



DÍOSPÓIREACHTAÍ PARLAIMINTE  
PARLIAMENTARY DEBATES

**SEANAD ÉIREANN**

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

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## SEANAD ÉIREANN

*Dé Céadaoin, 12 Nollaig 2018*

*Wednesday, 12 December 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 provide an update on the provision of health care services for patients with Ehlers-Danlos syndrome.

The matter raised by the Senator is suitable for discussion and will be taken now.

### **Commencement Matters**

#### **Rare Diseases**

**Senator Maria Byrne:** I welcome the Minister of State. Ehlers-Danlos syndrome is a disease that would not be very widely known, yet about 500 people in Ireland suffer from it. It is a soft tissue disease where patients suffer a lot of pain and where their joints might be rubbing off each other. Many children have been diagnosed with this disease. I spoke to the chairperson of the representative group in Ireland. I arranged a meeting between the Minister for Health and some people with this disease during a visit to Limerick earlier this year. I know the Minister took a note and was very aware of the different issues. I know he has had a meeting with the HSE with regard to it but there are a number of issues relating to the disease.

A main one is that there is no doctor in the country who can diagnose the disease fully or sign off on it in terms of the cross-border directive. If the patient has to have an MRI, it must be an upright MRI but there is no upright MRI scanner in Ireland. Patients must go to Belfast or London. The scan costs about €2,000 and is not covered under anything in the current system

so people must pay for it privately if they want to have the operation, which many of them must have. I know a young girl who had the operation in Barcelona earlier in the year and has had to go back twice since. The family fundraised for this operation because the girl was in such pain. She was 14 years of age. There are many more cases like that.

While it is recognised, there is nobody available to sign off on cases and there is no specified neurologist. Many children with the condition are on a waiting list of about two and a half years to see the neurologist at Our Lady's Children's Hospital, Crumlin. There are many issues and there is a considerable amount of pain, not just the pain the child or adult with the condition goes through but the pain their families go through. I know of a few adults with the condition. I know one family where the mother and her son have the condition. Patients and their families experience a considerable amount of pain and cost. I would like an update regarding what is happening with the HSE and what it will do for the people with this condition.

**Minister of State at the Department of Health (Deputy Jim Daly):** I am grateful to the Senator for allowing me the opportunity to speak about this important matter. Ehlers-Danlos syndrome is classified as a rare disease, which is defined in the EU as a disease or disorder affecting fewer than five in 10,000 of the European population. Although each disease is individually rare, there are a great many conditions and diseases. Collectively, rare diseases contribute to a number of important population health outcomes in terms of their mortality, morbidity and disability. I will take this opportunity to summarise policy development in the area of rare diseases.

Ireland published a national plan for rare diseases in July 2014. On foot of the plan, the HSE established both a rare disease office and a national clinical programme for rare diseases. In 2017 the Department published a progress report and update on all 48 recommendations contained in the national plan representing a detailed status update of the implementation of the national plan.

It is important to note that this syndrome is not one condition but a group of connective tissue disorders that can be inherited and can vary both in how they affect the body and in their genetic causes. They are generally characterised by joint hypermobility, skin hyperextensibility and tissue fragility. The condition has a relatively high prevalence of one in 5,000 of the population.

Once diagnosed, joint hypermobility syndrome can be treated with a mixture of exercise and physiotherapy. An exercise programme to improve fitness and muscle strength may also be effective at reducing pain. Hypermobility of the joints is the most common form of Ehlers-Danlos syndrome and requires management by physiotherapy and primary care but does not usually need specialist input. However, the nature of joint hypermobility syndrome also means that patients are at increased risk of injuries, such as dislocations and soft tissue injuries. Managing joint hypermobility may, therefore, involve treating short-term injuries as they arise while following a long-term treatment plan to manage daily symptoms.

The more severe forms of Ehlers-Danlos syndrome require specialist treatment, often by multiple specialists working as part of a multidisciplinary team but usually under the lead care of the specialist for the most severely affected part of the body. These specialists can include geneticists, rheumatologists, cardiologists, neurologists and surgeons. Where surgery is required, it is provided for in the context of surgical and orthopaedic services for patients with Ehlers-Danlos syndrome. These most severe cases of Ehlers-Danlos syndrome are rare and are

usually managed by specialists at Our Lady's Children's Hospital, Crumlin.

I am advised by the HSE that the total number of patients with severe Ehlers-Danlos syndrome is in the order of 20 to 40 patients nationally. The paediatric consultant rheumatologists in Ireland based at Our Lady's Children's Hospital, Crumlin have specialist training in the management of all types of rheumatic and musculoskeletal disorders and have access to other relevant consultant specialists needed for the care of those with Ehlers-Danlos syndrome. Patients and their families trying to find information on what supports, treatments and services are available can contact the rare diseases office in the HSE.

Regarding recent developments, I am very glad to inform the House that the national clinical programme for rheumatology recently launched its model of care for rheumatology in Ireland. The aim of this model is to ensure that the rheumatology patient is seen, assessed and treated by the right person in the right place as soon as possible. Based on this model of care, the national clinical programme for rheumatology, NCPR, plans to develop disease-specific pathways for all rheumatological disease groups, which will incorporate patients with Ehlers-Danlos syndrome, in the context of how these patients often present with joint hypermobility. The next steps, following publication, are for the HSE, as part of its service planning and prioritisation processes, to provide a national rheumatology service which delivers evidence-based care in an efficient, cost-effective manner and is readily accessible to all patients with rheumatic and musculoskeletal disorders.

**Senator Maria Byrne:** I thank the Minister of State. I am disappointed, not with the Minister of State but with the response. First, there is a two and a half year long waiting list for these children and the adults involved. This is not addressed in the response from the HSE. Second, they need an upright MRI scan to be recognised. As I said, it is reckoned there are approximately 500 people in Ireland, between adults and children, with different levels of severity of the condition. As stated in the response, these people are treated collectively by different consultants but there is no one who deals specifically with Ehlers-Danlos syndrome. As a result, there is no one qualified to sign off on permission for people to be covered under the cross-border directive. These people must go abroad for the operation because there is no one in Ireland qualified to perform it. This is not covered in the response either. These are two crucial issues. What happens a lot of the time is that when the children go into hospital, and many of them have gone into the local hospitals, the neurologist or whoever else is not trained to deal with the severity of the pain of these children. The pain they go through is sometimes quite excruciating.

We need someone who knows something about this. I know it is a rare disease but we must deal with it because the numbers with the disease are growing. Perhaps a neurologist who is sent on a course could deal with it specifically and with the people affected. It is terrible to think that people have to go abroad for their treatment and that there is no one here to sign off on this treatment.

**Deputy Jim Daly:** I thank the Senator again. I appreciate her frustration in not getting the answers she was looking for. I suppose what she is looking for more than answers is a more comprehensive set of solutions. I will undertake to go back to the HSE, raise the Senator's concern about the upright MRI scan and check whether there are any proposals in this regard or whether it is on the agenda to purchase the equipment. I will also query with the HSE specialist training for Ehlers-Danlos syndrome, particularly to see whether the HSE has a plan to have someone upskilled in treatment of the condition in order that we can accurately diagnose and

treat it here as opposed to sending people abroad. I will ask the HSE to revert directly to the Senator with its responses to these queries.

**Senator Maria Byrne:** That is great. I thank the Minister of State.

### **Messages from Dáil**

**An Leas-Chathaoirleach:** Dáil Éireann passed the Finance (African Development (Bank and Fund) and Miscellaneous Provisions) Bill 2018, changed from the African Development (Bank and Fund) Bill 2018, on 11 December 2018, to which the agreement of Seanad Éireann is desired. Dáil Éireann passed the Irish Film Board (Amendment) Bill 2018 on 11 December 2018, to which the agreement of Seanad Éireann is desired.

*Sitting suspended at 10.45 a.m. and resumed at 11.30 a.m.*

### **Order of Business**

**Senator Jerry Buttimer:** The Order of Business is No. 1, motion re the arrangements for the sitting of the House on Thursday, 13 December and Tuesday, 18 December, to be taken without debate at the conclusion of the Order of Business; No. 2, motion of referral of Fifth Programme of Law Reform to the Joint Committee on Justice and Equality, to be taken without debate at the conclusion of No. 1; No. 3, Central Bank (National Claims Information Database) Bill 2018 - Second Stage, to be taken at 12.45 p.m. and adjourned not later than 2.15 p.m., with the contributions of group spokespersons not to exceed eight minutes each and those of all other Senators not to exceed five minutes each; No. 4, Employment (Miscellaneous Provisions) Bill 2017 – Report and Final Stages, to be taken at 2.15 p.m.; No. 5, Social Welfare, Pensions and Civil Registration Bill 2018 – Committee Stage, to be taken at the conclusion of No. 4 and adjourned not later than 5 p.m., if not previously concluded; No. 6, Private Members' business, Children's Digital Protection Bill 2018 - Second Stage, to be taken at 5 p.m., with the time allocated for the debate not to exceed two hours; and No. 7, Judicial Appointments Commission Bill 2017 - Committee Stage (resumed), to be taken at 7 p.m. and adjourned not later than 9 p.m., if not previously concluded.

**Senator Gerry Horkan:** I thank the Leader for outlining the Order of Business. I note his optimism that No. 7 might conclude before 9 p.m.

**Senator Jerry Buttimer:** I hope my optimism is shared.

**Senator Gerry Horkan:** I am always optimistic, although sometimes my optimism is misplaced.

We could not have a conversation today without discussing Brexit. The position seems to have gone from bad to worse again. Prime Minister Theresa May now faces a motion of no confidence and will not come to Dublin today after all. I see no benefit, from the perspective of people in the United Kingdom, Ireland or the European Union, in the Prime Minister being

replaced by someone else at this stage. I wish her well in her battle and hope she wins it. If she does, under Tory Party rules, the matter will put to bed for at least a year. Mrs. May has a difficult task. We all need some certainty into the future and I hope she defeats the motion.

I was at two events during the week attended by the former British Prime Minister, John Major. Mr. Major spoke in Longford on Monday at an event marking 25 years of the Downing Street Declaration. That is something on which the House may wish to reflect. We marked 20 years of the Good Friday Agreement, and it was important that we did so, but the work Albert Reynolds and John Major did in 1993 to secure the Downing Street Declaration was also important and we should remember it. I also attended an event organised by the Institute of International and European Affairs at which John Major stated the UK should revoke Article 50, stop the clock, return to the start and examine what should and must be done. I echo those sentiments as, I expect, others may do in their contributions.

The Minister for Transport, Tourism and Sport, Deputy Ross, has engaged in another kite-flying exercise, this time regarding penalty points. He has decided not to go through the transport committee and to ignore pre-legislative scrutiny by making an announcement to distract people from the fact that he is not doing anything else in his Department.

**Senator Kevin Humphreys:** Stepside Garda station is reopening.

**Senator Gerry Horkan:** It is not open yet and it will not be anything like what it was either.

We need a much more nuanced and thorough approach on penalty points. We also need proportionality. We need to consider the idea of targeting repeat offenders differently from people who are caught for the first time. For instance, the case of someone caught speeding by a detection van in a transition zone where the speed limit changes quickly from 120 km/h to 50 or 60 km/h is slightly different from somebody caught travelling at 180 km/h on a motorway. There are also very different road conditions. There are speed limits of 60 km/h on the Stillorgan dual carriageway, yet many rural roads have speed limits of 80 km/h. We need proper speed limits and we must consider proportionality and how much people can afford to pay in fines. In Finland and Sweden, fines are based on earnings, which means those with a lot of money are hit more than those with very little money. That is not to say that people on small incomes should be speeding but income should be taken into consideration. Much can be done on speeds. As Senator Paddy Burke said, in ten years we will have driverless cars and all kinds of technology keeping an eye on us. However, one would hardly be caught speeding in Dublin because one can hardly get around the place. There are major tailbacks everywhere.

**Senator Jerry Buttimer:** There are more people in work.

**Senator Gerry Horkan:** There are more people in cars anyway because insufficient public transport has been provided. Buses in Dublin are full.

**An Cathaoirleach:** I ask the Senator to reach a conclusion.

**Senator Gerry Horkan:** I also wanted to mention climate change, on which Ireland has been ranked the worst in Europe by a fair margin. We need to deal with this issue. There is really nothing more I need to say other than that.

This Christmas many people will be buying gift vouchers or will be looking at that. Legisla-

tion has been stalled relating to expiry dates and so on. I gather the Minister for Business, Enterprise and Innovation, Deputy Humphreys, was dealing with it at one stage. Will the Leader indicate where that legislation is?

I appeal to people to exercise caution. They are nice to get and use but they often end up in drawers unspent. Companies change hands, restaurants go out of business and people lose their money. I appeal to people to ensure when they get them that they use them up and enjoy them.

**Senator Michael McDowell:** The first thing I wish to mention this morning is that in the course of yesterday afternoon and evening, the Seanad reform implementation group completed its work. I hope to be in a position to circulate to the Taoiseach and Members of the Oireachtas the final text of our work within the next seven days. I take the opportunity to thank the Members of this House for their co-operation and enthusiastic support for the work of the group and to indicate to them that their constructive approach to everything has resulted in a text of which we can all be proud.

