot state it will have discharged its function if the only way under this new regime that it will become aware that Mr. Justice Michael McDowell, a member of the High Court, wishes to be considered for a vacancy in the Court of Appeal or the Supreme Court is via Mr. Justice McDowell making an application to the appointments commission, which then decides whether the Government is made aware of that name having been put forward. According to the Minister, the commission, including the Attorney General, will be prohibited from telling the Government that a judge applied but was not included on the shortlist. A first year law student in King's Inns would know that is unconstitutional. One cannot do that to the Government. One cannot state that the only names it will be lawful for the Government to be told are the names chosen by people outside of Government, the majority of whom are not judges, although that is irrelevant, and that the choices will, therefore, necessarily be curtailed.

The fig leaf saving this Bill from manifest unconstitutionality on another front is that it is accepted in the Bill that the whole procedure does not prevent the Government from appointing an eligible person off its own bat. However, that fig leaf does not apply if the legislation provides that the Government cannot know the identities of willing candidates other than the

three put forward on a shortlist. Given the Government attitude to my amendment, I am being asked to assent to legislation which is manifestly unconstitutional. I have no doubt on this matter. There are occasions when lawyers query the constitutionality of various matters. As I have stated, I do not claim infallibility on this issue. However, this is manifestly unconstitutional if it has the meaning for which the Minister has contended. This House should not be asked to accept legislation that, in the view of its Members, is unconstitutional.

It is a forlorn hope, but I would love to see a memorandum detailing the Attorney General's reasons for this being constitutional. His opinions are never circulated and, having been Attorney General, I see good reason for that, but I would love to see the arguments as to why the provisions for which the Minister is contending comply with the Constitution. I would love to see set out in writing why the points I am making are wrong because, to me, they are manifestly right.

Ultimately, I hope the Bill will be tested by the Supreme Court on an article 26 reference because these issues are such that on ordinary *locus standi* rights to challenge legislation, it would be difficult to work out who would challenge it. Are we inviting a disappointed High Court judge to take a legal action pointing out that he or she was not recommended or appointed and is disappointed with the process? Perhaps a case will be taken by an ordinary citizen who thinks that the Judiciary would be improperly composed if this legislation should come to pass and that a decision of the Court of Appeal was invalid by reason of the improper constitution of the court. An Article 26 reference would be entirely appropriate in this case.

The Minister stated that I am being over broad in stating that ordinary positions in the Court of Appeal and Supreme Court should be comprehended by a special process. Let us remember one fundamental fact mentioned by Senator Norris - I am glad he reminded me of it - namely, that every member of the High Court is capable *ex officio* of functioning as a member of the Supreme Court or the Court of Appeal and every member of the Court of Appeal is capable *ex officio* of functioning as a member of the Supreme Court. That does happen. I have been in court when judges have been, so to speak, brought up to make up numbers for particular reasons. If that is the law as things stand and the Bill does not seek to change that, it is amazing that a judge cannot be a permanent member of the court but can be a temporary member for a particular case and be entirely suitable for that purpose by virtue of being a High Court judge without having been recommended by this external group of people.

**Senator David Norris:** It is a very telling point.

**Senator Michael McDowell:** Such a judge would not even have any means to communicate to the Government his or her wish to be appointed. It is strange that the Supreme Court could function with one or more members of the High Court sitting on the Bench and yet a group of people other than the Government-----

**Senator David Norris:** Consultants.

**Senator Michael McDowell:** -----can censor the fact a judge of the High Court has applied to become a member of the Supreme Court but been found unsuitable for that position. How can the commission be permitted to deliberately keep the Government in the dark in that regard?

There is another issue of which I wish to remind the Minister. We were told in Part 2, at section 7, that the decision to recommend a person for the commission should be "based on merit",

whatever that means. It is hard to imagine how a shortlist could be composed by a group of people whereby those on the list do not merit inclusion. When one moves on to subsection (2), one sees that when selecting and recommending persons for appointment, “regard shall be had” by the commission to the objective that the membership of the Judiciary should comprise equal numbers of men and women. This is a criterion that the commission is obliged to consider when filling a position in the Supreme Court, for example, which is odd. Regard should also be had to the objective that the membership of the Judiciary should, where feasible and practical, reflect the diversity within the population as a whole. Reference is also made to the Irish language. However, these are not the criteria by which the Government would necessarily decide to fill a vacancy in the Supreme Court. If a liberal-minded woman member of the Supreme Court was retiring, the Government might decide that it wants a liberal-minded man, whom it has identified, to sit on the Supreme Court in her place, or *vice versa*. There has been an enormous transformation in the composition of the legal profession from the ground up and among the Judiciary, from the least senior courts up. The number of women judges now, relative to the number of senior persons in other professions, is far healthier than in the past. The Government is, on occasions, conscious of gender and gender balance but it is also, on occasions, conscious of other issues such as liberalism, conservatism and so on.

What this comes down to is that the entire purpose of this Bill is to create a situation in which the Government will effectively only know of the desire of persons who are recommended by the commission to be appointed and will be prohibited from knowing that there were other choices, other willing candidates, available to it, which is absolutely unconstitutional. To turn to what the Minister said about amendment No. 90-----

**Deputy Charles Flanagan:** With respect, the Senator has imparted his views to the Seanad as if this is something that has not been discussed to date. This was quite clear from the Second Stage reading and the in-depth Committee Stage debate on Part 2, to which he now refers. It was also dealt with in the context of the discussions on sections 27 and 28. The Senator is right about the confidentiality aspect of the Bill. He is also right when he speaks of the need for the commission to deal with all applications. However, he is not saying anything new, as though this has suddenly dawned on the Seanad by dint of an answer that I gave half an hour ago to Senator McDowell. This was well known. This is the basis of the Bill but the crucial point is that nothing in the Bill interferes with or diminishes the ultimate power of the Government to make an untrammelled recommendation following due consideration.

**Acting Chairman (Senator Diarmuid Wilson):** I thank the Minister for his observations but would point out that Senator McDowell is entitled to make his points, once they are relevant to the amendment, and they appear to be so.

**Senator Michael McDowell:** I agree with the Minister in one respect, namely, that this is the logic of the positions he has successively adopted in the course of the Second Stage debate and the Committee Stage debate. This is the logic of his position but it must be clearly understood. If this Bill goes to the Supreme Court under Article 26 of the Constitution, it must be clear what the Minister intends, in case someone suggests that this is a fanciful construction of the Bill. The purpose of the Bill here is to prevent the Government from knowing the eligible and willing members of the Judiciary who are free to act up as temporary members of the courts on a daily basis. We are being told now, very clearly and explicitly, that if -----

**Deputy Charles Flanagan:** It is not a case of only being told now. The Senator was told that all along.



**Senator Michael McDowell:** No. If we enact this law, it will be unlawful for anybody to tell the Government the names of the judges who wished to be considered by the Government for appointment but who were forced into the judicial appointments process and left off the shortlist that goes to the Cabinet. There could not be anything starker as an unconstitutional proposition than that.

With the original Judicial Appointments Advisory Board, JAAB, the word “advisory” meant what it said, in that the Government was taking advice from a body. In this legislation the word “advisory” is dropped because the Minister for Transport, Tourism and Sport, Deputy Ross, thinks that this commission is more than advisory in nature. Perhaps it is more than advisory because under the proposed terms of the Bill, it will be the keeper at the gate as regards the information going to the Government. The Minister says that it is clear that the power of the Government under the Constitution to appoint somebody unrecommended remains untrammelled, but it is not untrammelled if the Government, through this legislation, is deliberately kept in the dark as to its choices. It cannot be that the Government’s constitutional power still exists if it is playing blind man’s buff, trying to work out what other judges might be interested in being appointed to the Court of Appeal or the Supreme Court.

It is not that this is a sudden revelation to me but it is now starkly before us as to where we are going and where we are being led with this legislation. We are being asked to walk into an unconstitutional cul-de-sac. The Minister should at least accept the fact that I said on many occasions that when we reached amendment No. 90, I would be proposing a different way of doing business which is designed to save this Bill from being deemed unconstitutional. It is designed to stop members of the Judiciary having to engage in a beauty parade before the judicial appointments commission to be appointed to courts where they are *ex officio* capable of serving without any such process. It is unconstitutional, in my view, to have a group of people vet the applications of judges by reference to criteria by which the Government is not bound if, at the same time, the law is that the Government cannot be informed, either directly or indirectly, of the willingness of those judges to accept office in a more senior court. I make no apology for wanting to extend this provision to ordinary judges of the High Court because those judges can be asked by the Chief Justice to serve in the Supreme Court for a particular case. The same applies to the Court of Appeal. One may be brought up, sat beside these judges and asked to serve. What business does this proposed appointments commission have in telling the Government that somebody who is capable, by virtue of the fact that he or she serves on the High Court day in, day out, of functioning on the Supreme Court, should or should not be selected to these positions? As a group of people, all High Court judges are entitled to serve in those courts if called upon to do so. The provision is inexplicable and it is wrong.

The Minister has said that he is considering bringing in some amendment in this area on Report Stage. We know what happened. He had a special committee in the Dáil which effectively took this proposal off the table by leaving the section in place and providing that everything goes back to the judicial appointments commission. If the Minister is merely telling us that he is a bad loser in the Dáil and wants to put back in a provision the Dáil rejected, that does not deal with the points this amendment deals with, which is the idea that ordinary judges of the High Court who are *ex officio* capable of functioning as judges of the Supreme Court should, notwithstanding that fact, submit themselves for scrutiny of their suitability for appointment by a body which is not the Government. One of the problems I have with the Minister saying that he might deal with this on Report Stage and that he may take advice on this - in effect, saying that anything could happen - is that it leads to uncertainty, which is unsatisfactory. If this goes

to the heart of the Bill and the heart of the issue of its constitutionality, which I say it does, the idea that we are being told that the Minister is contemplating going some way back towards recovering the position he lost in Dáil Éireann is not good enough. The problem with Report Stage is, as we know, that unless the section or the amendment is recommitted to Committee Stage, we will have a process in which there are a few contributions and the whip will be imposed and the proposal will go through. That is not satisfactory either.

I am not minded to be bought off with the statement that the Minister, as was said, might think about it for longer and that he might do something about it on Report Stage. This is too serious for that. He cannot say that he may do something about it and that he will tell us what he is thinking of doing later, but not today. If the Minister is serious about a Report Stage amendment, he should tell us what it would be. If he does not, I cannot see why anyone in this House would withdraw his or her objection to the Bill as it is currently drafted.

**Senator David Norris:** I do not share the Minister's timidity in using the word "promotion". If a person is moving from the High Court to the Supreme Court, it is of course a promotion.

**Deputy Charles Flanagan:** I agree.

**Senator David Norris:** It is a higher court. It is the Supreme Court of the land. There is no higher court. Of course it is a step up. The decisions are more serious.

**Deputy Charles Flanagan:** We have been told that it is an entitlement.

**Acting Chairman (Senator Diarmuid Wilson):** Senator Norris, without interruption.

**Senator David Norris:** That is fine, but I am talking about the question of promotion. The Minister has said that it was not a promotion.

**Deputy Charles Flanagan:** I do not think it is a promotion.

**Senator David Norris:** He hesitated. He thinks the idea is too delicate and requires political correctness. It is a higher position, the candidate gets more money and the views expressed are the law of the land. One could not get higher. One could not get a bigger promotion. It is spelt p-r-o-m-o-t-i-o-n - promotion.

With the focus on confidentiality, there is a frightful whiff of the Cosa Nostra or some other such secret society emanating from this entire bloody thing. If a High Court judge said in a newspaper interview that he or she had applied for the job and was very disappointed that he or she was not even shortlisted, can he or she be held criminally liable for that under this legislation?

**Senator Michael McDowell:** It depends on his or her behaviour.

**Senator David Norris:** Perhaps the Senator is correct. This is most extraordinary and represents a really serious curtailment of freedom of speech. Will the Minister explain precisely what is so dangerous to the Government about allowing it to see the longlist of candidates who have put themselves forward? Where lies the danger to the Government in that? What is the difficulty? I cannot see that there is a difficulty. In fact, under any form or rules of logic, I would say that the more information one has about a situation, the better one's decision-making will be. Constricting the information also constricts the nature of the decision made.