**Senator David Norris:** Then the Seanad can forget about it.

**Senator Jerry Buttimer:** We have not seen it yet.

**An Cathaoirleach:** I want the Chamber to be constructive this morning.

**Senator Michael McDowell:** As this House is aware, there are two Houses in the Oireachtas. As it is likely that the Bill will be introduced in Dáil Éireann, we will have the views of the people's direct representatives on the matter before we get to see it in this House. In the end, the people of Ireland voted to retain Seanad Éireann. The members of the implementation group took that mandate to implement and come up with ways in which the Manning report would be implemented seriously. They addressed their task with great diligence.

We hear the Government programme is about to be extended by agreement between party leaders. If that is going to happen, it will entail the implementation of the Manning report. The legislation will be available for the Dáil and Seanad to consider in the fullness of time. I hope these moves lead to its adoption and passage quickly. I emphasise, of course, that it is acknowledged that a radical reform of the kind proposed will take time to implement. In particular, I thank the Members of this House, including my colleague, Senator Ned O'Sullivan, for his constructive input into the phasing in of the new arrangements.

We have to be careful in this House that we do not forget what is happening with regard to Downing Street. Brexit is a tragedy for this country. Ireland will lose its greatest ally in Europe if Brexit proceeds.

**Senator David Norris:** It may not.

**Senator Michael McDowell:** It may not proceed, but that is what we are witnessing. While sympathy may go to a person who is battling for a particular position, nonetheless it should be remembered that Mrs. May has set her face against allowing the British people to have a final say in whether they do or do not want to leave the European Union on the terms she has negotiated.

From my point of view some basic facts are relevant. She articulated the proposition that no deal was better than a bad deal. While a nominal remainer, she failed to convince the British public to reject the Brexit referendum. It was she who told the British public, when she

became Prime Minister after David Cameron, that there would be no snap election. It was she who broke that promise, held a snap election, delivered herself into the hands of the Democratic Unionist Party and gave it a large say over what happens at Westminster on this issue. It is she who has brought us to this position. All I am saying is that whereas most of us would have sympathy for a person embattled in the circumstances in which she is and in some sense would wish her well, the simple fact is that the underlying project she has embarked on is highly damaging to Britain, Ireland and the European Union. We should never forget that.

**Senator Rose Conway-Walsh:** As we watch the ever evolving crisis at Westminster, Theresa May facing a no-confidence vote in her leadership and the possibility of a no-deal Brexit increasing, we must prepare on that basis that we will have a no-deal Brexit. We owe it to businesses, families and every citizen who will be affected if there is going to be a hard Brexit. We will be affected whether there is a soft Brexit or any other type of Brexit. We cannot, however, be distracted by the personalities. This is not a time for being warm and fuzzy about the British Prime Minister or the Prime Minister of any other foreign parliament. Who they chose as their leader is their business.

**Senator Paul Gavan:** Well said.

**Senator Rose Conway-Walsh:** Our business is to protect the rights of Irish citizens north, south east and west, as well as our diaspora. We must do this by holding rock solid on the agreed backstop as set out in the withdrawal agreement and by ensuring there is no return to the hard border. We must ensure citizens' rights are protected and that the Good Friday Agreement is upheld in all of its parts. That is the bottom line. We are getting distracted by who is who in the zoo. I could not care less who is in the zoo.

**Senator Gabrielle McFadden:** At least we have taken our seats.

**Senator Rose Conway-Walsh:** Let those in Fine Gael go up to the North and take their seats above. It is available to Fianna Fáil, Fine Gael or anyone else.

*(Interruptions).*

**Senator Rose Conway-Walsh:** Let those in Fine Gael go up and stand in the North and take their seats.

**Senator Paul Gavan:** Fine Gael is a partitionist party, a Twenty-six-Counties party.

**Senator Gabrielle McFadden:** We did not run in an election in the North.

**An Cathaoirleach:** Speak through the Chair, please. Senator Conway-Walsh has the right to speak. Allow her to conclude, without interruption.

**Senator Gabrielle McFadden:** We did not run in an election in the North.

**An Cathaoirleach:** No interruptions, please.

**Senator Rose Conway-Walsh:** Those in Fine Gael might have only discovered the Six Counties recently, but those in Fianna Fáil and Fine Gael are free to go up to the North, get their mandate and take their seats at Westminster any time they want.

*(Interruptions).*

**An Cathaoirleach:** If there are more interruptions, I will suspend the sitting for 15 minutes. We were here this morning until 3 a.m. and I want us to proceed.

**Senator Jerry Buttimer:** It was 2 a.m.

**An Cathaoirleach:** It was closer to 3 a.m.

**Senator Rose Conway-Walsh:** I think you are right, a Chathaoirligh.

I need to address an important issue today, as well as what is happening yonder. I refer to the ESRI report released yesterday showing that low-income households stand to lose most from the budget in 2019. The institute predicts that all household incomes will be down by 0.6% on average. Higher income households will benefit from the USC charges and the changes to income tax. If we put that into context with what we found out in the finance committee last week, the real priority for the Government becomes clear. Glenbeigh Securities, the vehicle used to transfer up to 6,000 mortgages from Permanent TSB, will not pay any tax at all because of how it is set up as a special purpose vehicle under section 110. We have been told by the Government time and again that all loopholes allowing vulture funds to avoid paying taxes have been closed. It took nine rounds of direct questioning from my colleague, Deputy Pearse Doherty, to get Permanent TSB to admit that the reason the bank will continue to hold the 5% interest was to avoid the main vehicle paying tax. That is absolutely disgraceful. We also learned that the selling off of the mortgages without agreement is against the code of conduct from the Central Bank. Yesterday we learned that the Irish Nationwide Building Society senior manager responsible for commercial lending had been fined €23,000 for reckless conduct. That cost this country €5.4 billion for Irish Nationwide Building Society alone. People need to wake up and see what is happening. It is always the little person who is being screwed. We are paying reverence to banks and institutions. Who is really running this country?

**Senator Kevin Humphreys:** I wish to raise the issue of dementia and Alzheimer's disease. It is urgent for the Minister to meet a cross-party group as soon as possible on the matter. I acknowledge that the Leader has done everything within his power to try to facilitate this. Given the workload facing and pressure on the Minister for Health, Deputy Harris, I hesitate in proposing an amendment to the Order of Business. I will not do so today. I accept that the Leader has been trying to facilitate it and ask him to continue in his efforts because Alzheimer's disease and dementia are hidden diseases that affect so many people in this country. It is important that the HSE service plan recognise that and that sufficient advisers be appointed to primary care centres to make sure families and patients access the services they need.

I have been looking back on the past year. On many occasions we raised issues concerning the national broadcaster. Concerns were raised initially about children's television, and how that was treated. It was practically done away with. Senator Norris led an all-party group addressing how RTÉ has been dealing with this House and its coverage of it, which has been disappointing. Very important points of legislation have been raised here and have not been covered. I raised the selling off of land with the previous Minister. It is very disappointing that no more than 10% of the RTÉ site at Montrose, the bare minimum, was provided for social housing. That has to be questioned. The Minister said it was up to the board and washed his hands of it.

Licence fees are another issue. While I have always been very negative about RTÉ, its coverage, its responsibility as the national broadcaster and the subvention it receives as such, the

non-collection of television licence fees has had a knock-on impact on independent producers of television programming. We have seen a fall-off in investment of more than €40 million since 2008. In recent weeks and months there have been several repeat programmes. The independent producers produce an awful lot of content for RTÉ and that has been slowly but surely reduced. If we have a public service broadcaster, it has to get the investment needed to produce quality programmes. It also has a responsibility to produce content, and reporting is a part of its public service. Senator Leyden raised the issue of independent radio and television last week.

I want to bring the Leader back to one point. Three or four weeks ago he said he would try to facilitate the Minister coming into the House to discuss the future of public service broadcasting. With what we have seen about RTÉ in the media in recent weeks, it is more important than ever that we have that conversation. We must have a conversation on policy, on how RTÉ treats its staff and on how it treats the public in its role as a public broadcaster. We have to discuss other radio and television stations and how their public content is supported through the licence fee. One issue that really needs to be addressed is the licence fee and the failure to collect it. There is a working group in the Department which is about to make recommendations. It would be timely if we had that discussion with the Minister in the House.

**Senator Maria Byrne:** I want to raise the importance of the BT Young Scientist and Technology Exhibition. It is coming up in January. Schools from throughout the country and which are in the localities of Senators are entering the competition. I sit on the Joint Committee on Education and Skills. I note that science, technology, engineering and maths, STEM, subjects, including physics, maths and biology, are subjects on which an awful lot of importance is placed. It is important for all of us to support local schools and competitors entering the exhibition. From my experience I know of many exhibitors who have had national success arising from their projects over many years. It is very important for us to encourage students to participate and to take notice that so many of them qualified. We must lend our support to these very important projects. It is all about highlighting the importance of science and encouraging students to further their careers.

**Senator Terry Leyden:** In regard to Senator Humphreys's point on the coverage of the Oireachtas on RTÉ, I note that last night the deliberations of the Seanad went out live on Oireachtas TV all night until the sitting was finished. The most intriguing question was who was behind the screen with a phone. When the Cathaoirleach announced that the House would adjourn for 15 minutes, people were wondering if there was an Inspector Clouseau situation. It distracted from the work that was being done here last night. Somebody was behind the screen.

**Senator Catherine Noone:** None of us knows.

**Senator David Norris:** I know who it was.

**Senator Terry Leyden:** Much more importantly, I extend sympathy to the mayor and the people of Strasbourg and to the President of France on the tragic shooting carried out by terrorists in the city's beautiful Christmas market last night, during the sitting of the European Parliament. Of course the timing was a political statement. The attackers could not get through to the European Parliament because there is very heavy security there, as there is at the Council of Europe. I have been going to Strasbourg for ten years.

This brings home the dangers posed by terrorists. An Garda Síochána should always be on alert for radicals, some of whom live in Ireland. They can be as radical here as anywhere else.

A member of my family was caught up in the shooting last night. Three people were killed and 13 injured. My family member escaped but he was within feet of the shooting. It brings home how close these issues are to everyone. We should all feel very grateful that we have not been caught up in these situations. It is almost Christmas, which is a Christian event. It is a beautiful event in Strasbourg. Three people died there and 13 were seriously injured. To all their close friends and family members I offer our sympathy on this terrible tragedy before Christmas. I hope that the terrorist, who is now on the run in France, is caught sooner than later because he will have a further shoot-out somewhere else.

**Senator Catherine Noone:** I refer to what was called a dangerous precedent last night in which an amendment was not be allowed to be withdrawn. I understand the argument completely. It is courteous. We all may need to have amendments withdrawn at certain points, for whatever reason. However, it is an equally dangerous precedent to speak on an amendment for two hours and then withdraw it. There has to be some reasonableness in how we approach our business. I wish to say that in a calm way because it was a little heated here last night.

I concur with Senator Humphreys on the licence fee. I have often said that we need to overhaul radically how we collect the money. The idea of a licence inspector going around checking if people have televisions in their homes to get the money out of them must be a thing of the past. It must be radically reformed in order that we charge at the source, through Internet providers or by some such method, in order that this money can go to the Government. All of those efforts and resources should not be expended in trying to collect moneys, something that could be done in a much more streamlined way.

I join Senator Leyden in his comments on the incident in Strasbourg. I was lucky to spend some time on the Council of Europe and spent many a day in Strasbourg. It is a beautiful city. It is a joyous event and a very quiet, peaceful place. It is very sad to see that happen in Strasbourg. My thoughts go to the families of those who have been killed.

*12 o'clock*

**An Cathaoirleach:** On the point of procedure, raised by Senator Noone, once an amendment has been moved, it is live in the House and the consent of the House has to be given to have it dealt with or withdrawn. That must be borne in mind.

**Senator Catherine Noone:** I understand that.

**An Cathaoirleach:** I accept that, but some Members said last night that it should be automatic. Let me clarify that, unfortunately, it is not automatic.

**Senator Paul Gavan:** On behalf of Sinn Féin I extend our sympathy to the people of Strasbourg. As a member of the Council of Europe, I was absolutely horrified to hear that terror has struck the people of Strasbourg in the way that it did. It is important that this message goes out from across the Chamber.

I wish to ask for a debate on our foreign policy with specific reference to our participation in PESCO. It looks increasingly like we will have an opportunity to have the debate because my conservative colleagues to my left look increasingly likely to join with my conservative colleagues to my right and facilitate a further extension of the term of the Government. Perhaps we will have more time to debate these issues.

12 December 2018

**Senator Gerry Horkan:** We are not conservatives, we are republicans.

**Senator Paul Gavan:** That is a good one, only as far as Cavan.

**Senator Terry Leyden:** The Senator should be careful what he wishes for.

**Senator Paul Gavan:** In 2016, the EU President, Jean-Claude Juncker, called for an EU security union with the end goal of establishing a European army. The basis of PESCO is that it obliges participating states to agree to the principle of a single force, to increasing their military spending to reach specific targets and to provide troops for EU combat missions. It is intriguing to see President Jean-Claude Juncker's tweet about PESCO, and I quote.

She is awake, the Sleeping Beauty of the Lisbon Treaty: Permanent Structured Cooperation is happening. I welcome the operational steps taken today by Member States to lay the foundation of a European#DefenceUnion.

Membership of PESCO obliges the State to increase military spending from 0.6% of GDP to 2% of GDP. Ireland has been a net contributor to the EU budget since 2014 and as such will also be a net contributor to the European defence fund, which will get €500 million annually from the EU budget. This sum will rise to €1 billion every year after 2020. Overall military spending in EU countries totals €200 billion annually and when one puts that in the context of the 100,000 people drowning in the Mediterranean, then the shameful practice of PESCO forces in driving migrants back to Libya, back to the coast, where they have every prospect of being imprisoned, raped, tortured and even sold is shameful. We have further evidence of that at the Council of Europe, to which I referred.

The people were never asked to endorse involvement in PESCO. The costs of involvement were never spelled out. Government expenditure on a priority such as PESCO will be to the increasing disadvantage of social needs, such as housing, education and health. To add particular insult to injury, this is being done at a time when many members of the Defence Forces and their families are forced to rely on social welfare benefits to augment their income.

I ask for a debate on this issue in the new year.

**Senator David Norris:** I compliment Senator McDowell on completing his work on Seanad reform, but I am very concerned about it. I understand that one of the proposals is that there should be one university constituency with six seats and there will be well over 1 million voters for them. This will be the death of the honourable tradition of the Independent voice from the universities. It opens it up wide to the political parties. That is an absolute disaster for Seanad Éireann. I hope, however, that Senator McDowell and his colleagues on the committee will push to get rid of Standing Order 41, which is a real reform of the Seanad, that we can do straight away.

I do not agree at all with the idea of having no Order of Business tomorrow. Tomorrow is an ordinary sitting day and I think it is a great pity if we reduce our commitment to the Order of Business. I am strongly opposing it. I think we should meet tomorrow and should have an Order of Business. We will have plenty of time for the rest of the business.

The final thing I would like to point out is the really beautiful effect, on which the city council should be complimented, of the projection of snow flakes and Christmas images on to the facade of Trinity College Dublin, City Hall and the municipal gallery. I do not know if other

colleagues have noticed. It is absolutely magical. It really transforms the city of Dublin into a “winter wonderland”, to adapt a phrase from an old song. It is really lovely and we should compliment Dublin City Council if it is it which took this initiative.

**Senator Michelle Mulherin:** I voice my serious concern on the co-named proposals I read in the media coming from the Minister for Transport, Tourism and Sport, Deputy Ross, once again to bring changes to the law on speeding and the immediate imposition of a fine for a person who does not carry his or her driving licence and removes the discretion of the Garda to deal with this. Let us be serious, the fines and the road traffic regime in place are already severe and very strict. As I understand it we have three Es - education, engineering and enforcement. There should be more emphasis on them than on what the Minister, Deputy Ross, is embarking on.

**Senator David Norris:** There is nobody more severe than a reformed tart.

**Senator Michelle Mulherin:** I am just wondering if the Minister, Deputy Ross, has got some copper-fastened commitment from an insurance company that we will see a reduction in our premiums, if this is introduced. Unless there is an incentive of reduced insurance costs, I do not see the reason for it. In fact, he is bearing down again on people in rural areas. We have speed limits in operation that do not match the condition of the roads. Some of the roads are in very poor condition. In areas where one could drive safely at a certain speed, we have reduced speed limits. We have speed limits of 100 km/h in places where people are going round a bad bend. That is the reality. As we do not have public transport, what happens if someone is ultimately put off the road? This can happen without any dangerous driving where somebody is caught driving in excess of the speed limit.

One of the major commitments given by the Minister when we increased the penalty for drink driving was that he would look after rural transport in order that people living in rural areas could get into their towns and villages. In a vast county such as County Mayo, we only have three schemes in place. I can tell Members that as somebody who goes around to these towns and villages and goes into pubs and meets the people, people are cheesed off and feel that rural Ireland is being shut down. I ask the Minister to come to this Chamber. I would like to ask him to come down to County Mayo to meet some of these people. He is doing a great impression of somebody living in an ivory tower. He would want to get in touch with the realities of the law abiding people, the people being caught on the road for these very minor misdemeanours. If speed involves something dangerous then there are other offences with which people can be charged, beside heaping it on again and again. I would like to see further examination of this proposal. I would like to see what good result we will get from it. Will we be persecuting people in rural Ireland?

**An Cathaoirleach:** I call Senator Robbie Gallagher.

**Senator Rose Conway-Walsh:** That is why we have a Minister for rural affairs.

**An Cathaoirleach:** Senator Gallagher has the floor.

**Senator Robbie Gallagher:** With my colleagues, Senators Leyden and Ned O’Sullivan, on this side and indeed many other Senators throughout the House, I have raised the plight of Defence Forces personnel because of the terms and conditions under which they work. PD-FORRA and RACO continue to raise issues in respect of the pay and conditions of their members. Earlier this year, the families and loved ones of the Defence Forces personnel were forced

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to mobilise themselves on the issues of those in the Defence Forces who are struggling to survive on the wages they get from the State. It is worth noting that between 2012 and 2017, 1,000 members of the Defence Forces paid to leave the force. These figures clearly indicate that despite what the Government is telling us and what the Minister of State is saying, we have a crisis in the Defence Forces. I have never seen morale as low among members of the forces. They are being treated with total disrespect. I ask the Leader to invite the Minister of State to the House early in the new year in order that we can question him on what he plans to do to address this very serious issue for the men and women of the Defence Forces.

**An Cathaoirleach:** I see that the next speaker, Senator Feighan, has arrived. He can go ahead and speak from there.

**Senator Frank Feighan:** I would also like to-----

**An Cathaoirleach:** Where Senator Feighan is sitting does not mean he has joined the Independent ranking.

**Senator Jerry Buttimer:** I hope the Senator has not joined the Sinn Féin benches.

**An Cathaoirleach:** Senator Feighan seems uncomfortable in that position but I will let him speak.

**Senator Robbie Gallagher:** The Senator is welcome to this side of the House.

**Senator Rose Conway-Walsh:** They have a seat obsession.

**Senator David Norris:** As the Shinners are occupying the Fianna Fáil seats, he is occupying-----

**Senator Jerry Buttimer:** Sinn Féin are in Fianna Fáil's seats.

**Senator Robbie Gallagher:** And then they complain about-----

**An Cathaoirleach:** Senator Feighan, please. We have a long day to get through.

**Senator Frank Feighan:** I remind the House my grandfather, James Feehily, was a Sinn Féin councillor back at the turn of the century-----

**Senator Paul Gavan:** Where did it all go wrong?

**Senator Frank Feighan:** -----and he joined Fine Gael while others joined Fianna Fáil.

**Senator Jerry Buttimer:** Inspired choice.

**Senator Frank Feighan:** I also extend my condolences to the people of France and Strasbourg. It was an awful shooting especially at Christmas time. We stand shoulder to shoulder with our French colleagues. As for the vote of confidence at Westminster today, the Prime Minister, Theresa May, has the respect of the Irish people and the British people. She has been formidable. I hope cool heads will prevail at Westminster. We do not want the lights to go out in Europe. We are strong and committed Europeans and need unity as much now as ever. I hope that tonight cool heads will prevail.

I welcome Elphin Community College to the Gallery. It is a great school. I am from Boyle, which is down the road. Elphin is a fine place and the home of the Elphin diocese.

**Senator Jerry Buttimer:** I thank the 12 Members of the House for their contributions. On my behalf, on behalf of the Fine Gael group and on behalf of the House I extend our deepest sympathy to the families of the innocent victims of the awful tragedy last night. I also extend our sympathy to the mayor of Strasbourg, the people of France and the French Government on this awful tragedy. We must always ensure the rule of law is upheld and any killing must be condemned. What happened last night was absolutely awful.

Senators Horkan, Conway-Walsh and Feighan raised the issue of Brexit. Not wanting to stray into the Conservative Party leadership machinations, I note the issue of Brexit is the most important issue for us as a country, and it is important for all of us to be careful in what we say, in particular to ensure we stand in solidarity with the other member states on the deal that was negotiated and ensure we continue to have our position best represented, which has been done successfully to date by the Government and the Tánaiste. I will not comment on what is happening at Westminster other than to say, as Senator Conway-Walsh said, it is important that we continue to be prepared for all eventualities in Brexit. As I have said before, there is no such thing as a good Brexit. In welcoming the students from Elphin community college to the House, they are of a generation that has benefitted from the prosperity of the European Union and a peaceful island of Ireland. I hope they will continue to be able to look forward to this as young men and women. I wish them all well in their studies.

Senators Horkan and Mulherin raised issues on speeding limits, directly and indirectly referencing the proposals coming from the Minister for Transport, Tourism and Sport. It is important not to pre-empt what the outcome of that legislation will be. Notwithstanding the legitimate points raised by both Senators, it is important to recognise that speeding on our roads does kill. If we look at the statistics, the number of people dying on the roads from speeding has increased. Whether this is because of poor road surfaces or because of the lack of a proper speed limit in particular areas, we have always been taught that enforcement, engineering and education are the three “E”s. I accept Senator Mulherin’s comments on parts of the country where speed limits are inordinately high but none of us could condone somebody driving 30 km/h over the speed limit and expecting to get away with a mere rap on the knuckles. We will have that debate in due time but we should be cognisant of the points raised by Senators Horkan and Mulherin. Equally, on the points raised by Senator Mulherin on rural Ireland, I remind Senator Conway-Walsh that in County Mayo, her ministerial colleague, Deputy Ring, is doing a fine job in-----

**Senator Rose Conway-Walsh:** I did not say he was not. It was not me who said it.

**Senator Jerry Buttimer:** -----rejuvenating rural Ireland.

**Senator Rose Conway-Walsh:** She said there were three rural transport schemes-----

**Senator Jerry Buttimer:** All we have to look at are the announcements made under LEADER programmes and village renewal schemes and we will see the Government is very much committed to rural Ireland.

**Senator Rose Conway-Walsh:** The Leader should tell that to his colleagues because day after day they stand up saying it is not.

**Senator Jerry Buttimer:** Senator Horkan raised the issue of gift vouchers, which is very timely. My information is the drafting of the legislation is proving to be more difficult than was originally envisaged. It is the intention of the Minister to have the legislation published

and to then come before the Houses of the Oireachtas early next year but there are issues in the drafting. People also need to read the small print on gift vouchers. I hope those who give gift vouchers recognise some of them have an expiry date. I hope goodwill is shown by the store or service provider.

Senator Horkan raised the issue of climate change. It was addressed yesterday. This morning, the Minister, Deputy Bruton, appeared on Seán O'Rourke's radio programme and he is attending a conference today in Oslo. We are behind in our targets and we have a lot of work to do. The all-party committee of the Houses of the Oireachtas on climate change will conclude its work at the end of January and the Minister is committed to an action plan to tackle a suite of issues on climate change and I hope we will do this.

Senators Horkan and McDowell raised the issue of the Downing Street Declaration and commended all involved in the commemoration events this week. As I said to the people in the Gallery who have now left, we are benefiting from the prosperity of a peace dividend that is, to be fair, a credit to Albert Reynolds and John Major and all involved in Irish politics who work so hard to ensure we have peace on our island.

Senators McDowell and Norris touched on the issue of Seanad reform. Not wanting to pre-empt or leak any part of the agreed report that is not yet finalised, because Members will be asked for submissions, I commend Senator McDowell on his resilience, patience, extraordinary courtesy and tunnel vision in having his way - sorry, in providing the final document yesterday afternoon. All jokes aside, to be fair to Senator McDowell, as chairman of the committee he certainly galvanised minds. I thank Dr. Brian Hunt, Síle de Búrca and members of the Department of the Taoiseach for their fantastic work. I also thank those who appeared before the committee. Irrespective of one's viewpoint on the final outcome, the process was a good one in that we were able in a non-adversarial way to have a healthy debate on Seanad reform and the future of the Seanad. We have had 12 or 13 reports to date on Seanad reform and we will have that debate in due course again. There will be ample opportunities for Senator Norris's views to be articulated and heard I am sure he will be able to impress on people the need to resist change or go with it, whichever the case may be.

**Senator David Norris:** The right change, not change for change itself.

**Senator Jerry Buttimer:** I am not going to pre-empt the report. Senator Conway-Walsh raised the issue of Permanent TSB. The Taoiseach has made a comment that the loophole will be changed. The Senator mentioned the ESRI report.

**Senator Rose Conway-Walsh:** The loophole happened within the past 30 days when the vehicle was set up.

**Senator Jerry Buttimer:** The Government's position is quite clear, that it is distressing for homeowners. The loophole will be changed. All of us agree there needs to be vigilance with the banks.