The Minister has also said that senior judges could be on the committee and they would have a very influential role. How does he know that? These meetings have not taken place yet. Some of these senior judges could have an upset stomach or-----

**Senator Michael McDowell:** They will be in a minority at every stage.

**Senator David Norris:** Senator McDowell is correct. How on earth can the Minister possibly know that those judges will have a more influential role than anyone else on the committee? He cannot say that, because he is predicting into the future.

**Deputy Charles Flanagan:** It is a matter of one's rank. The Senator is fond of that concept. They will be influential by virtue of their rank, influence and authority.

**Senator David Norris:** That does not mean that they will have a more influential role.

**Deputy Charles Flanagan:** Yes, it does.

**Senator David Norris:** No, it does not. We are talking into the future. They could sit down and say nothing at all. What would their influence be then? We are always being told about openness and transparency, but there is very little of that contained in the Minister's response. I have asked a series of questions, and I would like to hear the responses of the Minister.

**Deputy Charles Flanagan:** This is not being done for the protection of the Government in any way. Rather, it is for the protection of those who may not gain favourable consideration under the commission process.

**Senator David Norris:** Did the Minister ask for an opinion?

**Deputy Charles Flanagan:** It seeks to ensure that their names will not be in the public arena if they do not want them to appear.

**Senator David Norris:** How does the Minister know what these people might wish?

**Deputy Charles Flanagan:** It was an issue that was the subject matter of consultation. I am satisfied about that provision. I do not subscribe to the idea-----

**Senator David Norris:** Anyway, letting the Government know who has applied is not the public arena.

**Deputy Charles Flanagan:** ----- that the process should be undertaken.

**Acting Chairman (Senator Diarmuid Wilson):** The Senator should let the Minister answer. The Senator can come back in at the end.

**Deputy Charles Flanagan:** I do not accept that there is a majority in either House that would subscribe to Senator Norris's view that every candidate for consideration for selection should have his or her identity in the national newspapers.

**Senator David Norris:** Nobody suggested that their names should be in the national newspapers.

**Acting Chairman (Senator Diarmuid Wilson):** Senator Norris-----

**Senator David Norris:** Excuse me, but I am being accused of saying that they should be

in the national papers and I most definitely am not.

**Acting Chairman (Senator Diarmuid Wilson):** Senator Norris has made an eloquent contribution, as he does on most occasions on which he contributes to debates.

**Senator David Norris:** I am beginning to feel a quorum coming on.

**Acting Chairman (Senator Diarmuid Wilson):** He should allow the Minister an opportunity to answer his questions without interruption. He will get another opportunity.

**Senator David Norris:** The Minister is talking about the national newspapers. I never said anything about the national newspapers; I was talking about the Government.

**Acting Chairman (Senator Diarmuid Wilson):** Let the Minister respond, please.

**Senator David Norris:** Since when is the Government of Ireland a national newspaper? It is not. I never mentioned national newspapers.

**Acting Chairman (Senator Diarmuid Wilson):** Senator Norris will have an opportunity to come back in if he is not satisfied with what the Minister has to say.

**Deputy Charles Flanagan:** There is no intent on the part of the Government to endeavour to protect itself in some way by ensuring confidentiality. I do not agree with the Senator. I do not accept at all that the issue is one of protection of the Government. Rather, it is an issue of protecting the candidates themselves.

I want to refer briefly to a point which Senator McDowell has raised again. It is an important point. It is about the architecture, which was to be a senior appointments commission. I do not come back with this on the basis of it having been defeated in the Dáil or otherwise. I come back to this House to attract support for something which, to my mind, meets the issues of concern as raised by Senator McDowell, albeit not in the comprehensive and wide-ranging way he intends. I invite Senator McDowell to agree with me that what was proposed in the Dáil is more desirable than the current framework in the Bill, having regard to the issue of senior appointments raised by Senator Norris. Senator McDowell wishes to have the best and worst of every world, which is his right as a Senator. However, there comes a time when I would ask Senator McDowell to agree that ultimately, if there are parts of this Bill that can be improved upon, that we should do so. I invite Senator McDowell to agree with me on the construct of a form of senior appointments group.

Senator McDowell makes such a play about the State losing out on the expertise and experience of current serving members and future members of the Judiciary, or about people not applying, because they cannot make direct contact with the Government in order to inform it of their intentions. In response to that I would point to the content of section 39, which states clearly that any of these members of the Judiciary will be in a position, and will be required, to submit their names to the commission for consideration. This is the means by which the appointments procedure will be undertaken. The fact that they will not be in a position to express an interest to a Minister or publicly should not act to their detriment because they will be encouraged to apply under section 39(1) in the same way as anybody else who wishes to have his or her name considered for appointment.

**Senator Michael McDowell:** The more I hear about this the more alarming I find it. First, let us deal with the invitation the Minister gave me, which was to indicate that his senior

appointments committee would be better than what we have here. I am very loath to do so because, if he simply brought us back to the position at which this Bill had us in the Dáil, it would still be unconstitutional for the reasons I have mentioned. I am not going to say that one unconstitutional version of this Bill is better than another unconstitutional version. Unless the Minister deals with the constitutional issues I am raising, then both versions are equally bad in my view. The fact that one may look prettier or be more polished than another does not save it from ultimately being judged as to whether it is constitutional or unconstitutional.

I invite the Minister to tell me what is wrong with the present arrangement whereby the holder of a position in the High Court, the Court of Appeal or the Supreme Court who seeks to be considered for a more senior position is invited to intimate to the Secretary General to the Government that he or she is so willing. What is wrong with that? Does it somehow embarrass the Government to know who is interested in a particular appointment? Does it produce worse results? Does it amount to a form of canvassing which is reprehensible in some way? Of the 40 or so High Court judges - I am not sure how many there are, it is 40 or thereabouts - if 20 would, if asked, serve in the Court of Appeal why should the Government not know that? Why should it not know who they are?

By the way, I am absolutely sure that some judges of the High Court would not like to be appointed to the Court of Appeal, notwithstanding the slightly larger salary that goes with the appointment, because being a member of the Court of Appeal requires great intellectual endeavour and industry in terms of written submissions, preparing written judgments and the like. Some judges might feel that, having done ten or 15 years in the High Court and having dealt with defamation actions and this, that and the other, they frankly do not want to specialise as a points of law judge from now on. That is a perfectly respectable point of view. It is not to be assumed that every member of the Judiciary would like to be on the Court of Appeal or the Supreme Court. Yes, the term "promotion" can be used and it is doubtless that all of them would consider it an honour of sorts, but some might say that if they have another five or ten years to serve as a judge they might prefer to spend it on a mixture of cases rather than hearing points of law cases for the rest of their lives.

Likewise, it is very definitely my view that many judges might like to be on the Supreme Court but might not like to be on the Court of Appeal. Such judges would be minded to make an application for one, but not for the other. There is nothing wrong with that. I can well imagine men and women on the High Court Bench saying that they would not like to be on the Court of Appeal but that they would like to be on the Supreme Court if asked by the Government. That is a perfectly reasonable, rational frame of mind for somebody to have.

When the Minister asked if I would not consider that what he had in the Bill before it was amended in the Dáil was better than what we have now, I am dubious about the proposition because at least the constitutional flaws in this legislation are more obvious, even though they were present in the original version of the Bill. If the Minister wants to reverse the decision taken in the Dáil on the presidencies of the Court of Appeal, the High Court and the Supreme Court, why did he not put down an amendment on Committee Stage in this House so that we could discuss it in the proper way? Why is he holding back until Report Stage to come forward with his proposals? I do not see why that should be.

To have a special procedure for the presidency of the High Court, the Court of Appeal or the Supreme Court suggests in some sense that those positions are of much greater importance than the ordinary membership of those courts. For example, in many respects the Chief Justice is the



titular head of the Judiciary. One Chief Justice does not outvote two ordinary members of the Supreme Court, however, and it is not as if they are qualitatively different or have greater clout by virtue of being on one side of an argument rather than another in a collegiate decision. I do not accept the proposition that we should provide a wholly different mechanism for somebody to be appointed an ordinary judge of the Supreme Court from the mechanism we provide for the appointment of somebody to be Chief Justice.

I have a postscript, if one likes, to these remarks. I am not as convinced, as many judges are, that they are in the best position to tender much advice on these matters. I shy away from the idea of a self-perpetuating, self-appointing or self-recommending Judiciary. The Government is the body that makes the decision-----

**Senator David Norris:** The Minister has been abandoned. There is not a single Member from the Government side in the House.

**Senator Michael McDowell:** The appointment of an ordinary member of the Supreme Court, whether it is a man or woman, is of major importance. We only have to look to America. It was not the appointment of a chief justice that caused President Trump to get into such a state of high excitement but rather the appointment of an ordinary member because he was affecting the complexion or balance within the court. This distinction between the presidencies and the ordinary membership of the various courts is of doubtful value. The amendment we have tabled seeks to look at the Court of Appeal and the Supreme Court ordinary memberships and presidencies in an equally serious light and protect the Government's rights in the process.

The Government is always free to look for advice, have advice or set up procedures to advise it on such appointments, and I have no problem with that. I object when the so-called advisory body is portrayed, as it has been by the Minister for Transport, Tourism and Sport, Deputy Ross, as a means whereby politicians would no longer have a say in making judicial appointments. That is manifestly false. It is unconstitutional and wrong. Elected politicians who are part of the Government have, as I said, the right and duty to make appointments of judges to the best of their judgment. They can take advice from other people as to the qualities of potential candidates but it is their judgment, for which they are responsible and for which the Constitution holds them accountable and gives them discretion in advising the President.

**Senator Ivana Bacik:** I welcome the Minister to the House and take his point about the senior level judicial appointments committee. He has indicated his willingness to take on board some of the points that have been raised about that matter in the context of this debate. I will briefly address the point raised by Senator McDowell and which will be dealt with by amendment No. 90, which is currently under discussion. He proposed a new subsection (8) to a new section 44, which shall require the committee to make a report to the Government, including the names of persons who have expressed an interest in appointment to judicial office, as well as the names of the persons whom the committee recommends. I still do not see why there is a difficulty with requiring the committee to provide what Senator Norris has described as a "longlist" of candidates to the Government. Following the debate, I cannot see where the problem lies in giving the Government that list of names.

Like Senator McDowell, I am against the idea of a self-appointing or self-perpetuating judicial appointments process, where judges simply appoint people in their own mould. I have already spoken of the dangers of affinity bias and so on and I will not repeat all that. I do not see where the difficulty lies in having the committee supply the longlist to the Government. In

keeping with Cabinet confidentiality, that would not be published anywhere else. It would be outrageous if it were to be published anywhere else. That is not the proposal, which is simply to make a report of those names to the Government. I will not labour the point but I still do not see where the difficulty lies in making that provision.

**Senator David Norris:** The Minister was rather disingenuous in his response to the subsection (7) element of Senator McDowell’s amendment No. 90, which indicates that the committee shall “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)”. The Minister’s response was to point to section 39(1), which states, “Subject to subsection (2), a person, including a person who is for the time being a serving judge or a relevant office holder, who wishes to be considered for appointment to judicial office shall make an application to the Commission in that behalf (specifying the judicial office concerned); that application shall be in writing or in such other format as may be specified in the selection procedure.” That does not answer Senator McDowell’s amendment. The Minister is firmly placing responsibility back on the shoulders of the applicant, whereas Senator McDowell’s amendment has a requirement to let the members of the superior courts know a vacancy is to be filled.

I imagine that the overwhelming majority of members of the superior courts would probably have a bloody good idea if there was a gap in the Judiciary. They would know this almost instinctively because there would be gossip around the robing chambers and all that kind of stuff. Is the Minister suggesting judges should be grateful for not having been actively barred from seeking appointment, or promotion as I would call it?

I am glad to see the Government side has been replenished by somebody who probably does not want to be here but there was a period of five minutes when no Government Member was present.

**Acting Chairman (Senator Diarmuid Wilson):** That does not pertain to the amendment.

**Senator David Norris:** It is relevant to what I am on the point of saying. Wait for it. I feel a quorum coming on.

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

Amendment 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.

Amendment again put:

The Committee divided: Tá, 19; Níl, 20.	
Tá	Níl
Bacik, Ivana.	Burke, Colm.
Black, Frances.	Butler, Ray.
Boyhan, Victor.	Buttimer, Jerry.
Clifford-Lee, Lorraine.	Byrne, Maria.

Craughwell, Gerard P.	Conway-Walsh, Rose.
Daly, Mark.	Conway, Martin.
Daly, Paul.	Devine, Máire.
Davitt, Aidan.	Feighan, Frank.
Gallagher, Robbie.	Gavan, Paul.
Humphreys, Kevin.	Lawlor, Anthony.
Leyden, Terry.	Lombard, Tim.
McDowell, Michael.	Mac Lochlainn, Pádraig.
Murnane O'Connor, Jennifer.	Mulherin, Michelle.
Nash, Gerald.	Noone, Catherine.
Norris, David.	O'Donnell, Kieran.
O'Donnell, Marie-Louise.	O'Mahony, John.
O'Sullivan, Ned.	O'Reilly, Joe.
Ó Céidigh, Pádraig.	Ó Donnghaile, Niall.
Wilson, Diarmuid.	Reilly, James.
	Richmond, Neale.

Tellers: Tá, Senators Michael McDowell and David Norris; Níl, Senators John O'Mahony and James Reilly.

Amendment declared lost.

**Senator Jerry Buttimer:** I welcome to the Gallery the students from Christian Brothers College, Cork. They are wonderful representatives of the school.

**Senator Terry Leyden:** There must be an election coming.

**An Cathaoirleach:** They must be reducing the voting age.

**Senator Michael McDowell:** I move amendment No. 79:

In page 26, to delete lines 12 to 16 and substitute the following:

“(a) the provisions of the Act of 1961 as amended relating to qualification for appointment as an ordinary judge of the High Court including section 45A of the Act of 1961 (as inserted by *section 33(4)*),”.

Amendment 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.

Amendment again put:

The Committee divided: Tá, 19; Níl, 21.	
Tá	Níl
Bacik, Ivana.	Burke, Colm.

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Black, Frances.	Butler, Ray.
Boyhan, Victor.	Buttimer, Jerry.
Clifford-Lee, Lorraine.	Byrne, Maria.
Craughwell, Gerard P.	Coghlan, Paul.
Daly, Mark.	Conway, Martin.
Davitt, Aidan.	Devine, Máire.
Gallagher, Robbie.	Feighan, Frank.
Humphreys, Kevin.	Gavan, Paul.
Leyden, Terry.	Lawlor, Anthony.
Marshall, Ian.	Lombard, Tim.
McDowell, Michael.	Mac Lochlainn, Pádraig.
Murnane O'Connor, Jennifer.	Mulherin, Michelle.
Nash, Gerald.	Noone, Catherine.
Norris, David.	O'Donnell, Kieran.
O'Donnell, Marie-Louise.	O'Mahony, John.
O'Sullivan, Ned.	O'Reilly, Joe.
Ó Céidigh, Pádraig.	Ó Donnghaile, Niall.
Wilson, Diarmuid.	Reilly, James.
	Richmond, Neale.
	Warfield, Fintan.

Tellers: Tá, Senators Michael McDowell and David Norris; Níl, Senators John O'Mahony and James Reilly.

Amendment declared lost.

Question put: "That section 35 stand part of the Bill."

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.

Question again put:

The Committee divided: Tá, 22; Níl, 16.	
Tá	Níl
Burke, Colm.	Bacik, Ivana.
Butler, Ray.	Boyhan, Victor.
Buttimer, Jerry.	Clifford-Lee, Lorraine.
Byrne, Maria.	Craughwell, Gerard P.
Coghlan, Paul.	Davitt, Aidan.
Conway-Walsh, Rose.	Gallagher, Robbie.
Conway, Martin.	Humphreys, Kevin.
Devine, Máire.	Leyden, Terry.
Feighan, Frank.	Marshall, Ian.

Gavan, Paul.	McDowell, Michael.
Lawlor, Anthony.	Murnane O'Connor, Jennifer.
Lombard, Tim.	Nash, Gerald.
Mac Lochlainn, Pádraig.	Norris, David.
Mulherin, Michelle.	O'Donnell, Marie-Louise.
Noone, Catherine.	O'Sullivan, Ned.
O'Donnell, Kieran.	Wilson, Diarmuid.
O'Mahony, John.	
O'Reilly, Joe.	
Ó Donnghaile, Niall.	
Reilly, James.	
Richmond, Neale.	
Warfield, Fintan.	

Tellers: Tá, Senators John O'Mahony and James Reilly; Níl, Senators Michael McDowell and David Norris.

Question declared carried.

4 o'clock

## SECTION 36

**Senator Michael McDowell:** I move amendment No. 80:

In page 26, line 27, to delete "The Commission" and substitute "Without prejudice to section 7, the Commission".

Amendment 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.

Amendment again put:

The Committee divided: Tá, 12; Níl, 21.	
Tá	Níl
Bacik, Ivana.	Burke, Colm.
Clifford-Lee, Lorraine.	Butler, Ray.
Daly, Paul.	Buttimer, Jerry.
Gallagher, Robbie.	Byrne, Maria.
Higgins, Alice-Mary.	Coghlan, Paul.
Humphreys, Kevin.	Conway-Walsh, Rose.
Marshall, Ian.	Conway, Martin.



McDowell, Michael.	Devine, Máire.
Murnane O'Connor, Jennifer.	Feighan, Frank.
Nash, Gerald.	Gavan, Paul.
Norris, David.	Lawlor, Anthony.
O'Sullivan, Ned.	Lombard, Tim.
	Mac Lochlainn, Pádraig.
	Noone, Catherine.
	O'Donnell, Kieran.
	O'Mahony, John.
	O'Reilly, Joe.
	Ó Donnghaile, Niall.
	Reilly, James.
	Richmond, Neale.
	Warfield, Fintan.

Tellers: Tá, Senators Michael McDowell and David Norris; Níl, Senators John O'Mahony and James Reilly.

Amendment declared lost.

**An Cathaoirleach:** Amendment No. 81 is in the name of Senator Ruane, but she is not present to move it.

Amendment No. 81 not moved.

**Senator Alice-Mary Higgins:** I move amendment No. 82:

In page 26, to delete line 38 and substitute the following:

“(b) is suitable on grounds of character, temperament and capacity, and”.

I wish to withdraw the amendment but reserve the right to reintroduce it on Report Stage.

Amendment, by leave, withdrawn.

**Senator Alice-Mary Higgins:** I move amendment No. 83:

In page 26, to delete line 39.

I wish to withdraw the amendment but reserve the right to reintroduce it on Report Stage.

Amendment, by leave, withdrawn.

Question proposed: “That section 36 stand part of the Bill.”

**Senator Michael McDowell:** A number of aspects are becoming clearer as the discussion goes further. Section 36 is in Part 6, Chapter 2 of the Bill.

**Senator Jerry Buttimer:** Surely the Senator is not confused.

**Senator Michael McDowell:** I just want to be clear. The confusion seems to lie entirely in

the drafting of this legislation. This section states:

(1) The Commission shall not recommend the name of a person to the Minister unless the person—

(a) has displayed—

(i) in the case of a barrister or solicitor referred to in *subsection (2)*, in his or her practice as a barrister or solicitor, as the case may be, a degree of competence and a degree of probity appropriate to and consistent with the appointment concerned, and

(ii) in the case of a legal academic, in his or her role as a legal academic and also in his or her practice as a barrister or solicitor, as the case may be, a degree of competence and a degree of probity appropriate to and consistent with the appointment concerned,

Subsection 36(1)(b) states that before a person is eligible for appointment, he or she must be “suitable on grounds of character and temperament,” and subsection 36(1)(c) states the person must be “suitable on grounds of health.” This sounds sensible until we go back to what we have just enacted in subsection 34(1), which states: “Nothing in this Chapter shall be construed as being applicable to a judicial office to which *section 44* applies.” Section 44, in its present form, applies to the President of the High Court, the Chief Justice and the President of the Court of Appeal. We are now saying the provisions of section 36, which prohibit the appointment of a person who has not shown, in his or her practice as a professional, a degree of competence and probity appropriate to and consistent with the appointment concerned or is not suitable on grounds of character and temperament or on grounds of health, do not apply to the most senior positions in the country. We are told the commission is bound to inquire about the suitability on grounds of character and temperament for any other judicial position but because of the way the Bill is drafted - section 44 has been amended by the Dáil - we are now saying the one thing the commission does not take into account in selecting a Chief Justice is suitability on the grounds of character and temperament or on the grounds of health.

**Senator David Norris:** And a degree of competence.

**Senator Michael McDowell:** Yes, and a degree of competence when the person was a barrister. These are the kinds of things the commission does not take into account when appointing a Chief Justice, President of the Court of Appeal or President of the High Court. It is very reassuring that these positions are now to be filled by people who have not been vetted on their competence, character, health, temperament or anything else. A certain officeholder - I will spare his blushes - said the Bill was a dog’s dinner as it emerged in Dáil Éireann. Surely this is the greatest dog’s dinner of all.

**Senator David Norris:** A dog would not eat it.

**Senator Michael McDowell:** When sections 34 and 36 are combined, the commission, which for most judicial appointments is supposed to look at suitability on grounds of character, temperament, competence, probity and suitability on grounds of health, is not to do this for the three most senior appointments in the land. I cannot understand how that could possibly make sense. I do not understand why we have this multiplicity of chapters and apply bits and bobs of chapters here and there. We will have the same problem at section 37(1) when we get to it. It disapplies Chapters 1 and 2 of Part 7 to the senior appointments. Curiously, if one looks at

section 37 - I know I am straying - the same problem arises. Bad drafting and bad amending have brought us the point where section 37 will have the effect that section 39 will not apply to people applying for the post of Chief Justice, President of the High Court or President of the Court of Appeal but will apply to everything else. Surely this must emphasise that the Bill is a dog's dinner. It does not make sense. We are being asked to pass things that are incoherent and which cannot be defended as a matter of common sense. We are being told by the Minister that he wants to get on with this and get through Committee Stage. How can he stand over sections 34 and 37 as they affect sections 36, 38 and 39? It is a complete shambles. It says that all of these things do not apply to the most senior positions in the land. That simply does not make sense and I would like some explanation as to how the Minister reconciles these provisions. I would like it to be taken for granted that somebody who is about to be appointed Chief Justice is suitable on grounds of character, temperament and health and that when the person was a barrister or solicitor he or she behaved with probity and competence. Maybe that is expecting too much of senior positions.

**Senator Ivana Bacik:** Senator McDowell raised an important point that relates to an issue I raised on the last occasion with the Minister concerning the way the Bill links with existing legislation. The Minister dealt with that point and I believe he took it as a point worthy of consideration that the definition of "practising barrister" in this legislation is not compatible with the definition in the Legal Services Regulation Act. There is a difficulty with a lack of joined-up thinking or consistency. It raises a lack of joined-up thinking within the provisions of the Bill because section 34(1) seems to disapply everything in the chapter to the most senior judicial appointments under section 44. Section 37 disapplies that chapter and Chapter 2 of Part 7 for the most senior positions. Therefore, it is very hard to see how the section 44 appointment procedure is to be run if none of the normal considerations, or the considerations that are normally to be applied by the commission in deciding on competence and merit and so on, are to be applicable when we come to the three most senior positions.

I am conscious that we have tabled amendments to section 38 trying to address some of the discrepancies or issues about these most senior positions. In subsection 44(9), for example, we see a provision that if the commission cannot recommend to the Minister any names of persons to fill these three most senior judicial vacancies, the Minister shall request the commission to seek expressions of interest and so on. I do not think there is any equivalent provision related to any other judicial offices. That is what we are seeking to address through amendment No. 84, which we will come to later. This seems to indicate a very different approach to the three most senior positions compared with the other judicial offices. It is hard to see why there is this very elaborate procedure set out for appointment to the other judicial offices, yet many of those provisions are disappplied to the three most senior judicial offices through subsection 34(1) and section 37. Is there an explanation for that?