**Senator David Norris:** Ha.

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

**Senator David Norris:** I said "Ha".

**Senator Jerry Buttimer:** I have never demurred from saying that. It is a personal view.

Obviously, the Minister is constrained in what he can and cannot do. It is easy for people to come in to rant and rave, shout and roar, and do all kinds of things. We have an obligation to the customers of the banks also.

**Senator David Norris:** Absolutely.

**Senator Jerry Buttimer:** We bailed out the banks. I am not sure whether my view is black and white or one dimensional, but I genuinely believe we need to be vigilant in ensuring the banks recognise that customers are important and deserve to be treated with fairness and respect.

**Senator David Norris:** Absolutely.

**Senator Jerry Buttimer:** I half understood what Senator Conway-Walsh said about income levels. I do not want to misquote her. Was she speaking about an ESRI report?

**Senator Rose Conway-Walsh:** I referred to the analysis in yesterday's ESRI report. It is not Sinn Féin's analysis.

**Senator Jerry Buttimer:** No, it is not but it is Sinn Féin's interpretation of the analysis that I want to address.

**Senator Rose Conway-Walsh:** It is black and white. I have read it all.

**Senator Jerry Buttimer:** First, the ESRI assessment is done by comparing the budget against a hypothetical wage-indexed budget. Second, the ESRI results show that social welfare increases have happened, pay restoration has begun and the amount of income in people's pockets has increased. In the aftermath of the budget, the ESRI publicly acknowledged that the full indexation of the budget to wage growth would cost more than the resources available for the budget. I know the Senator has a-----

**Senator Rose Conway-Walsh:** The Leader is missing the point.

**Senator Jerry Buttimer:** I am not missing the point.

**Senator Rose Conway-Walsh:** It is the impact they were-----

**Senator Jerry Buttimer:** I know the Senator-----

**An Cathaoirleach:** We cannot have a debate on the matter now.

**Senator Jerry Buttimer:** -----wants voodoo economics to come back.

**Senator Rose Conway-Walsh:** No.

**Senator Jerry Buttimer:** To be fair to her, she has consistently asked the Government to spend billions of euro beyond what the Government has.

**Senator Paul Gavan:** No, we have costed our proposals.

**Senator Jerry Buttimer:** That is the whole point.

**Senator Paul Gavan:** They have been costed by the Department of Finance.

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**Senator Jerry Buttimer:** It is Sinn Féin's voodoo economics.

**Senator Rose Conway-Walsh:** I think we should-----

**An Cathaoirleach:** We cannot have any-----

**Senator Rose Conway-Walsh:** On a point of order, it might be useful if the Minister were to come to the House to discuss the ESRI report specifically.

**An Cathaoirleach:** That might be arranged.

**Senator Jerry Buttimer:** I have noted that request. None of the proposals made by Sinn Féin before the budget, with the exception of its proposal for tax relief for renters, involved the lifting of the tax burden on workers.

**Senator Rose Conway-Walsh:** That is completely false. Does the Leader want to read our document?

**Senator Jerry Buttimer:** I have read it.

**Senator Rose Conway-Walsh:** The Leader needs to read it again.

**An Cathaoirleach:** If the Leader grants the Senator a discussion on this issue, she can make those points at that stage.

**Senator Jerry Buttimer:** I would be happy to come back to-----

**Senator Rose Conway-Walsh:** I think the Leader needs to make this his Christmas reading.

**Senator Jerry Buttimer:** I have read it. It is complete voodoo economics.

**Senator Paul Gavan:** We will wrap it up for the Leader.

**Senator Rose Conway-Walsh:** We will put a bow on it.

**An Cathaoirleach:** I ask the Leader to move on, rather than getting bogged down in a personal clash.

**Senator Jerry Buttimer:** There is no personal clash.

**Senator Rose Conway-Walsh:** It is not personal.

**Senator Jerry Buttimer:** There is no personal clash at all. I thank Senator Humphreys for his patience regarding a request for a meeting. I understand his frustration. The approach he has taken is a demonstration of the importance of co-operation in the House. To be fair to the Senator, he has not pushed this item today. He could have done so by calling for the Minister to come to the House. I thank him for not doing so.

Senators Leyden, Humphreys and Noone spoke about the RTÉ licence fee. We will have that debate in the new year. We should reflect on the issue of RTÉ coverage of public affairs and the Houses of the Oireachtas and RTÉ should do likewise. I recognise that RTÉ decided to change its coverage of the Oireachtas. I believe some of its coverage of this House, in particular, has been less than adequate. Leaving aside the Order of Business, we have had a

number of very good debates on a wide variety of issues. I understand that when RTÉ removed “Oireachtas Report” from its schedule, it gave a commitment that it would continue to cover the Oireachtas properly, but in my opinion it has not done so. I have been disappointed with its coverage of the Seanad, which leaves a lot to be desired. The former Minister, Pat Rabbitte, was involved in the establishment by the Department of a working group on the licence fee. We will have that debate again in due course. I will be happy for the Minister to come to the House in the new year.

Senator Byrne mentioned next month’s BT Young Scientist and Technology Exhibition. I wish all those involved in it well. I commend everyone who participates in this important exhibition. The Senator is right when she says it is important for us to continue to promote STEM subjects, especially to young women.

I have dealt with Senator Leyden’s issue.

The Cathaoirleach has dealt with the procedural matter that was raised by Senator Noone in the context of an amendment that was debated by the House last night. The Senator is correct when she says there is an expectation. It does happen. The point made by people last night was that we need to be careful about what we can and cannot do.

Senator Gavan raised the issue of PESCO. I will be happy to have a debate on it in the new year. All of us are proud of the Defence Forces. I am thinking particularly of the work they have been doing in the Mediterranean. The Defence Forces and the Government are about supporting peace and security internationally. They are not about going to war. They are about supporting peace and neutrality. As part of PESCO, the Defence Forces have had access to the best equipment and training.

Senator Gallagher reminded the House that many people are leaving the Defence Forces and highlighted the pay and conditions of those who are staying in the Defence Forces. It is critical to say that under the Government, there has been a restoration of pay and an unfurling of the FEMPI legislation. We have a road to travel. We accept that there is frustration within the Defence Forces. The Minister of State, Deputy Kehoe, is acutely aware of that. The Government ended the recruitment embargo. Senator McFadden has been very strong in expressing her support and ours for the Defence Forces.

Senator Norris spoke about Seanad reform, an issue we will debate again in due course. I have answered the question asked by Senator Mulherin.

**Senator David Norris:** I also asked whether we would have an Order of Business tomorrow.

**Senator Jerry Buttimer:** To be fair, it is not as if I want to hear people on my side speaking while not allowing others to make a contribution. I spoke to representatives of all the groupings yesterday. The decision we have made is based on our desire to complete the debates on all Stages of an important Bill which is giving effect to the vote of the people in a referendum. I would not have pursued that approach or proceeded in this way if there was an objection to the proposal, or if there was not a majority in favour of it. We saw what happened yesterday. To be fair, this approach will allow us-----

**Senator Paul Gavan:** It was the right decision.

**Senator Jerry Buttimer:** We have seen the activities of some Members of the House during debates on the Judicial Appointments Commission Bill 2017. I decided, as Leader, to speak to my colleagues in all groups to ensure we would not delay and we would not have a situation whereby the Bill would not be passed, and would not go to the Phoenix Park for signature before the Christmas recess. That is why we will not have an Order of Business. If Senator Norris wants to propose on today's Order of Business that we should have an Order of Business tomorrow, we will have a vote on it. This decision has not been taken on the basis of any sense of not wanting to have an Order of Business.

**Senator David Norris:** I think it would be futile to put it to a vote.

**An Cathaoirleach:** We can put that question in a minute.

**Senator David Norris:** Obviously, the Government would win.

**Senator Jerry Buttimer:** I understand the Senator's position.

**Senator David Norris:** I think it is a bad precedent.

**Senator Jerry Buttimer:** I accept that.

**Senator David Norris:** I think we have plenty of time to deal with the Bill, given that one can speak just once on Report Stage.

**Senator Jerry Buttimer:** We were here until after 2 a.m. yesterday. If the Senator had seen-----

**Senator David Norris:** I stayed until almost midnight.

**Senator Jerry Buttimer:** I know.

**Senator David Norris:** I stayed for ten years-----

**Senator Jerry Buttimer:** Some of us were here until the very end.

**Senator David Norris:** No, the Leader was not around very much.

**An Cathaoirleach:** Please, can we conclude now? We do not want-----

**Senator Jerry Buttimer:** I was in the House. I might not have been in the Chamber.

**Senator David Norris:** The Leader might have been in the House, but he was not here.

**An Cathaoirleach:** I ask the Senator to allow the Leader to conclude. There are several important points to be put.

**Senator David Norris:** I can leave if it would help.

**Senator Jerry Buttimer:** The Senator does not need to leave. I am not asking him to leave at all.

**Senator Gerry Horkan:** We are missing him already.

**Senator Jerry Buttimer:** I thank all members of staff of the Houses of the Oireachtas, including the ushers, the stenographers, the recording people, the lads who tally the votes at the

back and the Seanad staff, for their courtesy last night. It was an exception in this Oireachtas that we sat late. There was a precedent for late sittings in previous Oireachtais. A 2 a.m. finish was a bit unusual. I thank the members of staff who were significantly discommoded.

I welcome the members of the Iranian delegation to the House. As the Cathaoirleach will confirm in a minute, they are very welcome. We had the pleasure of visiting Tehran last year. It was a very fruitful and positive visit. The members of the Iranian delegation are very welcome.

**An Cathaoirleach:** The Leader has stolen my thunder.

Order of Business agreed to.

### **Visit of Iranian Delegation**

**An Cathaoirleach:** I am sure Members of the House will wish to join me, as Cathaoirleach of the Seanad, in formally welcoming members of the Iran-Ireland parliamentary friendship group, led by Mr. Mostafa Kavakebiyan, who is the chair of the group. On my own behalf and on behalf of all my colleagues in Seanad Éireann, I extend a very warm welcome to the members of the group. I extend to them every good wish for a successful visit to Ireland and good relationships in the future.

### **Sittings of Seanad: Motion**

**Senator Jerry Buttimer:** I move:

That, notwithstanding anything in the Standing Orders relative to Public Business:

(1) The Seanad shall meet at 10.30 a.m. on Thursday, 13th December 2018 and the following arrangements shall apply:

(a) Standing Orders 29 and 30 shall stand suspended;

(b) there shall be no Order of Business;

(c) the business to be taken shall be confined to the items set out in the Schedule to this paragraph and, accordingly, no other business shall be taken unless the Seanad shall otherwise order on motion made by the Leader of the House or such other Senator as he may authorise in that behalf.

#### **Schedule**

*Motion to mark the 100th Anniversary of the 1918 General Election and first occasion Irish Women had the right to Vote.*

The motion to mark the 100th Anniversary of the 1918 General Election and first occasion Irish Women had the right to Vote, shall be taken at 10.30 a.m. and shall be

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brought to a conclusion after 12 minutes, with the contributions of Group Spokespersons not to exceed 2 minutes (time may be shared).

*Health (Regulation of Termination of Pregnancy) Bill 2018 [Dáil] – Report and Final Stages.*

The Report and Final Stages of the Health (Regulation of Termination of Pregnancy) Bill 2018 [Dáil], shall be taken on the conclusion of the motion to mark the 100th Anniversary of the 1918 General Election and first occasion Irish Women had the right to Vote.

(2) The Seanad shall meet at 12.30 p.m. on Tuesday, 18th December 2018 and the Order of Business shall be proposed at 1.30 p.m.

Question put and agreed to.

### **Fifth Programme of Law Reform: Referral to Joint Committee**

**Senator Jerry Buttimer:** I move:

That the draft Fifth Programme of Law Reform, a copy of which was laid before Seanad Éireann on 11th December 2018, be referred to the Joint Committee on Justice and Equality, in accordance with Standing Order 71(3)(k), and that the Committee, or a sub-committee thereof, be instructed to report thereon to Seanad Éireann on or before 22nd January 2019.

Question put and agreed to.

*Sitting suspended at 12.30 p.m. and resumed at 12.50 p.m.*

### **Central Bank (National Claims Information Database) Bill 2018: Second Stage**

**Minister of State at the Department of Finance (Deputy Michael D’Arcy):** I welcome the opportunity to address the Seanad today on the Central Bank (National Claims Information Database) Bill 2018, which was published on 10 July 2018. This Bill seeks to provide the legislative basis for the Central Bank of Ireland to establish and maintain the national claims information database which was recommended by the cost of insurance working group in January 2017. Its essential purpose is to improve data availability in the motor insurance area. It is also proposing to amend sections 8 and 14 of the Civil Liability and Courts Act 2004.