On the points we have just discussed with regard to the names of those who are longlisted, can we say the commission cannot forward the names of those longlisted for the three most senior section 44 positions to the Government? I am looking at section 44 to see if I can see any indication there. Is the discussion we had only relevant to those non-section 44 positions? In other words, is the commission similarly precluded from supplying the names of those longlisted for Chief Justice, President of the Court of Appeal or President of the High Court to the Government as it is from supplying the names of those longlisted for other judicial appointment? A point of concern is that there are such different procedures and the Bill has been constructed in this way. It appears these procedures are all to be consistent around judicial appointment gener-

ally, yet through sections 34(1) and 37, section 36 in particular will not be applied to these three more senior positions nor will the other provisions be later in Part 7. Will the Minister explain why there is this different approach? Clearly it is intended to be different. What is the rationale for the different approach? Would it make more sense to apply the same criteria?

Given we are talking about section 36 specifically, it seems of particular concern that all of these considerations around competence, probity, character and temperament are currently not required by the appointments commission under section 44. It might be that I misunderstood this but I do not see where there are any similar or equivalent provisions relating to section 44 positions. Section 36 simply does not apply to those provisions.

When one looks at section 36(1)(d), there is a concern that similarly there will be no requirement for any person appointed under section 44 to give an undertaking in writing to the commission to take courses or courses of training or education as may be required. Perhaps we are saying there should not be any requirement for anybody appointed as Chief Justice, President of the Court of Appeal or President of the High Court to take any courses of training or education. That seems at odds with the purported general principle of the legislation that we would have continuing professional development for judges at all levels. I have been involved in the publication of various reports, in particular one on the legal process and victims of rape some years ago, a topical issue. In that, as in many other expert reports, there have often been recommendations for continuous judicial training and professional development for members of the Judiciary, including senior members of the Judiciary. It would seem odd if we are not going to apply section 36(1)(d) to the three most senior judicial positions.

It is clearly intended that the commission will only recommend the name of a person to the Minister where the person has given an undertaking that if appointed he or she will take courses or courses of training or education such as may be required. Can we square that with the provision in section 34(1) that states that this is simply not to be applied to a section 44 judicial office? There are probably other consequences of sections 34(1)(d) and 37. It is quite difficult to tease these out. When we look at section 36, it clearly has been disapplied and there is no equivalent provision relating to section 44 appointments. As a result, section 44 appointments are made in the absence of any indication as to specific criteria or conditions to be satisfied for those appointments.

That is a valid matter of concern which does require some discussion and explanation.

**Senator David Norris:** It seems to me it is very plain where it states, “nothing in this Chapter shall be construed as being applicable to a judicial office to which section 44 applies”. That rules out a whole series of the most senior judicial offices of the State. This is a grotesque inconsistency.

With regard to section 44, I note the Minister gives himself the power to request the commission to seek expressions of interest on the part of eligible persons. The Minister objected to an earlier amendment which did exactly the same thing. The Minister is in favour of expressions of interest in one section but against it in another. It is inconsistent.

**An Leas-Chathaoirleach:** I hate to tell the Senator but we are on section 36.

**Senator David Norris:** Are you on section 36, a Leas-Chathaoirleach? That is exactly the section I am on. What a coincidence. I am so grateful to you for pointing out this unusual conjunction of events.

**An Leas-Chathaoirleach:** I did so for fear you were straying. However, I should not doubt you.

**Senator David Norris:** Would I ever stray?

Section 44 has been brought directly, as well as quite appropriately as the two sections reflect on each other, into the discussion by Senators McDowell and Bacik. I am just following their example.

It is quite extraordinary that an appointments commission would deal with issues such as probity and all of these other matters. This, by and large, faceless commission, apart from a spattering of judges, will make decisions to say that somebody, including judges and legal academics, who occupies fairly high positions, may not have a degree of competence and a degree of probity. It is a strong thing to say about anybody that he or she does not have the degree of probity, honour and judiciousness, as well as not being suitable on grounds of character and temperament. These enormous circumstances would be actionable measures if the person found out about them.

The section states the commission will not recommend the name of a person to the Minister unless he or she has displayed all of these qualities. To me, that is a most astonishing thing. The unfortunate victims of this process will not even be informed. Not only under this legislation is the Cabinet deprived of this information, I understand the people themselves would be deprived of it. Essentially, when a barrister, solicitor or legal academic applies for one of these posts, he or she could be turned down on the grounds that he or she lacks the character, does not have sufficient probity or temperament, or is incompetent, unworthy dishonourable or his or her health is all over the place. Are the reasons for refusing to nominate somebody made known to the applicant?

**Deputy Charles Flanagan:** Applicants will be notified by the commission as to the status of their application.

**Senator David Norris:** Will they be given the reasons?

**Deputy Charles Flanagan:** They could well be.

**Senator David Norris:** That is not a satisfactory answer.

**Deputy Charles Flanagan:** Senator Norris speaks of grotesque inconsistencies. Were he to read objectively back over the record of his own contributions, even today alone, he might not be too keen to withhold the word “grotesque” when he speaks of inconsistency.

**Senator David Norris:** I will paraphrase the late great writer, James Joyce. Am I inconsistent? Very well then, I am inconsistent. I can say that as an individual Member but I do not believe one should be allowed to say that about legislation.

**Deputy Charles Flanagan:** There is no inconsistency because the Senator will be aware that the purpose of Chapter 2, to which he referred, is to address the recommendation process instituted by the commission under the Bill’s provisions. The arrangements which are proposed under section 44 aim to do exactly what Senator Norris suggested earlier, namely, deal with the exceptional cases of seniority, the three most senior judicial positions in the land, that of Chief Justice, President of the Court of Appeal and President of the High Court. What I wish to do is signify alternative arrangements for these appointments to acknowledge the seniority of the



positions and their exceptional nature. My position here, as stated time and again in the course of this debate, is to acknowledge those positions and to propose specific requirements relating to these most senior positions. As I said in response to Senator McDowell earlier, I am reflecting on issues that were raised by Senators and points that were made regarding amendments on which we recently voted but that the Seanad did not seem to regard as being of sufficient import to include in the Bill. I assure Senators that whatever precise arrangements are finally considered for the three most senior positions, we will be ensuring that all of the appropriate criteria will apply to all posts and to those senior posts in particular.

Section 44 provides for the specific arrangements for the three most senior positions. I will be reflecting on the mode of appointment, having regard to what Senators have said this afternoon and will come back to the House with a more definitive arrangement on Report Stage. It is my intention to seek to have an alternative arrangement for appointment to the three most senior positions. They will not be subject to the specifics as outlined in Chapter 2. Of course, we must accept that in filling these three most senior judicial positions, the candidates that will be considered by the Government in furtherance of the filling of vacancies for these positions will be senior members of the Judiciary in any event.

In response to Senator Bacik's point, they will be required to engage in continuous professional development. In fact, the section states that they will be directing other members of the Judiciary in that context so it would be entirely inconsistent were they to be exempt themselves. These people will, in effect, be organising the courses, directing that the course be held and mandating those in more junior positions to attend. Of course, continuous professional development will also be applicable to them. I do not have the final arrangement on the senior appointments committee but I acknowledge the important points that have been raised by Senators Bacik and McDowell in the context of earlier amendments and will consider what Senator Norris quite rightly referred to as the importance of the three exceptional positions of seniority.

**Senator David Norris:** The Minister's reflections have been so interesting and I am really distressed that there is nobody in the seats opposite. There are only three Senators in the House. Can this be possible? We must call our colleagues to boot and have a quorum.

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

**An Leas-Chathaoirleach:** I call Senator Bacik.

**Senator David Norris:** We ought to wait for the Minister.

**Senator Jerry Buttimer:** He is present.

**An Leas-Chathaoirleach:** He is present.

**Senator David Norris:** Is he?

**An Leas-Chathaoirleach:** Yes.

**Senator David Norris:** So he is.

**An Leas-Chathaoirleach:** The Senator's eyesight is suspect.

**Senator Jerry Buttimer:** May I propose that the section stand part of the Bill?

**An Leas-Chathaoirleach:** The Senator may do so if he wishes, but I have called Senator Bacik.

**Senator Ivana Bacik:** I thank the Minister for his response to the points raised by Senators Norris, McDowell and me on section 36 and its disapplication to the section 44 appointments. I also thank him for stating that he will come back on Report Stage with more definitive arrangements for those three most senior appointments. That is very welcome, as is his clarification that there will be a separate process from appointments to other judicial offices.

However, that separate process would not preclude an obligation for further training or continuing professional development. I take his point that under section 36(1)(d) to which I referred it is clear that it is the Chief Justice or the President of the relevant court who would require an appointee to undergo a course or courses of training or education. They are different in that respect to other judges because they direct that the courses be taken. However, that does not mean that they should not also have some obligation for continuing professional development.

Sections 44(10) and (11) relate directly to this point on section 36 and its disapplication to the section 44 positions. Subsections (10) and (11) refer to “eligible person” and “eligible member” qualified for appointment to the judicial office concerned, that is, one of the three top positions, by virtue of sections 5 or 45A of the Act of 1961.

Looking at those sections of the 1961 Act, I am unclear whether practising barristers, solicitors or, indeed, once this Bill is passed, if it ever is, legal academics would be eligible or whether “eligible persons” refers solely to those who already hold judicial office. Senator McDowell reminds me that a practising barrister was appointed directly as President of the High Court. I note the Minister is agreeing with me. There is currently provision for such appointment and that will not change under the provisions of the Bill. However, I am unclear how that will link with the existing provisions in the 1961 Act because section 36 refers to barristers, solicitors and legal academics but not to persons already holding judicial office who seek promotion.

Should there be an equivalent provision for serving judges who are seeking appointment at a more senior level? One might not wish to refer to such appointment as a promotion, so I will refer to it as seeking another judicial appointment. Does any provision of the Bill require certain standards or levels of competence and probity and so on for such judges or will the commission only be concerned with criteria such as those set out in section 36 when considering applications for judicial appointment by a barrister, solicitor or legal academic?

If judges who seek promotion or further appointment are not to be subject to the same sort of conditions, what are the criteria for appointment to further judicial office for judges? It is a fundamental point for the new regime which the Bill anticipates if a significant section of appointments will not be subject to the same criteria as the appointments of practising barristers, solicitors or legal academics. This is a bigger issue about section 36. It is not just about how it links to sections 34(1) and 44. More fundamentally, as it only relates to barristers, solicitors and legal academics, is there any equivalent provision in the Bill for those who are currently judges and seek appointment to further office through the commission procedure? There may be such provision which I have missed. However, if there is not, that is an anomaly or internal inconsistency within a Bill which is supposed to bring forward a more streamlined and consis-

tent set of procedures for judicial appointment.

**Deputy Charles Flanagan:** Senator Bacik and I appear to be at one on the matter of section 44 dealing with the three most senior positions. As I indicated to Senator McDowell, it is my intention to give further consideration and scrutiny to the issue and seek advice on how best we can propose a form of senior appointments committee on Report Stage. I am disappointed that Senator McDowell indicated that he would have a difficulty giving favourable consideration to any proposal we put forward in that regard, particularly given his acknowledgement in amendment No. 90 in particular of the need for an alternative arrangement to the straightforward commission practice and procedure. We will revisit the issue on Report Stage and I will be asking Senators for their support. I acknowledge the welcome that Senator Bacik has given for such a procedure and I hope that can continue.

A point was raised regarding the application of section 36 to those who may already be serving in judicial office and have applied for further assignment, perhaps to a more senior position or a superior court. I remind Senator Bacik that section 36(1) reads, “The Commission shall not recommend the name of a person to the Minister unless the person—”. Of course, if it is recommending the name of a judge, that person will have served in that capacity and will have brought to that position the type of expertise that would be regarded as necessary and appropriate. The section states that the name of a barrister or solicitor can only be sent forward if the Commission has given due and appropriate regard to the experience, competence, and suitability of that person. That will not apply in the case of a person who has already shown competence as a member of the Judiciary. This provision is separate and distinct from the appointments under section 44 and I will have a separate and distinct arrangement in respect of that for us to consider on Report Stage. I would be happy to engage with Senators prior to coming back at a later Stage.

**Senator Ivana Bacik:** If I may respond to the Minister, I hear what he is saying about section 44. We have discussed that. Leaving it aside, I have raised a more fundamental concern about section 36. It does not apply to serving judges seeking promotion. The Minister has indicated that my reading is correct and that it does not apply. It clearly only applies to barristers, solicitors or legal academics seeking appointment. That is fine but I do not see why we cannot have some equivalent criteria set out for the commission to observe when considering applications from serving judges. Indeed it is of concern that there is not something equivalent. I accept that serving judges could be dealt with in a separate provision. I listened carefully to the Minister as he said that he presumes somebody who has served as a judge will have shown competence in that office, but where in the Bill is it set out that the commission must have regard to the level of competence and probity in a person’s tenure as a judge?

On another serious issue, where in the Bill is there a requirement for serving judges to give an undertaking that they will engage in continuing professional development training or education as required? It would be an anomaly to exclude serving judges from the requirement set out in section 36(1)(d), which applies to anyone else. Any practitioner, however long-standing, and any legal academic, however senior, must give an undertaking in writing to take a course or courses of training or education. That is absolutely proper and appropriate.

I authored a report on the legal process in respect of victims of rape with two colleagues back in the late 1990s. It identified many issues in our rape and sex offence trial process which are only coming to light and being discussed now. We recommended, and others have since recommended likewise, that many of these issues should be addressed through judicial training.

If a serving judge of the District or Circuit Court is appointed as a judge of the High Court, he or she will therefore preside over rape trials as a Central Criminal Court judge. He or she may never have sat as a judge in a rape trial. One should expect that such a person would be required to undertake whatever courses of training, education, or both as might be required in respect of the conduct of such trials or, indeed, in respect of any other area of trial procedure of which he or she might not have had previous experience.

It is of concern that there is no provision to guide the commission in considering applications from serving judges that is similar or equivalent to those criteria set out in section 36 which must be satisfied in order for the commission to recommend the names of practising barristers, solicitors or legal academics for appointment. It seems to be an inconsistency and it is of concern. I acknowledge that if a person has served as a judge, one might presume he or she has the same level of competence or probity but that is not really good enough when the Bill is supposed to be setting out a whole new streamlined and consistent regime for appointments. Why should serving judges be exempt from the requirement to give an undertaking in respect of continuing professional development in particular? That is perhaps as serious, if not more serious, than the lack of any criteria to guide the commission in considering serving judges for appointment.

I do not want to go on any further. The fundamental issue I have with section 36 is that there is nothing equivalent relating to the appointment of serving judges. As I have said, I am leaving aside the point about section 44, of which the Minister has indicated he is aware and with which he will deal. This is about the appointment of persons currently serving as judges to judicial offices that are not the three topmost posts set out in section 44. It could, however, be any other judicial office in which a vacancy has arisen and which the commission is considering.

**Senator Michael McDowell:** I was called away for a meeting of the Committee of Members' Interests of Seanad Éireann and did not quite hear everything the Minister said in response to the points I raised. I believe I have gathered the drift of them from the discussion thus far. The terms of this Chapter and Part of the Bill and of Part 7 have quite clearly been seriously interfered with by the amendments made in the Dáil. The balance of them and their internal coherence has taken a bit of a battering. Of course I welcome any step to address their coherence in principle but I want to make my objection very clear. I hope that I will not have to state it at great length.

I fundamentally object to the notion that a judge who, after ten or 12 years of sitting on the High Court, considers that the Government might consider him or her for appointment as an ordinary member of the Supreme Court should such a vacancy arise, instead of doing what is working perfectly well at the moment, which is to write a letter to the Secretary General to the Government asking the Secretary General to inform the Government that he or she is available for the forthcoming nomination, would instead be told that he or she cannot do that, that is going to be illegal from now on, and that he or she has to put in an application to a commission. I object strongly to that whole idea. It is seriously damaging to the Judiciary that judges cannot just carry out their functions as normal, indicate their availability, and leave it to the Cabinet to decide which of the eligible serving judges would be the best person to put on the Supreme Court.

I again make absolutely clear my objection to the judicial appointments commission advising the Government on that issue by reference to criteria which are of little interest to the Government. For instance, the criterion that it is desirable that the Judiciary should be reflective of

society as a whole can, at best, be defended at the point of entry into the Judiciary. It cannot be the case, however, that a group of people that is not the Government starts working out who is the best person to be on the Supreme Court by reference to whether they went to a particular kind of school-----

**Senator David Norris:** Clongowes.

**Senator Michael McDowell:** Clongowes or wherever else. I will not mention any other school-----

**Senator David Norris:** The High School.

**Senator Michael McDowell:** -----because I will be accused of snobbery. Other such criteria might include the person's religion or things like that. Why are we even considering for a minute giving the appointments commission the function of trying to work out a shortlist of three people from among the Judiciary in order of preference for appointment to the Supreme Court? Why are we doing that? Who are these people that they know more about these matters than the Government? What is their qualification? At least a member of the Government has stood for constitutional office as a Deputy or a Senator, theoretically.

**Senator David Norris:** It is not just theoretically. There have been two.

**Senator Michael McDowell:** Yes. As a member of Government, he or she has undertaken a constitutional office. At least members of the Government are given by the people under the Constitution the role of deciding who they should recommend from among the Judiciary to vacancies for the position of ordinary judge of the Supreme Court. I cannot see any basis in the Constitution for saying the Government should not find out who is eligible and that the Government should be kept in the dark as to who would like to be promoted and instead is to be told only about a shortlist of three ranked in order of preference by people who are not going to make the decision. That is not advice as it currently exists. That is an attempt to force the Government to carry out the wishes of the commission, by keeping it in the dark, which the Minister says is the purpose of this Bill. In my view it is unconstitutional.

I wish to be clear that I am objecting to the idea of a senior legal appointments committee only concerning itself with three positions, namely, the presidencies of the three courts. Frankly, it is not all that important. What one needs for the President of the High Court is a person who can manage other people, and who has experience of the court. One needs someone who can manage the court system and keep it firing on all cylinders, keep the Judiciary motivated and keep them organised and serviced as best he or she can. The Government, the Attorney General and the Minister for Justice and Equality are far better positioned to make that call than a group of people who are not concerned with the day-to-day operation of the courts.

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

**Senator Michael McDowell:** The presidencies are selected out in the Minister's model, which was rejected for a special recommendatory process, but the ordinary members of the Supreme Court are just as important as, for instance, the President of the High Court. They are just as important and just as crucial to the operation of the State and the operation of the constitutional order as anybody else is. Therefore, I want it to be clearly understood that I am not being a dog in the manger about this; my objection lies in the Judiciary being asked to engage in a beauty contest before this group when there is no need for it.



Let us take for instance the Supreme Court. Has anybody ever suggested that it was filled on the basis of cronyism or that wholly unsuitable people were ever appointed to it by the Government?

**Senator David Norris:** Yes, I have.

**Senator Michael McDowell:** The Senator would. That proves my point.

**Senator David Norris:** Senator McDowell is too cruel.

**Senator Michael McDowell:** There is no problem here. I served for eight years as Attorney General and Minister for Justice, Equality and Law Reform and the people who were appointed to the Supreme Court were not appointed on the basis of cronyism or political allegiance. They were appointed on the basis of what kind of people they were, what kind of brains they had, what kind of social attitudes they had and what kind of legal philosophy they had. Those were the criteria. I do not like where we are going with this approach. The Minister has indicated that we have not voted yet on amendment No. 90, but he has indicated that he is against the principle of exempting the present Judiciary from this process. No decent reason has been put for it.

**Senator David Norris:** I thought he said he was in favour of it.

**Senator Michael McDowell:** No. He said I am too wide in my amendment No. 90 and he thinks he is going to try and get back to where he was in the Dáil before it was amended. No practical reason has been given as to why this should be done. I am against this section. It no longer makes any sense at all. It is ridiculous that we should now be putting in legislation that the three highest presidencies in the land will be filled without regard to the criteria set out in paragraphs (b) and (c) of section 36.

**An Cathaoirleach:** Is the amendment being pressed?

**Senator David Norris:** Yes.

**An Cathaoirleach:** I was following the debate on the monitor and with all respect to Senator McDowell, we seem to be wandering back to amendment No. 90 rather than the business we are on.

**Senator Ivana Bacik:** We are on section 36.

**An Cathaoirleach:** Yes, but amendment No. 90 has already been dealt with. From the tenor of what I could gauge from-----

**Senator Michael McDowell:** Section 36 is related to section 34(1).

**Senator Martin Conway:** Could we just call a vote and stop this nonsense?

**An Cathaoirleach:** It is also my prerogative to try to have reasonable debate and it is not my duty or obligation to interfere. I can direct people but it would be out of my character to force people to vote. Senator Norris wants to make a brief comment.

**Senator Martin Conway:** We have been discussing the same thing for three hours.

**Senator David Norris:** It will be quite a brief comment. These people are consultants and

this, that and the other, but we do not have any information as to their background qualifications, certainly not in any detail. I wonder what entitles them to say that somebody has not got competence, that they do not have probity, that they are unsuitable on the grounds of character and temperament or health. Are they medical practitioners? What do they know? Who are they?

**Senator Michael McDowell:** I would like to know what suitability “on grounds of health” means.

**Senator David Norris:** Someone in a wheelchair might make a very good judge.

**Senator Michael McDowell:** Yes. One could have a lifelong disability of various kinds and be a perfectly good judge. The implication is that there would have to be medical examinations in order to be appointed to the Judiciary.

**Senator David Norris:** Does Senator McDowell mean that one would have to undergo a medical test?

**Senator Michael McDowell:** Yes, or fill out a form about one’s medical background. I wonder why it is that the commission is being given this function of assessing the health of candidates. Why are we doing that? It has not been a problem in the past.

**An Cathaoirleach:** Is Senator McDowell opposing the section?

**Senator Michael McDowell:** Yes.

**An Cathaoirleach:** Does the Minister have anything further to add, or will I put the question?

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.

Question again put:

The Committee divided: Tá, 22; Níl, 12.	
Tá	Níl
Burke, Colm.	Bacik, Ivana.
Butler, Ray.	Black, Frances.
Buttimer, Jerry.	Boyhan, Victor.
Byrne, Maria.	Craughwell, Gerard P.
Coghlan, Paul.	Gallagher, Robbie.
Conway-Walsh, Rose.	Humphreys, Kevin.
Conway, Martin.	Leyden, Terry.
Devine, Máire.	McDowell, Michael.
Feighan, Frank.	Murnane O’Connor, Jennifer.
Gavan, Paul.	Nash, Gerald.

Lawlor, Anthony.	Norris, David.
Lombard, Tim.	Ó Ríordáin, Aodhán.
Mac Lochlainn, Pádraig.	
Mulherin, Michelle.	
Noone, Catherine.	
O'Donnell, Kieran.	
O'Mahony, John.	
O'Reilly, Joe.	
Ó Donnghaile, Niall.	
Reilly, James.	
Richmond, Neale.	
Warfield, Fintan.	

Tellers: Tá, Senators John O'Mahony and James Reilly; Níl, Senators Michael McDowell and David Norris.

Question declared carried.

#### SECTION 37

Question proposed: "That section 37 stand part of the Bill."

**Senator Michael McDowell:** Section 37 is the first section in Chapter 1 of Part 7 of the Bill. It states: "Nothing in this Chapter or *Chapter 2* shall be construed as being applicable to a judicial office to which *section 44* applies". As we know, section 44 applies to three offices. Those are the appointments to the positions of President of the High Court, President of the Court of Appeal and Chief Justice. The disapplication of Chapters 1 and 2 is significant. If Chapter 1 is not to apply, it means that, for instance, section 38, which in subsection (a) concerns the commission providing "information on the selection procedures and the other matters that are set out in a [public] statement", continuing in subsection (b) with "shall, as the occasion requires, invite, through means of advertisement, the making of applications by persons to be considered for selection, that is for their being selected to be the subject of a recommendation for appointment to judicial office, and" may do so in other things, does not apply if this chapter does not apply to appointments to those three positions.