As Senators are aware, the cost of insurance working group was established by the Minister for Finance in 2016 to examine the factors contributing to the increasing cost of insurance and to identify what measures can be introduced to help reduce this cost, taking account of the requirement that we maintain a financially stable insurance sector. The result of that examination was the publication of the report on the cost of motor insurance in January 2017, with 33 recommendations for implementation. Subsequently, the report on the cost of employer and public

liability insurance, with its 15 additional recommendations, was published in January 2018. Both reports contain recommendations targeted at improving the insurance sector generally. It is important to say that a key conclusion of the working group was that there was no single policy or legislative silver bullet to stem or reverse immediately significant premium price rises. This was also recognised by the Oireachtas Joint Committee on Finance, Public Expenditure, Reform and Taoiseach, which reported on the issue in late 2016.

One of the key themes which emerged from the discussions of the working group was that an improvement in transparency, through the additional collection and publication of data, was essential. The cost of insurance working group, therefore, recommended the establishment of a national claims information database on a legislative basis to facilitate a more in-depth analysis of annual trends in motor insurance claims. This was seen as key to developing an understanding of how claims costs are impacting premiums, in particular understanding the relationship between the price paid by a customer for motor insurance and the cost to insurance undertakings.

In making its recommendation the cost of insurance working group felt there was a need to take a practical approach to the establishment of a database. In other words, in broad terms it should be trying to achieve the following: provide key aggregate data around how the market is operating at a particular time, be relatively simple to construct at the outset, be cost-effective, be capable of being put in place relatively quickly, and have the capacity to expand and deepen its scope and range over time.

In considering this matter the working group took into account the type of data collected in other jurisdictions to see if there was a precedent on which it could build its database. Consideration of the cost dimension was also important as ultimately the database will be paid for by the insurance industry which will pass the costs onto policyholders. Relative simplicity was deemed an important quality because insurers do not always collect data in a consistent way. Therefore, the database needs to be sufficiently broad at the outset to cater for a slight variation of approaches. Over time this can be improved as insurers standardise the way they provide data. In summary, the working group took the view that a database built upon the characteristics above was the best way forward.

A subgroup of the cost of insurance working group was established to identify relevant data that could be defined in a consistent manner and devise a practical method for the collection of that data, using these objectives. It was chaired by officials from my Department, including representatives from the Central Bank, the State Claims Agency, the Personal Injuries Assessment Board, PIAB, the Central Statistics Office and the Society of Actuaries in Ireland. This work culminated in the publication of the Bill before Seanad Éireann today.

In parallel, work has been undertaken by the Central Bank in close co-operation with the data subgroup on the finalisation, subject to the passage of the legislation, of a specification document which sets out the specific data that will be required from insurers for the purpose of the database. The progression of the specification in parallel with the drafting of the Bill was seen as necessary to ensure that the database can be operational as quickly as possible following enactment. It also provided a means of signalling to industry certain system changes it may need to undertake to be ready for engagement with the database. I understand my officials circulated briefing material on what would be collected within the data specification to Senators. I hope this was beneficial in highlighting the level of detail that will be collected.

I propose to give Senators a brief overview of the major sections of the Bill. It should be noted that I will provide a more detailed breakdown on each section on Committee Stage.

Section 4 which covers interpretation is an important provision because, as well as defining a range of relevant expressions, it also sets out the different settlement channels through which a claim may be finalised. A claim may be resolved directly with an insurer, through the PIAB, or by a court decision. As aggregate industry data are not currently available, for example, on direct settlements, this breakdown was identified as important to allow policymakers to see trends or distinctions in the costs related to these channels and to enable them develop more targeted response measures, where necessary.

Section 6 allows the scope of the database to be extended to other lines of non-life insurance in the future on foot of an assessment by the Central Bank of the appropriateness of such extension after consultation with the Minister for Finance. While it is intended in the first instance that the database will focus on the motor insurance sector, it was clear from our consultations that many saw a case to extend the scope of the database in the future to encompass other lines of non-life insurance, such as employer liability insurance and public liability insurance.

Section 8 is the pivotal section of the Bill as it confers the Central Bank of Ireland with the function of establishing and administering the database. It requires the Central Bank to collect and analyse data from insurance undertakings on the income and costs associated with carrying on the relevant class of insurance. It is then required to publish information about those data at least annually. The type of information that can be collected includes data on different types of income, exposure, business expenses, the number and nature of claims, the costs and provisions associated with those claims, as well as the amounts paid in respect of claims resolved in different settlement channels and the costs associated with those claims.

Section 8 also sets out the purposes which the Central Bank's annual report should meet and includes the following: increasing the level of information around the relationship between the cost of providing insurance and the cost of a premium for the consumer, identifying current and emerging trends within the sector, identifying the factors that cause price movements in the relevant line of insurance, presenting a statistical analysis of income and expenditure associated with providing the relevant type of insurance, and presenting a statistical analysis of information relating to claims and of each particular settlement channel used in respect of such claims.

Section 11 sets out the funding regime for the establishment and administration of the database. This provision is designed in such a way as to ensure that the Central Bank is fully reimbursed for the performance of this additional function. One of the reasons for this is to ensure that the financing of the project does not run contrary to the prohibitions on monetary financing set down by the European Central Bank statutes.

I will touch briefly on the amendments to sections 8 and 14 of the Civil Liability and Courts Act 2004 which are covered by section 13 of the Bill.

*1 o'clock*

On Committee Stage in the Dáil this section was introduced into the Bill in order to implement two key recommendations of the cost of insurance working group's report on the cost of employer and public liability insurance.

With regard to section 8, three changes are being made: the period of notice is being re-

duced from two months to one month; the wording “or as soon as practicable afterwards” is being deleted as this, it is argued, allows too much latitude for late notification - it is felt that there is already sufficient safeguard in the legislation for a plaintiff insofar as if he or she has reasonable cause for the delay then the court will take account of this; and a court “shall” be required to draw inferences from a failure to notify rather than “may” draw inferences - it should be noted that these inferences are unlikely to be negative if the plaintiff has reasonable cause for a late notification.

A new subsection (4A) is being inserted into section 14 of the Civil Liability and Courts Act 2004. Section 14 deals with the matter of a verifying affidavit in a personal injuries action. At the time this Bill was being legislated for, it was described as a key element of the 2004 Act and was designed to combat false and exaggerated personal injury claims. The working group took the view that the requirement to lodge an affidavit within 21 days of the service of the pleadings was not unreasonable. However, it appears that this regularly does not happen. Therefore, this new subsection would provide for a court hearing a personal injuries action, where there is a failure to lodge an affidavit in court within 21 days to draw inferences and where it thought it appropriate in the circumstances of the case to deduct costs from the party responsible for the failure. This will have no impact on those plaintiffs and defendants already complying with this legislative rule.

I reiterate the importance of the swift passage of this Bill to ensure that the national claims information database can be established and the Central Bank of Ireland can begin collecting and analysing the data necessary to increase transparency in the insurance sector as soon as possible. Ultimately, the main benefit of the database is the report that the Central Bank will produce, which I believe will become a rich source of information that will benefit policymakers, insurers, including insurers considering accessing the Irish market, and consumers. In general terms, it should make the Irish insurance market more attractive over time.

Another aspect I want to highlight is that on the issue of the insurance fraud section within An Garda Síochána, I will meet the Commissioner, Mr. Drew Harris, tomorrow morning.

**Senator Gerry Horkan:** The four of us here were all members of the Joint Committee on Finance, Public Expenditure and Reform when it held an in-depth investigation and discussion about motor insurance in late 2016. The Minister of State mentioned it in his report, with the work being done by the cost of insurance working group.

I welcome the opportunity to speak about this long-awaited Bill which we will be supporting as a party. The Bill, as the Minister of State outlined, enables the Central Bank to gather and publish regularly data on insurance claims. At present, 70% of those claims are settled outside either the Personal Injuries Assessment Board, PIAB, or the courts, with 20% in the PIAB and 10% in the courts. There is no objective way of measuring or understanding what is happening in the 70% of the sector to which I refer. This weakness is a deterrent, particularly for new entrants or potential entrants into the market who are looking at the market and have little visibility on what is happening here.

While the Bill is welcomed, it must be acknowledged it has taken far too long to get here. It is another example of making an announcement and yet failing to deliver. Neither I nor my party will delay the Bill, either today or at any other Stage. This legislation was meant to be enacted at the end of 2017 and here we are at the end of 2018, a full year after its initial deadline.

As customers continue to come to terms with excessive insurance premia, the Government recently released its seventh update on the cost of motor insurance and employer and public liability insurance. Motor insurance customers, businesses, charities, sports clubs and many others continue to face insurance premia that are far in excess of what is justified or fair. The Minister of State and I have had many discussions at committee, both when he was a member and, subsequently, as Minister of State, about fraud, exaggerated claims, etc.

According to the CSO, the premia have reduced by 11% in 2017. Since June 2013, premia have increased by 32%. Many Senators of all parties have examples of policyholders who have experienced increases far in excess of 32%. The CSO is limited in what it can account for. When someone wishes to make an alteration to an insurance policy mid-year, for example, to change address, the insurance companies are charging well in excess of what would be seen to be fair.

For businesses, there is no index that records the cost of insurance. This has led some to believe insurance premia have stopped growing in motor insurance at the expense of business insurance, which is not monitored.

Fianna Fáil has long been calling for reform of the insurance market. In June 2016, a motion, tabled by Fianna Fáil in the Lower House and passed, called on the Government to reform the insurance market to make it more transparent and to ultimately reduce premia. In response, the Government created the working group, which published its initial recommendation in January 2017. We welcome those proposals but delivery, as the Minister of State will acknowledge, is key. Like many other reports, its implementation has simply not been good enough or quick enough. While the industry needs to be heard, so too do the countless customers who feel ripped off as their insurance premia go through the roof. We all have discussed it. We are getting older, our cars are getting older, we are driving less, yet our premia are going up significantly with no claims.

It is not too much to ask for a consumer to be informed as to the reason or reasons the premium has increased. This action point has more or less been abandoned by the Government. Instead, insurance companies now only have to provide generic reasons for increases offering customers little or no clarity whatsoever. The recommendations for policyholders to be informed of claims made against them before a settlement has been reached has stalled and it looks like the Government is rolling over on this point also.

A mechanism to set up the anti-fraud unit within An Garda Síochána was to be approved by the third quarter of 2017. This has yet to be achieved. I acknowledge the Minister of State's comment at the end of his contribution which is not in the speech in terms of meeting Mr. Drew Harris. I welcome that because not that long ago in committee the Minister of State was more or less saying that he did not want to divert gardaí away from real crime onto this issue. Of course, there is gangland crime and other crime that needs to be dealt with, but fraud, at any level, either completely staged claims or, indeed, fraudulent increasing or massively exaggerating claims, is bad, and we are all paying for it. It is important to bear in mind that 8% of motor insurance policyholders are claiming at the expense of the other 92%. While these claims are not all fraudulent - nobody is saying they are - many policyholders are not making claims and are still experiencing very significant increases.

On top of all of this, we have the ongoing investigation by the European Commission and the Civilian Planning and Conduct Capability, CPCC, on alleged anti-competitive behaviour.

Individuals, small businesses, charities and sports clubs are all facing unsustainably high insurance premia. It is a direct threat to our competitiveness and we must tackle the issue. I acknowledge that the Bill helps in that regard. The Minister of State acknowledged - I concur - that there is no silver bullet but we need to chip away at it in every way we can. We need to reduce the number of road deaths. We need to reduce the number of crashes. We need greater enforcement. Earlier today we were talking about speeding and the ways we deal with speeding. We need to look at proportionality but, equally, we need to look at those who are repeat offenders and, perhaps, look at offenders' salaries in terms of the penalty they pay because an €80 fine to somebody on a lot of money is not the same as to somebody on very little money. We certainly need to be looking at ways of ensuring better driver behaviour and, in terms of other claims, better general behaviour.

Equally, we need to acknowledge that the high premia are a result of high payouts. The Minister of State has said so previously and I agree. We need to get the number of claims down. We need to get the amount of claims down and the value of those claims down. We can do that in many ways, including by enforcing the road traffic laws in many ways and providing better roads in order that there are not as many crashes. Insurance companies must pursue. I am glad to see some judges are now throwing out claims where they tell the plaintiff that just because he or she managed to slip somewhere does not mean he or she is entitled to €60,000, €80,000 or €100,000 when a significant share of the blame was his or her own.

The key recommendations of the cost of insurance working group were around protecting the consumer, improving data availability, improving the personal insurance claims environment, reducing the cost of the claims process, reducing insurance fraud and, as I have outlined, promoting road safety. Those recommendations include action to enhance levels of transparency, which is the purpose of this Bill, and to improve the personal injuries litigation framework through a number of measures such as ensuring potential defendants are notified in sufficient time, tackling fraudulent or exaggerated claims and ensuring suitable training.

I acknowledge what the Minister of State said about the change in the other legislation in terms of asking people to make a claim or announce their claim earlier. There were issues in the pubs and restaurant industry. People were coming in two years after an alleged claim which may not have been a claim in the first place and saying they slipped in that premises two years ago. All the video footage may be gone and many of the staff will have changed. It is an important part of the Bill and I welcome its inclusion.