Section 39, which would also be disapplied if section 37 stands, states in subsection (1): "Subject to *subsection (2)*, a person, including a person who is for the time being a serving judge .. [and] who wishes to be considered for appointment ... shall make an application to the Commission in that behalf (specifying the judicial office concerned); [and] that application shall be in writing or in such other format as may be specified in the selection procedures". If that does not apply to the Chief Justice, the President of the Court of Appeal and the President of the High Court, it seems to me that it follows that it will apply to the position of ordinary member of the Supreme Court. This section, in effect, is being disapplied to those three particular offices.

Why are the publications of selection procedures and the like disapplied to the position of the Chief Justice, the President of the Court of Appeal and the President of the High Court? There is no reason given for that. Of course, the reason is that under the original section 44, the commission was to have no function whatsoever in respect of those appointments and, therefore, it made sense to disapply all of that chapter to appointments to those offices. One

question I have been wondering about is that if it was the intention of Dáil Éireann to require all positions, including that of Chief Justice, to be the subject of applications to the judicial appointments commission, is there any indication that the Dáil has changed its mind? If we start amending the legislation now so as to undo the amendment that the Dáil made, are we going to find ourselves back in the position where this Bill goes back to the same process in Dáil Éireann only for that House to reject the Minister's formulation for the second time? We would then be left with the Bill in a very dodgy condition.

I am worried about that. I am worried about the whole idea that we should have elevated the procedure to those three presidencies to one particular channel. Even if it is remedied by the Minister so that the judicial appointments commission will have nothing to do with it in future, all other judicial offices will be subject to what is provided for here. There is no point in me repeating why I am against it. I just am against it.

I believe, by the way, that if this Bill is considered by the courts, perhaps by the Supreme Court under Article 26, or by the court system in the context of a challenge brought other than under Article 26, the Judiciary will be obliged to consider a very simple question as to whether it is appropriate for it to be looking over its shoulder at an advisory commission which can, effectively, prevent members of the Judiciary from being considered by the Cabinet because the fact that they are interested must be kept secret and the Cabinet must be kept in the dark about their interest in the position.

I believe that the Judiciary, at whatever level and by whatever means, will ultimately find that is unconstitutional. I remind the Minister that every member of the High Court can sit on the Supreme Court *ex officio*. They are deemed to be capable and suitable to discharge the function of an ordinary member of the Supreme Court. In that context, I cannot see why members of the High Court should have to apply to a group of people, who are not the Government, for a vetting process and a setting in place of preferences for first, second and third on a list when all of them are eligible, *ex officio*, to be members of the Supreme Court and to sit as a member of the Supreme Court if called upon to do so by the Chief Justice. Why are we doing all of this?

It is a long time now since we considered the views of the European Commission on interference with judicial independence. It seems like it was almost months ago since we discussed all of that territory.

**Deputy Charles Flanagan:** There was high dudgeon.

**Senator Michael McDowell:** Exactly.

**Deputy Charles Flanagan:** Senators were swinging from the rafters.

**Senator Michael McDowell:** And rightly so.

**Deputy Charles Flanagan:** And what happened?

**Senator Michael McDowell:** This Bill still offends that and I believe that the Judiciary in Ireland will find that and I believe the objections stated by the European Commission are still valid. What business is it of any group to take upon itself the function of looking at judges of the Court of Appeal, short-listing them and setting them out in order of preference for appointment to be an ordinary member of the Supreme Court? What business is it of theirs? It is the constitutional function of the Government to do this. It is not the constitutional function of

anybody else. The Government is entitled to take advice from somebody else but it cannot be corralled into a state of enforced ignorance because the Minister has conceded that the purpose of this Bill is to prevent-----

**An Cathaoirleach:** We have hit 6 p.m., the time at which this debate must adjourn.

Progress reported; Committee to sit again.

*6 o'clock*

### **Control of Economic Activity (Occupied Territories) Bill 2018: Committee Stage**

**An Cathaoirleach:** I welcome the Minister of State.

Sections 1 and 2 agreed to.

#### SECTION 3

Question proposed: "That section 3 stand part of the Bill."

**Senator Frances Black:** I welcome the Minister of State. I will try to be as brief as I can, but this is an important section and I must ensure that people understand the issue, given that there have been many questions about it.

Section 3 mirrors section 2, as our aim is to focus solely on international law. While much of the debate has covered Israel's 50-year occupation of the West Bank and relentless settlement construction and the devastating human rights consequences that have resulted, colleagues will see that this section of the Bill is drafted generally. That is vital. It means that it can only apply to occupations and breaches of international law anywhere in the world if there is evidence and legal consensus.

As the House knows, I am deeply passionate about the human rights of the Palestinian people. I remember doing charity gigs for Gaza in 2014 and being devastated by what was happening, but the same standards should apply everywhere. I could have drafted a Bill relating only to Israel and Palestine, but I agree with those who say that it should not just be about any one conflict. This is about the rule of international law, applicable anywhere, and a commitment from Ireland that, if we are sure laws are being broken and certain goods are being produced as a result of war crimes, we will not support that.

Ireland cannot, nor would we want to, adjudicate on the status of every occupation or conflict in the world. Instead, we set a neutral objective standard that relies on international law and the decisions of the international courts listed. Here we set a high bar based firmly on international law. The reason the Israel-Palestine situation is covered from the outset is the overwhelming international legal consensus that the settlements violate international law. This is the long-standing and consistent position of the Irish Government, the EU, the UN and the International Court of Justice.

I agree with colleagues across the House and would welcome further rulings by the courts in question. For example, a strong case can be made for Western Sahara. Recognising that colleagues may feel passionately about a particular occupation and believe that international courts are moving too slowly, sections 3 and 4 give us the capacity to include other territories



and move ahead of court rulings. If there is agreement between the Seanad, the Dáil and the Minister, there is a reasonable standard working on the basis of court judgments and strong consensus in the Oireachtas.

Given the confusion on this section, I wish to say clearly that we are not singling out any state. No individual state is mentioned anywhere in the Bill. Instead, we rely on the clear decisions of international courts as respected arbiters of international law.

Progress reported; Committee to sit again.

### **Visit of French Delegation**

**An Cathaoirleach:** Before I call the next speaker, Members of the House will wish to join with me in welcoming a parliamentary delegation from France, led by Député Paul Molac, president of the Ireland-France parliamentary friendship group. On my own behalf and on behalf of all colleagues in Seanad Éireann, I extend a very warm welcome to the delegates and good wishes for a successful trip to Ireland.

### **Control of Economic Activity (Occupied Territories) Bill 2018: Committee Stage (Resumed)**

#### SECTION 3

Question again proposed: “That section 3 stand part of the Bill.”

**Senator Joe O’Reilly:** I briefly join with the Cathaoirleach’s welcome for the delegation of French parliamentarians. I had the privilege and pleasure of meeting them for conversations on a number of issues. There are long ties of friendship between our two countries.

We must put a number of issues on the record before we approach the specifics of the legislation. I want no ambiguity about the position of my party and the Government on the occupied territories. We want a return to the pre-Six-Day War boundaries. We want the accelerated rate of occupation since 2017 to stop. We are not supporters in any fashion of the occupation of the territories. I feel passionately about that. We unquestionably empathise with, condemn and have no truck with the suffering of the Palestinian people.

**Senator Lynn Ruane:** On a point of order, I have to interrupt. This sounds like a Second Stage speech. I wonder whether Members could speak to the section.

**Senator Joe O’Reilly:** No, it is relevant to the section. The Chair will rule, but my understanding is that we can speak-----

**An Cathaoirleach:** Senators may speak on the section generally. I will allow the Senator to continue, but if he goes on for too long, I might consider Senator Ruane’s point.

**Senator Joe O’Reilly:** We will move on to the specifics, but what I am saying is extraordinarily relevant - if we take a position on a section, there must be a clear understanding as to why.

Besides our position on the occupied territories, we are in favour of a two-state solution. In tandem with the Minister of State, Deputy Cannon, that has been pursued vigorously by the Tánaiste and Minister for Foreign Affairs and Trade, Deputy Coveney, since he started in that Department. There is an ongoing concerted effort to achieve the two-state solution and get the peace process back on the rails.

We take issue with and are abhorred by the shooting of Palestinians in the recent strikes. We have a major problem with the litany of human rights abuses, for example, minors appearing before adult courts and being separated from parents in the middle of the night. We also oppose the skyrocketing unemployment rate, the low *per capita* income and the breakdown of infrastructure in terms of roads, water, power, etc. We are unambiguously and unequivocally against all of that and in favour of the Palestinian people. Let there be no illusions about that. We condemn Israeli expansion and we have supported a number of EU measures sanctioning Israel for the expansion of those settlements. Those have included excluding settlement groups from normal tariff rates and ensuring accurate labelling of settlement goods which could be represented as coming from Israel. Consumers can thereby make a choice for themselves, which has to be the ultimate yardstick. Members will be aware, as Senator Black never fails to acknowledge, that the Tánaiste has liaised with Senator Black throughout this process and understands the objective she is trying to achieve. It is a question of how to arrive at those objectives. Therein lies the issue.

The Government is opposing the Bill on the following technical grounds. I refer to section-----

**An Cathaoirleach:** I want to be careful. The Senator can come back during the debate on other sections or towards the end of the Bill but I do not want him to make a full Second Stage speech on section 3.

**Senator Joe O'Reilly:** Would it be in order if I went through the technical reasons?

**Senator David Norris:** No it would not. On a point of order, this is a classic filibuster.

**Senator Joe O'Reilly:** It is not.

**Senator David Norris:** I spoke in the other debate. I was accused of filibustering and I said that I was. It is a perfectly legitimate political tactic. I was lectured by the Government about filibustering. Its members claimed the high moral ground.

*(Interruptions).*

**An Cathaoirleach:** I ask Senator Norris to please resume his seat. That is not a point of order. Senator Norris is being very disobedient of the Chair. Senator O'Reilly may continue but he should contain himself to the section.

**Senator Joe O'Reilly:** It was important that I gave a context. That was a very short aside. One could have gone much more into every subsection. My comments essentially stated our philosophical position and our policy. That is an important context.

The difficulty that we have with the Bill is that-----

**Senator David Norris:** This is a general speech.

**Senator Joe O'Reilly:** No, it is on the following matters-----

**An Cathaoirleach:** I remind Senator Norris that I have ruled. Senator O'Reilly is about to finish so I will allow him to do so.

**Senator Joe O'Reilly:** The Bill requires the Government to do something which is not in its power. External trade, including the control of goods entering the EU Single Market, is an

exclusive EU competence.

**Senator David Norris:** What does this have to do with the relevant occupied territory?

**Senator Joe O'Reilly:** It is about the importation of goods.

**Senator David Norris:** No it is not. It is completely irrelevant.

**Senator Joe O'Reilly:** Deciding that is an EU competence.

**An Cathaoirleach:** Senator Norris should allow Senator O'Reilly to conclude.

**Senator Joe O'Reilly:** Goods from Israeli settlements cannot be excluded at EU level by an individual member state but only as a collective. This is the nub of the issue. Our advice from the Office of the Attorney General and general legal advice say that it would expose the State to the risk of legal action, not only by Israel but by anyone claiming to be affected by the Bill. I am sure nobody in the House would want this. It would be likely to lead to substantial and recurring damages against Ireland. It is particularly pertinent. If-----

*(Interruptions).*

**Senator Joe O'Reilly:** This is not a course that any Government would want to take. In deference to the House I will leave it at that. I will come back to that more substantially in discussions on section 6.

**Senator Neale Richmond:** At the risk of accusations I would like to briefly welcome the Minister of State to the House. As convenor of the French-Irish friendship group I would like to echo his welcome to the delegation from the French National Assembly.

I have a couple of points which are specifically relevant to section 3. I welcome Senator Black's comments when she said this was about a wider issue, and her deliberate reference to Western Sahara is of course welcome. I am concerned about other disputed regions which are quite obvious but affected by various roles within the International Criminal Court. The Bill's reference to "an international tribunal" is vague. I do not know how that could apply. Another area of concern is the will of the Minister. This could depend on the Government of the day. Does the Government breach international rulings to determine what is a conflict area?

A problem arises in subsection (2), which refers to "all territories". The easiest way to discuss this is to give a practical example. It was very obvious on the front page of *The Irish Times* yesterday. I refer to the Odessa region in Ukraine. We cannot get a combined ruling of the United Nations Security Council because of the constant fear of a Russian veto. This brings up the question of disputed territory. What is an occupied territory? While I do not want to take away from the meaning and potential benefits of this Bill, I have a concern that it is open to abuse and there is a vagueness in that subsection. I would really appreciate if the Minister of State could outline whether this is watertight enough for the Government to stand over in its interpretation of what exactly an occupied territory is. Yesterday's occupied territory might be a liberated nation. Tomorrow's liberated nation might become an occupied territory. It is something on which I would like clarity. I do not necessarily oppose or reject it but under a reading of international law it could be open to abuse by future Governments.

**Senator Niall Ó Donnghaile:** I welcome the Minister of State and our many visitors in the Public Gallery.

I wish to reaffirm and restate what Senator Black has said about the definition. This is not about singling anyone out. This is about clearly marking those breaches of international law which constitute what is contained in the Bill. It is very straightforward. I refer Members to the legal advice that Senator Black has received. It has been published and is there for all to see. It is a great shame that, to my knowledge, the Government has not published its own legal advice which prohibits it from supporting this Bill.

I also note the remarks and input from our Seanad colleague, Senator McDowell, and his advice that this is in no way a breach of international law. Most importantly, it in no way breaches domestic law. I will not prolong my own contribution but as Senator Black outlines very clearly this in no way targets individual states or entities. This is very clear. It aims to adhere and compel us to adhere to international law and stop, cease and desist the sale or purchase of goods and services from illegal settlements. These constitute war crimes under international law. By turning a blind eye or enabling the purchase of such goods and services, we are effectively continuing to enable apartheid. As I said earlier in this debate, that is a shameful position for this State. It is a shameful position for this Government. We should adhere to the legal advice that has been given to us. We should not be afraid of it, and we should not be afraid of the democratic will and mandate expressed by this House.

**Senator Ned O'Sullivan:** I do not want to make a Second Stage speech, but this is my first speech on this issue since I became Fianna Fáil spokesman on foreign affairs so I ask the Cathaoirleach for a small bit of leeway. It is important for my party that we outline exactly what our position on this is. I welcome the Bill and I commend Senator Black and her colleagues for introducing it. Fianna Fáil has decided to support the Bill on Second Stage and Committee Stage. I am supporting the section. My party has a long-held interest in the Middle East peace process. It was a Fianna Fáil-led Government which made Ireland the first EU member state to propose the two-state solution.

In supporting the Bill and the section, we are very conscious of the wrongs that have been committed by both sides. It is certainly not our intention to alienate Israel or its allies. We fully support Israel's right to self-determination and self-defence. We further believe, and I wish to state on record, that there is an onus on the Palestinian Authority to act responsibly in its interactions with Israel and to do all it can to prevent attacks on the Israeli people. Notwithstanding that, we are deeply frustrated by the lack of progress towards a two-state solution. We believe that the continued expansion of illegal settlements on Palestinian land and the deteriorating humanitarian situation in Gaza and the West Bank cannot be allowed to continue. In 1980 Brian Lenihan Snr said unequivocally that the Palestinian people had the right to self-determination and an independent state in Palestine. That remains the key policy of my party to this day, but we also respect the state of Israel and its undisputed right to self-determination and self-defence. Attacks on Israel and incitement to violent action are unacceptable to us. However, we cannot support the continuous building by Israelis on Palestinian land which has proved to be totally disastrous for the peace process.

Since I took on this brief and this motion was flagged, I have been inundated with messages of support for the Palestinian position. I welcome and respect all of these communications, but I have heard almost nothing in support of Israel. It is my opinion that it has a serious public relations problem in that regard. As we know, there are two sides to every story and while I hold this brief, I intend to look at both sides and try to make a fair assessment of the situation. In this country there is a pro-Palestinian consensus, of which I am not a part. I am not one to blame the state of Israel for everything. It is worth recalling that the people of Israel, the Jewish

nation, have undergone suppression and abuse and endured behaviour by others that no other nation in the history of the world-----

**Senator David Norris:** Not unlike what happened to the Palestinians.

**Senator Ned O’Sullivan:** Even our long history of imperial repression by the British pales into insignificance when compared to the Holocaust and the travails of the Jewish people for centuries. It is not too much to hope the Israeli people will, at this late stage, be allowed to have a home in peace and security. I am calling on both sides to the conflict to take the pursuit of the two-state solution more seriously. They claim to believe in the two-state theory, but we do not see any sign of that in practice on either side.

**Senator Michael McDowell:** I wish to speak briefly to the section. I agree with Senator Black’s analysis of it. The definition of “occupied territory” is not related to one particular corner of this planet and is of general application. It is perfectly legitimate for the State to uphold international law by rendering the importation of goods and the supply of services from an unlawfully occupied territory to be a criminal offence, especially when the occupation amounts to a war crime. It is the case that under various international conventions, it is a war crime to move one’s population into territory which is not one’s own with a view to permanent settlement.

**Senator David Norris:** I listened in horror to the debate between Senator Black and former Deputy Shatter, an old school pal of mine and a chum, but his language was appalling and grotesquely intemperate. He talked about the Bill and the debate on it as being full of hatred, rage and racism, which is absolute rubbish.

I now move to the matter in hand. I presume it has already been rehearsed that various legal authorities have attested to the appropriateness of the Bill, including Mr. Michael Lynn, Professor James Crawford and our own Senator McDowell who is a former Minister for Justice and Equality and Attorney General. It has been added to by a renowned authority, Professor Takis Tridimas. I will put all of that to one side, but what I cannot put to one side is the evidence from Israel and, in particular, within the Jewish Israeli community. I have in my hand a letter from ambassador Ilan Baruch who says that, in his view, the legislation will help to “enhance differentiation between the State of Israel and the occupied Palestinian territories” where illegal settlements are benefiting from economic relations maintained with Irish and other EU firms. He goes on to say his petition comes with a sense of urgency as further evictions and the demolition of Palestinian residential and commercial buildings in east Jerusalem are taking place. Palestinians are being evicted from their homes in the neighbourhood of Silwan, while settlers are moving in. At the same time, the Israeli Government authorised the construction of 800 new housing units for Israelis in occupied east Jerusalem. With that in mind, he believes the Control of Economic Activity (Occupied Territories) Bill 2018 can play a pivotal role in upholding international law and the implementation of UN Security Council Resolution 2334. He also says it will contribute to the creation of the necessary conditions on the ground for a just and lasting peaceful resolution of the Israeli Palestinian conflict.

I have strongly supported the state of Israel for many years. I could paper my library walls with the names of trees planted in my name by the people of Israel because of the work I had done for them. However, I reserve the right to strongly criticise them when they act in gross violation of human rights. I say to the Minister of State and through him the Minister that in a former Government Ruairí Quinn was given advice by the then Attorney General, Mr. Peter Sutherland, that a proposed action was against EU law, but he defied that advice. He had the



courage to defy it. I call on the Government to defy the same defective advice being given by the Attorney General.

**Senator Terry Leyden:** I welcome the Minister of State. As Senator Ned O’Sullivan said, Fianna Fáil is supporting the Bill. I welcome Deputy Niall Collins, our party spokesperson in the Dáil, who has been very supportive of the legislation. In July the Fianna Fáil Parliamentary Party made a decision to support the Bill on the basis of the ongoing oppression of the Palestinian people on the West Bank and in Gaza. I also welcome the ambassador from Palestine and commend the lobbyists and activists in this country who are working on behalf of the Palestinian people.

Ireland has a long and honourable tradition of providing support for Palestine. I am very proud of the fact that Brian Lenihan Snr was one of the first politicians in the European Union to recognise the right to self-determination of the Palestinian people and their right to live in harmony with Israel. He argued in favour of the two-state solution, the only solution that will work in the region. The actions of the President of the United States, particularly in moving the US embassy from Tel Aviv to Jerusalem, are most divisive and unhelpful.

In 2003 I was involved in setting up in the Oireachtas the Friends of Palestine group which drew support from the largest number of Oireachtas Members ever. The chairman was the current President of Ireland, Michael D. Higgins, who played a pivotal role in the area of foreign affairs during his time in the Oireachtas. I welcome the Bill which was brought forward by Senator Black and her colleagues. It is very important, not least because it serves to highlight the situation in Israel and gives the House an opportunity to remind itself again of the oppression of the Palestinian people.

On the section, we are talking about occupied territories, specifically occupied Palestine. We could talk about Crimea and other parts of the world that are also occupied, but I am interested in this particular region. I led a delegation from the Dáil and the Seanad to the occupied territories. We saw for ourselves the occupation of Palestinian lands and the building of a wall 30 feet high, fences and so on. The beautiful city of Bethlehem is surrounded by a massive wall. The people there are crying out for justice.

I am delighted the Seanad was retained by the Irish people because it is a forum where we can speak out on behalf of people who are persecuted in the region. I led a delegation to the region and I was appalled to see the occupied areas and settlements, all built to a certain design. The buildings were white with a red roof and there were swimming pools where water is scarce. The sewerage system pours the sewage on to Palestinian farms. I was absolutely appalled by the way the Palestinians were treated. That is why we must take a stand. I would like to see the other 26 countries of the European Union taking a stand on this, along with the UK. A delegation from France is visiting the Oireachtas and human rights are very important in that country. Speaking of friends of Palestine, there was no greater friend to the region than former Senator Michael Langan from Kilkenny, who was the leading spokesperson on the matter in this House and was recognised by the Palestinian people for it.

The Bill is not unconstitutional or against the law so the Attorney General should review it because it does not specifically mention the occupied areas of Palestine. It is a general Bill relating to areas that are occupied throughout the world. I recommend to those in the House who have not yet travelled to Palestine or Israel to go there. I was wearing a Palestine-Ireland badge on my lapel on my visit and I was stopped at the airport. I was almost refused admission

to Israel because I had this badge. When I was asked where I got the badge, I said I got it from the Palestinian people, whom I support.

We will support the Bill and I know the sponsor, Senator Black, is anxious to get it through. I will not make any further contribution, other than to say that we categorically support the Bill, which will pass Committee Stage in this House tonight.

**Senator Gerard P. Craughwell:** I congratulate Senator Black and her colleagues on bringing forward this Bill. As has been pointed out, it is not about two countries but rather an illegally occupied area. I do not necessarily condemn everything done by Israel as it is entitled to protect itself. It has rockets coming over the border from Hamas but the response is sometimes above and beyond anything that would be expected. For all intents and purposes, Israel has destroyed Gaza.

The bottom line is that Israel is in an area where it should not be and products from any economic activity generated from that area should not be purchased by people in the European Union. Senator Black's Bill would not send shockwaves through the Israeli Government or its people but it might provide a lead for the rest of the European Union to follow. It is only through action like this that one can get some sort of reaction from a state that has lost the run of itself. We are talking about the breaching of international law. I support Senator Black on this. While I do not intend to speak to the Bill again, I support it in its entirety.

**Senator Alice-Mary Higgins:** I will address some of the concerns raised by Senator Richmond. The definition of "international tribunal" is that used under the Fourth Geneva Convention. I know there was concern as to what the definition might be. We are very safe in that all this language is taken from the Fourth Geneva Convention and its precedent.

Section 3(1)(d) relates to the capacity of the Minister. It is interesting that the Senator mentioned Ukraine as there is a precedent involving the European Union, including Ireland, taking quite serious actions - far beyond the scope of this Bill - in respect of Crimea. Section 4 sets out lengthy regulations relating to how the capacity in section 3(1)(d) would be determined. There is no danger of ministerial abuse as the Minister would have to go through both Houses of the Oireachtas to get their approval. It certainly would not be a matter of a Minister having sole discretion. However, I imagine that if further safeguards are to be sought, this could be considered on Report Stage with amendments to section 4. What is being sought is appropriate scope and leadership for the Government, and the section exists to allow both the Government and the Houses of the Oireachtas to respond in cases such as those outlined by the Senator.

The Bill is well thought through and we will have the opportunity to consider European Union and trade law later. The preponderance of eminent Irish and international legal opinion is very clear that this is within European law. We are talking about global experts who have not only been cited by our Supreme Court but the International Court of Justice. This is not solely about one area or even the concerns people may have around illegal occupation in Palestine. This is about international law in the widest sense. For example, West Papua may well have a case taken to the International Court of Justice in future. It is being spoken about. This is more about Ireland's commitment to international law, as well as any perspective we may have on a conflict. It is something we have always tried to stand up for. It is important to keep that wider perspective.