I do not want to delay the Bill. I am very supportive of it and the work the Minister of State is doing. However, the more we do and the faster we can deliver on it, the better. That will be for the benefit of every consumer, club, business, NGO and so on. Everybody is paying insurance, and everybody feels insurance is dead money to a certain extent in that it goes out but one never sees a return on it, and one is not supposed to see a return. If we can manage to keep the number of claims down, we can reduce the cost of premiums. I commend the work the Minister of State is doing. We will help him to do that as much as we can.

**Senator Kieran O'Donnell:** I welcome the Minister of State, Deputy D'Arcy, to the House again. He is always extremely welcome here. He is doing very valuable work. I commend him on his perseverance in the area of insurance. It is obvious he has encyclopaedic knowledge both from being in business as a farmer for many years and also the fact that he was involved in the banking inquiry with my good self. He was on the finance committee when we had the initial insurance report and subsequently he has taken up the role as Minister of State in charge

of that area.

I want to make some observations. First, the initial focus should be on motor insurance. There is a facility in the Bill to go to other areas in non-life insurance. I would not want to have too many elements involved initially. It would take the focus away from motor insurance.

Second, in terms of the existing databases in motor insurance companies, is there any way of feeding those into the national database being compiled by the Central Bank or do they preserve those as their own property?

Third, when does the Minister of State anticipate that the national database will be put in place? Is he satisfied there is sufficient capacity within the Central Bank, both in terms of personnel and resources, to compile that as quickly as possible? When the database is up and running it will provide transparency in terms of the premiums being charged, the claims being made and a myriad of factors, which should bring about a lowering of premiums. Importantly, when it is being compiled it should encourage competitive premiums. The insurance industry is aware that a national database will be in place in a relatively short period of time that may point out that exorbitant rates had been charged on motor insurance premiums prior to that date.

This is a very welcome measure. It is long overdue, which we are aware of from reports. There should be no delay in passing the legislation. When does the Minister of State anticipate it will be in place? Does he believe the Central Bank has the necessary resources and capacity to put it in place?

What is the status of the existing databases in the motor insurance industry? I refer to feeding into the national database and interaction with the national database when it is up and running. Who will have ownership of the database and who will have access to it?

**Senator Rose Conway-Walsh:** I welcome this Bill. In the previous finance committee we spoke about the assessment of where we had got with the motor insurance sector. The CSO has stated premiums are down by 23%. I will be writing to the Minister of State about the information I have collated from a number of surveys I have done which do not reflect that. I will write to him under separate cover and get the Minister of State's comments on it because it is worrying.

I welcome this Bill; we have talked about it for long enough. Transparency was the key identified by the finance committee when we examined this issue in detail over the past two years. However, the legislative approach taken is weak and hands too much scope to the Central Bank to interpret the will of the Oireachtas.

We have had eight progress reports to date on changes made to the insurance sector. When others and I quizzed the Minister about the lack of progress on many elements of the cost of insurance working group's plan, we were told that we needed to examine the database as it was the main element and not get distracted by other parts that are way behind schedule or have been dropped. It is here now and it could be a lot better.

I have doubts about whether the database the Minister envisages will ever see the light of day given that this legislation is basically an enabling piece of law to allow the Central Bank go ahead and do what it wants. That is not good enough. When the idea of the database was first mooted most people would probably have imagined it to be a database they, as consumers, could consult to check out details of insurers. Instead, it is only an industry database held by

the Central Bank. It is a very limited form of transparency.

On Second Stage in the Dáil my party raised the issue of whether the Central Bank is the right body to hold and manage this database. Other suggestions were made such as the Personal Injuries Assessment Board or the CSO. The Minister is proceeding with the Central Bank as the body responsible but he is failing to draw up sufficiently tight instructions for the Central Bank to operate it.

Technically, there is nothing in this Bill to guarantee that any motor insurer would be included. I accept that is the intent but much leeway is given to the Central Bank and there is no legal onus to include motor insurers. Public liability insurers are kicked down the road, so to speak, and again there is no legal obligation to have them included.

I have concerns also that the reporting rules put into the Bill will allow insurers to muddy the waters by declaring all sorts of costs as expenses, meaning that they will look as if they are less profitable than they are. As legislators, we should not simply tell the Central Bank to go and make regulations. We are the ones accountable and we should influence primary law. In this case, we should be using that influence to tighten up the transparency standards.

The other parts of the Bill that concern me are the changes to the Civil Liability and Courts Act 2004. These are very serious changes. We cannot simply go along with every change suggested because it is sold as tackling fraud. We are running the danger of going through a period of reform in the insurance industry and the only aspect actually reformed is that it becomes far more difficult to make a legitimate claim. The idea of legislation allowing the courts to draw an inference is pushing the boundaries of constitutionality and we need to tread very carefully.

I support the Bill but we will consider a number of Committee Stage amendments that may enhance it. I thank the Minister of State for taking on board one of our party's amendments on Report Stage in the Dáil. We can work together but there are serious issues within the Bill that need to be addressed. It is our intention to enhance the Bill in every way we can but also to have it passed by the House as speedily as possible. We share the concerns of the Minister of State on the high cost of motor insurance and the greater transparency that is needed all around to allow more competition into the market and to unblock some of the barriers that are preventing people from obtaining motor insurance and insurance in general at a reasonable cost.

**Minister of State at the Department of Finance (Deputy Michael D'Arcy):** I thank the Senators for their thoughts on this matter. There is a full focus on motor insurance. It is the only insurance which people are legally obliged to have. A person who brings a car on to the road is obliged to have the vehicle taxed and legally obliged to have it insured. There is no other legal obligation to have insurance. That is why the full focus is on motor insurance.

Motor insurance also accounts for the vast majority - between 60% and 70% or perhaps a little more - of insurance claims. We are focusing on motor insurance first and employment liability and public liability insurance will follow. That is the appropriate approach.

The database of the companies belongs to the insurance companies. The Central Bank have been working on this since the legislation was published. Work has been taking place in parallel with the legislation, prior to the Bill's publication and as it has moved through the Houses. The big body of work is the review going back for ten years. I expect an analysis of the ten-year period up to and including 2018 to be published in quarter 3 of 2019. We will have a decade of information on motor insurance to analyse. A large body of work is being done and it will

allow us to get started.

We will see the settlement channels. The Senator asked for whom this information is being gathered. It is to provide an analysis of what is happening for policymakers and the insurance industry. Senator Horkan has made the point that we do not know what the settlement channels are. We have sight of less than 30% of the cases that go through the Personal Injuries Assessment Board, PIAB, and we have no information on the other 70% of PIAB cases. I have met all the insurance companies and they all have different business models, settlement channels and structures. Some insurance companies will settle early without a medical report. I call this “go away money”. Commercially, that is their business model and it works for them because they are profitable. However, I do not agree with that model.

At the other end of the spectrum, another company will fight cases involving people who have been impacted on and have legitimate claims every step of the way and for every penny. That is the other side of the business model and I do agree with that either because it involves fighting people who have been legitimately impacted on and cases that require damages to be paid. Then there is everybody else in between. We do not know what the correct model is. While I can understand the commercial reality of settling early and of fighting every claim every step of the way, I do not agree with either model. There should be a space in the middle because that would be a more appropriate model.

If there are too many companies settling without a medical report, that could become a policy issue and result in the Oireachtas changing the law to prevent that practice by providing that companies cannot settle without a medical report. That is just an example. I do not know what I can do in the case of companies which fight legitimate claims every step of the way, which is not correct practice either. There is then everything else in between. The analysis will look back ten years from the end of this year. There is considerable information and data flow to be analysed and the analysis will throw up many issues that we are not aware of. We will see what information emerges.

As to who will have access to the database, there will at least be an annual report, which should be sufficient. As such, we will have ten years of data and, subsequently, we will have an annual report when the information is made available. This will allow us to identify if there have been changes.

I was probably a little harsh on Senator Conway-Walsh at the committee meeting to which she referred.

**Senator Rose Conway-Walsh:** That is correct.

**Deputy Michael D’Arcy:** I apologise if I was but the Senator is well able for it.

On the Central Statistics Office data for insurance costs, we accepted these data when they tracked the increase from the low point to the peak, which was almost 60%. We should accept the CSO data as prices go down given that we accepted them when prices went up. This is not my information or the Department’s information. It is information compiled by the Central Statistics Office. There has definitely been a reduction in premiums but it has not applied to everybody. When I meet the insurance companies, some do not want young drivers and they price accordingly, while others do not want older drivers and they also price accordingly. We also have everything in between. Every company has a different calculation structure and business model and is stronger or weaker in different areas. It is not for me or anybody in the

Department of Finance to tell them what their commercial business model should be. My job is to probe the companies to get my head around exactly how they operate. Some are very strong in the areas of younger drivers and have a large segment of that market. They price more competitively than companies which do not want to insure younger drivers.

**Senator Rose Conway-Walsh:** Will the Minister of State examine the data I have collected? They could be used in his meetings with the insurance companies.

**Deputy Michael D'Arcy:** I will have a look at it.

On the Central Bank of Ireland's leeway that the Senator also highlighted, the Central Bank, as the regulator, is the appropriate body to do this. It has information on the insurance companies that cannot and will not be available to other bodies, including the CSO and the PIAB. This is a technical structure to analyse information and present a report. We are starting with motor insurance and will move to other parts of the insurance industry afterwards.

On section 14 of the Civil Liability and Courts Act, the change in data retention and the GDPR regulations has resulted in an anomaly in law. Somebody who has imagery or video footage is obliged by law to delete that imagery within one month. The unfairness of this requirement is clear to me and obliges us to do something about it. We are reconciling the period within which an insured person must inform someone else that he or she may take a case with the time within which imagery and video footage must be deleted. This is to ensure the person against whom a claim is being made can protect that imagery or video footage and have a proper defence. That is fair. By law, one is obliged to delete such footage after one month. It is absolutely appropriate that the two time schedules are merged into the same period.

It is also appropriate that if one does not have a reasonable ground for failing to inform the person against whom a claim may have been taken, the judge can draw inferences from that. On too many occasions, people first find out about a claim against them when they seek to renew their insurance premium and find there has been a loading. That is not fair or right either.

Section 14 also makes a change on the affidavit. We must give people an opportunity to mount a proper defence. I also want to end the practice of taking fraudulent insurance claims. This is not a victimless crime. Everyone who pays a premium pays extra for fraud. I want to end the situation where that practice is a one-way bet. Claimants can chance their arm on a claim for €20,000, €30,000, €40,000 or €50,000, which can be thrown out of the civil courts by a judge who suspects an element of fraud. The difficulty arises because the interaction between the criminal courts and the civil courts has not been properly constructed. We want to improve that so that the opportunity to place a one-way bet, which is part of the structure of Irish insurance, does not continue. I accept what the Senator says. We did not take these changes lightly. However, we believe there are sufficient protections within the structure to avoid an unfair impact on those with legitimate claims.

I will make two final points. Everything we are doing primarily concerns the lower range of awards, that is, claims below €30,000. All our analysis, including the Personal Injuries Commission, PIC, report, the Department of Finance report and the Personal Injuries Assessment Board report, shows that those claims are well out of kilter with our UK neighbours. That is the best jurisdiction with which to compare ourselves. About five times more is awarded in this jurisdiction than in the UK. If consumers want British premia, claimants must receive British awards. Our awards are not in sync with that. Less work has been done to examine much larger

awards, but these seem to be in line with those in other jurisdictions, whereas that is certainly not the case with lower awards. That is one point.

If we want to do this, these changes must be made. As I said, the lower awards are well out of sync with similar awards in the UK, while higher awards are practically in sync. I have forgotten my second point.

**Senator Kieran O'Donnell:** It will come to the Minister of State.

**Deputy Michael D'Arcy:** I am not sure it will.

**An Leas-Chathaoirleach:** The Minister of State is all right.

**Senator Rose Conway-Walsh:** It is Christmas.

**Deputy Michael D'Arcy:** The Leas-Chathaoirleach is being generous.

**An Leas-Chathaoirleach:** As some of us were here until 2.30 a.m., we might not be as-----

**Deputy Michael D'Arcy:** The Leas-Chathaoirleach looks a bit tired.

**An Leas-Chathaoirleach:** I am glad the Minister of State noticed.

**Deputy Michael D'Arcy:** I thought he might have nodded off a moment ago.

**An Leas-Chathaoirleach:** Forgive the interruption.

**Deputy Michael D'Arcy:** It would be very helpful if we could get this Bill through the House before the end of the session. It contains an important suite of provisions that we need to implement. This is the really important stuff. The Senator highlighted that some of the recommendations are not being followed or have been delayed. While that is correct, this is important legislation. The Personal Injuries Assessment Board (Amendment) (No. 2) Bill 2018 is also important. Overall, however, the Judicial Council Bill 2017 is probably more important than just about anything else. The sooner we get this key legislation through both Houses, the sooner we will impact further on the reduction of premia. I am fully aware that businesses are closing because the cost of insurance is very high. I am also aware that voluntary groups throughout the country, from the Senator's part of County Mayo in the west to County Wexford in the south-east where I come from, are stretched. Everything that we do is intended to bring down premia.

While debate can sometimes be combative, I express my gratitude to the Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach and to Deputies and Senators for the speed with which the Insurance (Amendment) Act 2018 was passed. The Bill before the House went through the Dáil pretty quickly and I hope and anticipate we will get it through this House. As I said, this Bill, the Personal Injuries Assessment Board (Amendment) Bill 2018, the Insurance (Amendment) Act 2018, the Judicial Council Bill 2017 and one or two other bits and pieces will have an impact and reduce insurance premia even further.

Question put and agreed to.

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

**Senator Kieran O'Donnell:** Next Tuesday.

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

Committee Stage ordered for Tuesday, 18 December 2018.

*Sitting suspended at 1.35 p.m. and resumed at 2.15 p.m.*

### **Employment (Miscellaneous Provisions) Bill 2017: Report and Final Stages**

**An Cathaoirleach:** We are now dealing with Report Stage of the Employment (Miscellaneous Provisions) Bill 2017. Before we commence, I remind Senators they may speak only once on Report Stage, except the proposer of an amendment, who may reply to the discussion on that amendment. On Report Stage each non-Government amendment must be seconded.

**Senator Gerald Nash:** I move amendment No. 1:

In page 5, line 23, to delete “six months” and substitute “three months”.

**Senator Lynn Ruane:** I second the amendment.

**Senator Gerald Nash:** I appeal to the Minister to see if there is any prospect of her considering moving the date from which the Act will be commenced to three months rather than six months. We had a discussion on this issue the last time and I understand there needs to be a level of preparedness for business, other stakeholders and for the Workplace Relations Commission, WRC, to get their heads around what is reasonably complex legislation. I propose that we delete six months and substitute that with three months to ensure the implementation of the Bill commences at the very earliest opportunity after its enactment by these Houses and passing through that process and we would hope to have it signed into law by the President. As we have waited a significant number of years, as the Minister is aware, for this legislation to come through these Houses, I ask the Minister and this House to consider this request.

**An Cathaoirleach:** Does the Minister agree to the amendment?

**Minister for Employment Affairs and Social Protection (Deputy Regina Doherty):** I agree.

Amendment agreed to.

**An Cathaoirleach:** Amendment No. 2 involves a potential charge on the Exchequer and has been ruled out of order.

Amendment No. 2 not moved.

**An Cathaoirleach:** Amendment No. 3 is in the names of Senators Higgins and Ruane. Neither Senator is present.

**Senator Gerald Nash:** I have permission and would like to move the amendment.

**An Cathaoirleach:** As the Senator has permission, he may move it.

**Senator Gerald Nash:** I move amendment No. 3:

In page 19, after line 25, to insert the following:

### **“Report on involuntary underemployment**

**21.** The Minister shall, within twelve months of the passing of this Act and following an appropriate public consultation, prepare and lay before the Houses of the Oireachtas, a report and recommendations on the issue of involuntary underemployment and the advertisement or allocation of additional hours within the workplace.”.

We had a detailed discussion about the original proposal from Senator Ruane who has clearly replaced that original proposal which I believe was also problematic in terms of operability and practicality. The Senator has a fair point on the need for very clear analysis to inform policy discussions on under-employment and so on, particularly for part-time workers.

I am happy to withdraw the amendment on behalf of Senator Ruane if the Minister could give a commitment that her Department would look closely at this matter and possibly present a report or take the opportunity to consider it in advance of the social welfare Bill and come back to the House with some suggestions as to how we could move forward to try to ensure we have a strong evidence base to inform policymaking on underemployment in Ireland, which is an issue for some, as we know.

**Senator Paul Gavan:** I second the amendment. I welcome the Minister. I support what Senator Nash has said. I have come across the issue of under-employment regularly during my time as a trade union official. There was an interesting report published this week from Social Justice Ireland and it suggested a figure of well in excess of 100,000 workers. It is a major issue. Sinn Féin supports this Bill and wants to be constructive. It is worth reiterating the points made by Senator Nash and requesting the Government to give strong consideration to acting on it in due course.

**Deputy Regina Doherty:** I thank the Senator for withdrawing the amendment. I cannot say strongly enough, both in this and the other House, how vehemently I oppose putting reports into legislation, particularly legislation that is not amended thereafter.

Let me reassure the Senator that, arising from what we agreed in the House on foot of what Senator Ruane was trying to do last week, I wrote to the Workplace Relations Commission, WRC, the following morning, and it has agreed to undertake a body of work on the current part-time work statutory code of practice. It replied to me today saying that it will take about six months to complete this body of work. I have made arrangements that when it comes back to me with recommendations, we will look seriously at them with a view to changing, if changes are required.

The officials in my Department consistently look at data. We consistently look at under-employment in this country and at people who are not in employment but are not registered as unemployed. We have our jobless household strategy, our disability strategy and we have an open door. If anybody wants to work, he or she can go into an Intreo office and avail of the services that are there, although he or she may not be on the live register.

What we very much need to do is to look at the Central Statistics Office, CSO, data, look at the people who are under-employed who want to work for a longer period and ensure they avail of all of the services of the State in order that they can get as much employment as they possibly need to have a decent standard of living. There are some people - I acknowledge that most of them are women - who choose to be employed part-time and I want to make sure we get the balance right with the services that we offer so as not to push these women into making

choices that they otherwise do not want to make, or not make them feel stigmatised because they make the choice to stay at home with their children when they are small or when they are not in school.

I am willing to have a look at it and come back to the House. It might even be worthwhile to have a course of hearings by the Joint Committee on Social Protection and I can certainly ask for that, if the Senators are agreeable to it.

**An Cathaoirleach:** Is Senator Nash reasonably satisfied with that response?

**Senator Gerald Nash:** Yes, I am happy to withdraw Senator Ruane's amendment.

Amendment, by leave, withdrawn.

Amendment No. 4 not moved.

Bill, as amended, received for final consideration and passed.

### **Social Welfare, Pensions and Civil Registration Bill 2018: Committee Stage**

Sections 1 to 8, inclusive, agreed to.

**An Cathaoirleach:** Amendment No. 1 is in the name of Senator Higgins. As Senator Higgins is not present to move her amendment, it falls.

Amendment No. 1 not moved.

Section 9 agreed to.

Sections 10 to 26, inclusive, agreed to.

**An Cathaoirleach:** Amendment No. 2 is in the name of Senator Higgins. Amendments Nos. 2 and 3 are related and may be discussed together, by agreement. As Senator Higgins is not present to move her amendment, it falls.

Amendment No. 2 not moved.

**An Cathaoirleach:** Amendment No. 3 is in the name of Senator Higgins. As Senator Higgins is not present to move her amendment, it falls.

Amendment No. 3 not moved.

Section 27 agreed to.

Sections 28 to 31, inclusive, agreed to.

**An Cathaoirleach:** Amendment No. 4, in the name of Senator Conway-Walsh, has been ruled out of order and cannot be moved.

Amendment No. 4 not moved.

12 December 2018

**An Cathaoirleach:** Similarly, amendment No. 5 has been ruled out of order.

Amendment No. 5 not moved.

**An Cathaoirleach:** Amendment No. 6 is in the name of Senator Higgins. As Senator Higgins is not present to move her amendment, it falls.

Amendment No. 6 not moved.

**An Cathaoirleach:** Amendment No. 7 is in the name of Senator Higgins. As Senator Higgins is not present to move her amendment, it falls.

Amendment No. 7 not moved.

**An Cathaoirleach:** Amendment No. 8 is in the name of Senator Higgins. As Senator Higgins is not present to move her amendment, it falls.

Amendment No. 8 not moved.

**An Cathaoirleach:** Amendment No. 9 is in the name of Senator Higgins. As Senator Higgins is not present to move her amendment, it falls.

Amendment No. 9 not moved.

**An Cathaoirleach:** Amendment No. 10 is in the name of Senator Higgins. As Senator Higgins is not present to move her amendment, it falls.

Amendment No. 10 not moved.

Schedules 1 to 3, inclusive, agreed to.

Title agreed to.

Bill reported without amendment.

**An Cathaoirleach:** When is it proposed to take Report Stage?

**Senator Ray Butler:** Next Tuesday.

**An Cathaoirleach:** Is that agreed? Agreed.

Report Stage ordered for Tuesday, 18 December 2018.

*Sitting suspended at 2.30 p.m. and resumed at 5 p.m.*

### **Children's Digital Protection Bill 2018: Second Stage**

**Acting Chairman (Senator Catherine Noone):** I welcome the Minister of State, Deputy Canney.

**Senator Joan Freeman:** I move: "That the Bill be now read a Second Time."

The purpose of the Bill I am introducing is to safeguard children from exposure to harmful and age inappropriate content online by placing responsibility for the distribution of such information on Internet service providers. I am speaking about content that contains encouragement of and incitement to suicide and self-harm and encouragement of prolonged nutritional deprivation that could put a child's health at risk. I will give an example of what I am talking about. This afternoon I spent 30 seconds on the Internet. I typed in the word "suicide". The first thing that came up was a HSE website advising people to let someone know if they had concerns in that regard. The second thing that came up was the website of a charity that is well known for suicide intervention. The third website that came up encouraged and instructed people on how to take their own lives. That was the third hit. This grave matter is affecting children. We need to acknowledge that suicide rates among young teenage females have increased so dramatically that Ireland now has the highest rate of suicide in Europe among young female teenagers. Again, this is related to the Internet. In the past young girls who attempted suicide would have chosen non-fatal methods, but now they are using more lethal methods because they are being instructed on the Internet.

I saw a website today that went into lengthy and horrifying detail in providing answers for those seeking information on how to take their own lives. It is upsetting enough that adults can access this information, but we must bear in mind that children can do so too. According to Ofsted, 39% of children between the ages of eight and 11 years and 83% of those between the ages of 12 and 15 have their own smartphones. We know that vulnerable children and young people spend more time online than their peers. A recent NHS report revealed that one in three young people with a mental disorder was on social media for at least four hours on a typical schoolday and for significantly longer on Saturdays and Sundays. In 2011 the EU Kids Online study which was led by the London School of Economics found that one quarter of Irish young people between the ages of 11 and 16 years had come across harmful online content, 11% had seen anorexic and bulimic websites, 9% had seen self-harm websites and 4% had seen websites on which suicide was discussed. Given that this study was published almost eight years ago, we can be absolutely sure that the numbers in question are significantly higher today.

The "thinspiration" generation has unlimited access to all forms of websites which actively promote a culture of starvation among people who are already vulnerable. In Ireland there are 200,000 people with eating disorders. According to the HSE, the number of hospitalisations of teenage girls for anorexia and bulimia has almost doubled in the past ten years. There is a clear relationship between high levels of obsession with body image and the development of eating disorders. By definition, body image dysmorphia is one criterion in the diagnosis of both bulimia and anorexia nervosa. The websites about which I am talking are extremely damaging for people with eating disorders. There is no legislation regulating the distribution of such websites which can include online chatrooms in which starvation and eating solutions - how to starve oneself - are encouraged. Irish figures for self-harm and eating disorders have soared in the past decade. Ireland has the highest rate for girls who take their own lives. The reasons for these figures are complex, which means that we need a complex multi-factoral model to understand them. I believe that if we ignore the role played by dangerous online content, it will be at our peril. We need to study addictive-type behaviour in the use of smartphones and social media. Rates of anxiety and depression are increasing. There is extreme pressure on young people online, especially on image-based social technology websites.

This legislation will strengthen the regulation of access to unsafe online material. There is no unique approach to the regulation of online material. The existing practice is that a com-

plaint can be made to an Internet service provider which responds if it chooses to do so. It is up to each provider to act of its own accord in a form of self-regulation. There are 33 Internet service providers registered with the Internet Service Providers Association of Ireland and they have no uniform complaints procedure. No uniform actions are taken in response to complaints about harmful material. This legislation responds to a deep concern that self-governance in this area is not effective and potentially life-threatening. Its intention is to require Internet service providers in Ireland to remove or block harmful material which is not illegal but which nonetheless is age inappropriate.

Other countries have introduced legislation in response to the abuse of online information. For example, Australia has passed the Criminal Code Amendment (Suicide Related Material Offences) Act 2005. Take-down orders, as they are known under EU law, appear to be the most effective way to police this type of content because there are no standards in primary legislation for the distribution of harmful online content.

The legislation I am proposing, which no doubt will need certain revisions, seeks to place responsibility on the Commission for Communications Regulation to issue enforcement notices against Internet service providers and other entities where content is legal but age-inappropriate. Generally, illegal content is governed by the separate hotline service in Ireland, which deals exclusively with child pornography. This legislation is not concerned with child pornography.

The harmful content covered by the Bill comes under four categories in section 3(2). The first is encouragement or incitement to suicide. The second is encouragement of any self-harm practices. The third is encouragement of prolonged nutritional deprivation that would have the effect of exposing a child to risk of death. The fourth is the encouragement of any unsafe practices that would endanger the health and well-being of the child. A person can make a complaint regarding any content falling under these categories.