**Senator Aodhán Ó Ríordáin:** The Labour Party supports this Bill, as it did on the previous

Stage. I congratulate Senator Black and the Civil Engagement group on bringing forward this legislation. Whenever we speak in this Chamber of the rise of right-wing rhetoric and populism across the world, countries such as America, the UK, Hungary, Poland and Italy are mentioned but nobody ever mentions Israel. Remarkably, from a pretty low base it has managed in the past number of years to make things even worse.

The Jewish people - a proud people wherever they have been - have always been viewed as the enemy within. They have a proud community where I live and there is a Jewish cemetery around the corner from me. They are a proud people viewed as the enemy within, a reviled people, and yet that is exactly what Israel is doing to the Palestinian people. It views them as the enemy within. That is why we support the Bill and why we will continue to support the Palestinian people. It is why we will continue to join others to ensure that Israel is eventually treated as South Africa was in the past. It is only with collective international action that Israel will change its attitude and practices with its outright disgraceful treatment of international law.

Question put:

The Committee divided: Tá, 29; Níl, 14.	
Tá	Níl
Ardagh, Catherine.	Burke, Colm.
Bacik, Ivana.	Butler, Ray.
Black, Frances.	Buttimer, Jerry.
Boyhan, Victor.	Byrne, Maria.
Clifford-Lee, Lorraine.	Feighan, Frank.
Conway-Walsh, Rose.	Lawlor, Anthony.
Craughwell, Gerard P.	Lombard, Tim.
Daly, Mark.	Mulherin, Michelle.
Davitt, Aidan.	Noone, Catherine.
Devine, Máire.	O'Donnell, Kieran.
Dolan, John.	O'Mahony, John.
Gallagher, Robbie.	O'Reilly, Joe.
Gavan, Paul.	Reilly, James.
Higgins, Alice-Mary.	Richmond, Neale.
Humphreys, Kevin.	
Kelleher, Colette.	
Leyden, Terry.	
Mac Lochlainn, Pádraig.	
McDowell, Michael.	
Murnane O'Connor, Jennifer.	
Nash, Gerald.	
Norris, David.	
O'Donnell, Marie-Louise.	
O'Sullivan, Grace.	
O'Sullivan, Ned.	
Ó Donnghaile, Niall.	

Ó Ríordáin, Aodhán.	
Ruane, Lynn.	
Warfield, Fintan.	

Tellers: Tá, Senators Frances Black and Alice-Mary Higgins; Níl, Senators John O'Mahony and Joe O'Reilly.

Question declared carried.

Sections 4 and 5 agreed to.

#### SECTION 6

Question proposed: "That section 6 stand part of the Bill."

**An Leas-Chathaoirleach:** Is Senator O'Reilly indicating on section 6?

**Senator Joe O'Reilly:** Yes. I ask the Leas-Chathaoirleach to take Senator Richmond first.

**An Leas-Chathaoirleach:** I call Senator Richmond.

**Senator Neale Richmond:** I hoped to speak to section 4 but the Leas-Chathaoirleach did not notice me indicating.

**Senator David Norris:** The Senator did not indicate.

**Senator Neale Richmond:** I did indicate. I ask the Senator not to interrupt me. I thank Senator Higgins for clarifying certain regulatory matters. I had concerns regarding how those regulations would interact with EU regulations.

On section 6, dealing with the importation of settlement goods, will the Minister of State clarify how a conviction for an offence under subsection (1) may be appealed? If a person is found guilty by an Irish court of an offence under the Bill, may that person appeal that conviction to the European Court of Justice or elsewhere? What are the limitations in that regard?

**Senator Joe O'Reilly:** It is important to note that Ireland is part of and supports EU actions in disputes around the world, such as those in Crimea and Palestine. Also of importance is that, contrary to the point made by Senator Norris, there is an onus on the Government to accept the legal advice of the Attorney General and his office and it generally does so. I will await the summing-up speeches to address my other points. It is the view of the Attorney General and the legal advice to Government that----

**An Leas-Chathaoirleach:** The Senator should speak to the section.

**Senator David Norris:** He is not speaking to the section.

**Senator Joe O'Reilly:** The legal advice to the Government is that the Bill would leave the State liable to legal action.

Question put and agreed to.

Sections 7 and 8 agreed to.

#### SECTION 9

28 November 2018

Question proposed: "That section 9 stand part of the Bill."

**Senator Neale Richmond:** For the information of the Leas-Chathaoirleach, I wish to contribute on section 11(a) when it is reached. Section 9(1) refers to territorial waters. Will the Minister of State, in summing up, differentiate between inland and offshore waters? How are disputed claims over those waters arbitrated under international law?

**An Leas-Chathaoirleach:** I remind Senators that there will be no summing up. We are on Committee Stage. The Minister of State will have an opportunity to sum up on Fifth Stage.

Question put and agreed to.

Section 10 agreed to.

## SECTION 11

Question proposed: "That section 11 stand part of the Bill."

**Senator Michelle Mulherin:** When the Bill was before the Seanad, the debate ended prematurely and I did not have the opportunity to speak. I wish to speak against the Bill. This is pertinent to section 11. The Minister for Foreign Affairs and Trade, Deputy Coveney, addressed the House on the Bill and I support the position he expressed. He is genuine in his ambition to contribute to peace in the Middle East.

*(Interruptions).*

**Senator Michelle Mulherin:** I ask Senators to show respect to the speaker. I do not agree with the Bill. It is not lawful. International-----

*(Interruptions).*

**An Leas-Chathaoirleach:** Section 11 deals with defences against charges under the Bill.

**Senator Michelle Mulherin:** Yes. I am addressing lawfulness.

*(Interruptions).*

**Senator Michelle Mulherin:** It is up to the Leas-Chathaoirleach. I did not have the opportunity to speak on the Bill.

**An Leas-Chathaoirleach:** I am very sorry that the Senator did not have such opportunity. I was probably not in the Chair at that time. There is nothing I can do about it. I ask her to be as succinct as possible.

**Senator Michelle Mulherin:** I will try. The Bill is not lawful. International trade is an exclusive competence of the European Union. Ultimately, although it may be well intentioned, the Bill is futile. Further, the Minister described how the passing of the Bill would hinder his work for peace. He stated that Irish action of this nature would isolate and marginalise Ireland's voice and influence on the question of Palestine at EU level, which is the level at which we can do the most good for Palestinians. We ought to listen to him. He has a broad view and meets and listens to all parties. The human suffering and misery which is evident in the settlements must not be condoned, but the Bill will not help the situation.

The history of Israel and the Jewish and Arab peoples is very complex. Each side believes



their views and actions are fully morally justified. They are completely different cultures and hold differing views on how the current situation was brought about. We should guard against imposing our solutions as though we know best. We must listen carefully to both sides and hold them to account for the part they are playing in ensuring this conflict goes on and on. We must facilitate a conversation towards peace that will be meaningful for both. Peace and the means to find a way to co-exist can only be found-----

7 o'clock

**An Leas-Chathaoirleach:** The Senator should speak to the section.

**Senator Michelle Mulherin:** -----through the actions of Arabs and Jews, not outsiders. As outsiders, the facilitation of that conversation should be our focus. Have we not learned from what happened in the North of our country? The Bill could negatively impact on the channels of communication and trust between the Minister, the Government and Israel.

A number of people today might feel better if this Bill is passed but the conflict is bigger than settlements. This Bill is just skirting around core obstacles that need to be faced internationally. Let us not throw oil on the fire of conflict in the Middle East here today.

**An Leas-Chathaoirleach:** That was a Second Stage speech but I thank the Senator.

**Senator Alice-Mary Higgins:** I take issue with the point on unlawfulness. We have been very clear. There are differing legal opinions. We have not seen the legal opinion of the Attorney General but Mr. Michael Lynn, Professor James Crawford-----

**An Leas-Chathaoirleach:** Defences against charges-----

**Senator Alice-Mary Higgins:** It is important to state this Bill is very careful in law. As others have indicated, we are open to Report Stage amendments to take even further cognisance of EU court rulings in respect of the laws in this area. The opinion we have had from Professor Takis Tridimas is the one given to the International Court of Justice. We are internationalists and our peace-building role gives us responsibility to uphold international law.

**Senator Neale Richmond:** I will speak very briefly on this section. I apologise for the slip-up earlier. My point, rather than a question, relates to section 11(b) and the definition of a settler within an occupied territory. I have a concern about this. As suggested by others, amendments might be forthcoming on this on Report Stage. Within the Bill, there is an element of vagueness. One could draw the occupied territory on a map but the definition of a settler is another matter. This is where the legislation moves away from the specific region of Israel and Palestine.

The point has been very well made by the Bill's proponents and others that the provision is not specific to the region. I respect and fully appreciate that. Again, I make the comparison with Crimea and Odessa and the ongoing situation involving Ukraine and Russia. It is a matter of how one defines a settler when some would deny persons going into the region are settlers. They may comprise an invading force. Others might be in denial of their existence. This requires the Bill to provide more depth regarding the concept of a settler. One must ask whether it is a good or service that is produced by a settler. With modern technology in mind, one must ask whether the settler is producing the service remotely or within the territory in itself. The legislation could be tightened up on the next Stage. I might come back with amendments in due course.

**Senator Marie-Louise O'Donnell:** I wish to point out to my colleague, Senator Mulherin, that I am not an outsider when it comes to human rights. I did not come in here to be an outsider regarding human rights; I came in here to be a speaker for human rights.

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

**Senator Marie-Louise O'Donnell:** The Senator should never stand up and accuse me of being an outsider. That is not what I am. This House is a legislative House and a House of human rights so the Senator should never speak like that about her fellow Senators again.

Question put and declared carried.

TITLE

Question put: "That the Title be the Title to the Bill."

The Committee divided: Tá, 30; Níl, 13.	
Tá	Níl
Ardagh, Catherine.	Burke, Colm.
Bacik, Ivana.	Butler, Ray.
Black, Frances.	Buttimer, Jerry.
Boyhan, Victor.	Byrne, Maria.
Clifford-Lee, Lorraine.	Feighan, Frank.
Conway-Walsh, Rose.	Lawlor, Anthony.
Craughwell, Gerard P.	Lombard, Tim.
Daly, Mark.	Mulherin, Michelle.
Daly, Paul.	Noone, Catherine.
Davitt, Aidan.	O'Donnell, Kieran.
Devine, Máire.	O'Mahony, John.
Dolan, John.	O'Reilly, Joe.
Gallagher, Robbie.	Richmond, Neale.
Gavan, Paul.	
Higgins, Alice-Mary.	
Humphreys, Kevin.	
Kelleher, Colette.	
Leyden, Terry.	
Mac Lochlainn, Pádraig.	
McDowell, Michael.	
Murnane O'Connor, Jennifer.	
Nash, Gerald.	
Norris, David.	
O'Donnell, Marie-Louise.	
O'Sullivan, Grace.	
O'Sullivan, Ned.	
Ó Donnghaile, Niall.	
Ó Ríordáin, Aodhán.	

Ruane, Lynn.	
Warfield, Fintan.	

Tellers: Tá, Senators Frances Black and Alice-Mary Higgins; Níl, Senators John O'Mahony and Joe O'Reilly.

Question declared carried.

Bill reported without amendment.

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

**Senator Frances Black:** Next Tuesday.

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

**Senator Terry Leyden:** Why not take it now?

**An Leas-Chathaoirleach:** Because it has not been ordered by the House. The Senator should be respectful. He has been a Senator for a long time and should know better. Is the proposal that Report Stage be taken next Tuesday agreed to? Agreed.

**Senator Terry Leyden:** The House could have ordered that it be taken now.

Report Stage ordered for Tuesday, 4 December 2018.

**An Leas-Chathaoirleach:** When is it proposed to sit again?

**Senator Jerry Buttimer:** Maidin amárach ar 10.30.

The Seanad adjourned at 7.20 p.m. until 10.30 a.m. on Thursday, 29 November 2018.