I pay tribute to Dr. Mary Aiken. I am delighted the legislation has received academic support from Dr. Aiken, who is the adjunct associate professor of the UCD Geary Institute for Public Policy. She is willing to chair a debate on the regulation of inappropriate Internet content. She has rallied tirelessly on the importance of this issue at academic and political levels. I am grateful for her oversight and work on this proposal. I thank the Minister of State for being here.

**Senator Pádraig Ó Céidigh:** I strongly support and congratulate my colleague, Senator Freeman, on bringing forward this Bill. The Minister of State is more than welcome. It is great to see a fellow Galway man here. There are a few of us.

**Acting Chairman (Senator Catherine Noone):** I think there are four Members here from Galway.

**Senator Pádraig Ó Céidigh:** There are, including Senator Alice-Mary Higgins.

**Senator Gerard P. Craughwell:** We would expect nothing less.

**Senator Tim Lombard:** There should be a quota.

**Senator Pádraig Ó Céidigh:** We have a good west of Ireland lady in the Chair.

**Acting Chairman (Senator Catherine Noone):** I think those of us from Mayo might trump the Senators.

**Senator Pádraig Ó Céidigh:** We will not go there. We are dependent on Corofin to help us through this year.

To get back to the Bill, I wish to make a couple of important points. I am delighted this Bill has been brought forward to Second Stage and hope the Minister of State and all parties will support it. Following Second Stage, Members who are interested parties may table amendments and make suggestions. I suggest that rather than water down this Bill, we should strengthen it because young people under 16 years who are the people defined in the Bill are very vulnerable at that age. We, as legislators, have a responsibility to protect the most vulnerable in our society. As we know, social media and the Internet are extremely invasive in terms of very vulnerable people, particularly in the area of suicide.

I listened carefully to Senator Freeman when she said she spent a few seconds on a website, as I did this afternoon. On the third search, one can see how to commit suicide. It actually explains how to tie the knot. It is disgusting. That is freely available to all. I will not go into any more gruesome detail on it but that is what we are talking about. This Bill is fundamental to addressing that issue and I will passionately support it.

As self-regulation is not working, we need leadership from the Minister of State and the Government to ensure there is a duty of care in terms of this issue. Parents, schools and we, as legislators, have a duty of care but, importantly, Internet providers have a duty of care also. Self-regulation is not working. That is the reason we need Senator Freeman's Bill. I seek to strengthen it because right now this problem is like a virus affecting vulnerable people and we must protect those vulnerable people.

I am comfortable with ComReg as a regulator in this area. I have a question about the penalties proposed, which I would strengthen. The Bill provides for a fine or a term of imprisonment not exceeding 12 months on conviction of a summary offence and imprisonment not exceeding seven years on conviction of an indictable offence. A fine for a summary offence will not compensate for the damage that can be done to one person.

I like the jurisdiction proposed in the Bill, which relates to acts committed both within and outside the State but which can affect people in the State. As the Senator said, Australia enacted legislation in 2006. I understand Germany has legislation in this area also. Regardless of what other countries have done, as parliamentarians, Senators have a duty of care to push this Bill to Committee Stage as quickly as possible and to invite contributions on it. Senator Freeman has done a lot of homework on this Bill and engaged with many people in its drafting but there is room for more support in terms of amending and strengthening it. I hope the Minister of State, the Government and all parties will support the Bill proceeding through Committee Stage.

**Senator Tim Lombard:** I welcome the Minister of State to the Chamber. I may be wrong but I believe it is the first time he has been in the Chamber since his reappointment. Not only is he being welcomed as a Galway man but also in his current position.

The Bill is very welcome. It is a significant statement by this House and a problem we need to acknowledge. There has been much talk in this space in the past six to ten months. I am a member of the Joint Committee on Communications, Climate Action and Environment which spent hundreds of hours in the past two years dealing with pre-legislative scrutiny of several Bills, including the Digital Safety Commissioner Bill. The space we are in on this issue is frightening. The self-regulation model has failed us. The space has moved so fast we have not

regulated for it. The issues have become apparent in all the hearings we have held in recent months. Major multinationals have control over data, the content put on the Internet, who takes it down, the process of taking it down and the speed at which they will act. That has become another issue that needs to be addressed. It needs to be changed and regulation is required, not only nationally but internationally also. There are many aspects that we need to tie together.

Something that happens in Australia can be viewed by me on my phone 30 seconds later. We have seen that. It is a problem for us. I will not mention the providers because it would be unfair but we have had several hearings with some of the key stakeholders. We are talking about exceptionally large multinational companies. A major meeting was held in the House of Commons on this issue which was attended by chairpersons of communications committees from Europe, Canada, the United States and even Brazil. The chief executive of one of the largest organisations, Facebook, refused to turn up at the meeting. He would not engage, even by way of a video link. It is an indication of the power of that machine when the chairpersons of 13 or 14 communications committees from across the world come together but the chief executive of one of the largest companies in this area refuses to deal with us. That is the power with which we are dealing and it is frightening.

We need legislation in this area and debates such as this one because as the Minister, Deputy Bruton, said recently, the self-regulation model needs to change. This space has changed, and we need to move into it. In many ways, we are behind the curve on this issue because the space has moved so quickly. As a parent, I am very aware of that. I have a seven year old daughter who could almost tell me how to run the Internet. It is frightening. Even in terms of basic content on YouTube on TV, we see the advertisements. When there are parents in the room the children come up to us and tell us exactly what they want for Christmas in July. We wonder where they get all the information. It is being sold to them because they can work through these mediums and, as parents, we need to educate ourselves about it.

The Bill is a positive measure. The Joint Committee on Communications, Climate Action and Environment would gladly take a Bill such as this one, go through it and work with the Senator. I am referring to the kind of information and debate we need as a society so we can make this space safer for everyone.

**Senator Lorraine Clifford-Lee:** I commend Senator Freeman on introducing this Bill in the House. I thank the Minister of State for attending to listen to this debate. Undoubtedly, the Bill deals with an important area on which we need to catch up very quickly. As others have mentioned, it is a very fast-moving space. It is scary for a parent to realise the dangers that exist. When one closes one's own door, one believes one is protecting one's children from predators but the predators are coming into one's home and can contact and communicate with very young children. It requires a lot of vigilance and education on the part of parents but it also requires us to act in these Houses. Therefore, I commend Senator Freeman on introducing this Bill. It is good to have this debate. Fianna Fáil will be supporting this Bill in principle but will be introducing in the coming weeks its own Bill on the establishment of an office of a digital safety commissioner. It is very good that we are having this debate tonight. I hope it is the start of a genuine, combined and concerted effort to tackle the dangers posed by online activity.

**Senator Niall Ó Donnghaile:** I am sharing my time with Senator Devine.

Like other colleagues, I welcome the Minister of State to the Seanad. I commend Senator Freeman on introducing this Bill in order that we can deal on Second Stage with the important

subject matter it seeks to address. Sinn Féin certainly welcomes the policy behind the Bill and its attempt to put some regulatory form on the online environment and protect those who are most vulnerable and open to exploitation.

The Bill contains many of the objectives of the Sinn Féin Bill that was introduced in the Dáil and is currently on Committee Stage. It remains under a money message. We hope progress can be made on it. Our Bill, like this Bill, seeks to have regulatory protections in our online world. It is a relatively new area that is ever-growing and it cannot be left to self-regulation or, worse, no regulation at all, nor can it be left to corporate entities to define the regulatory environment. This is a job for us as legislators. Legislation must establish the balance between respecting freedom of speech and the need to protect those who are most vulnerable. Social media and the online world will no doubt develop their own body of law on protection as ever-emerging technology increasingly invades everyday life. This body of law will need oversight.

Our Bill, like this Bill, seeks to establish an office of a digital safety commissioner. This office would be a permanent statutory body rather than an office internal to the Department. The former communications Minister supported the intention of our Bill but the Fine Gael Government thus far has failed to legislate. As it is a new emerging area of law, it will require much work from a legislative perspective. We are debating various aspects of the Bill at meetings of the communications committee, such as how we would define harmful material and how we would address the trans-boundary nature of online communications. Simply because it is a new area does not mean we should sit back and not act. The office under the Sinn Féin Bill would have responsibility for promoting digital safety, online reviewing and regulating harmful digital communications on the Internet as well as other digital platforms with the intention of establishing safer and healthier attitudes for all users of digital platforms. The concept of a digital safety commissioner is supported by the ISPCC, the Ombudsman for Children and CyberSafeIreland. The former Minister also spoke positively about it.

It is time to legislate in this area and put proper protections in place. That is why I again commend Senator Freeman on introducing this Bill. We shall support it as it progresses. I apologise to Senator Freeman because I will not be present for the rest of the debate as I am hosting an event in the audiovisual room.

**Senator Máire Devine:** I wonder whether any of us remembers Bebo. I remember asking when my children were growing up what it was all about and what was happening. It was a very innocent time. Providers eventually looked around and said they could make progress on the concept and make a profit from it. This is achieved by our allowing our children to be subjected to extremely unacceptable images and whatever else is put up on the Internet that cause them much angst and despair and at times send them into very dark places. The children are subjected to these before they have had a chance to grow up inquisitive, funny, smart, crying, bold and so on. There is a dark side that Internet providers have tapped into in our children's heads. We need to protect them. I lament the innocent days of Bebo and the question of how it was to be saved. This Bill intends to achieve what is required in that regard.

I believe Senators Freeman and Noone were with me at a meeting of the Joint Committee on Children and Youth Affairs attended by representatives of Facebook. The providers sat there and had the audacity to say how wonderful they were, how glossy they were, how caring they were and how wonderful their approach was to the protection of children in the circumstances in question. It belied the fact that all the company is interested in is profit. The company left up for days on end a video of an online suicide. It left up for days a video of an assault on a child

and found nothing in it that was in breach of its terms. It was a vicious assault on a child by an adult, not by other children.

I am delighted to see a provision for the Minister to re-evaluate, reassess and amend this Bill. I would like to believe the Bill will be able to cover more high-risk areas, including gambling. I refer to the targeting of our children by online games that get them to trade something for something else. Eventually the money creeps in and one can buy extra teddy bears for €2, for example. This activity is occurring and the games are aimed at children of three years and upwards. That is quite concerning. Gambling is normalised as a game from childhood.

I thank Senator Freeman and commend her on introducing the Bill. I trust her. I thank her for her ongoing commitment to children and their childhoods, happiness and safety.

**Senator Alice-Mary Higgins:** I join others in welcoming the Bill. Having the advantage of speaking at the end, I welcome the strong consensus on all sides of the House in recognising self-regulation is not adequate in this area. It is encouraging that we are hearing various proposals from all the parties and groupings. I am hopeful that we will find ways to work together and combine the best legislative proposals. While I recognise this Bill works under ComReg, I believe the case for a digital safety commissioner has been strongly made. If a proposal were made for the establishment of such a role, perhaps the Bill could work with it. The Bill refers to sole responsibility but additional responsibilities might need to be catered for if we succeed in establishing a digital safety commissioner. That is important.

Senators have said things are moving fast. For quite a long time, online service providers have managed to create a sense that this is an impossible area to regulate and that it cannot be done. This is similar to the intimidating dynamic we used to hear about regarding financial regulation. We are told the system is global, that it is everywhere and nowhere, and that it is impossible to regulate. As with financial regulation, we have realised this is an area that can be regulated because the companies do land and have headquarters, bases, clients and customers. They have commercial practices. Anywhere there is money changing hands, regulation is possible. What we are seeing now is a stepping-up by legislators. I am happy to see it across this House but I have also met legislators in the United States and in other parts of Europe who have realised that this is an area where many of our citizens spend time and where we have a duty to see if we can take action. Ireland has a particular duty because this is where many of these companies are headquartered.

Some specific points are really positive in this Bill and represent useful additions to the debate in online safety. The expression “distributes or otherwise makes available” is used. This is important because it is not always the case that something is simply published. Some material may be published online but “distributes or otherwise makes available” covers something wider. It covers personal messages that people may get. Such messages might come directly to people and may not be subject to any of the normal safeguards or screens that we have in the public sphere.

The issue of harmful practice and how platforms respond to it arises. There is also the issue of incitement to hatred, which is another matter that needs to be looked at. I am keen to strengthen the Bill in that regard.

Another important point complements the last point in terms of the issue of direct messaging. This is a major area where people are being reached. It is not as visible as Facebook or

what might be happening on Twitter. I am referring to direct personal messages and WhatsApp. We know WhatsApp is an area where people receive messages. It is an encrypted site. It is difficult to know what content is there and how to access it.

The framing of the expression “a means of communication” is interesting in terms of the jurisdiction. It applies even if the person is outside the State but the means of communication is located in the State. WhatsApp and other direct messaging formats rely on telephone numbers sourced in Ireland. We know about the area of incitement to hatred and we have seen the use of WhatsApp in the Brazilian elections and elsewhere. The number attached to a person’s messages in WhatsApp needs to be accessed in a given country. I can send a number from a UK telephone number. However, if I have a telephone number with a 087, 086 or 085 prefix, the number is sourced. Ireland has strict rules around the regulation of unsolicited text messaging and so on as well as in the area of direct marketing through text. There is scope for us to target the area of WhatsApp, which is a concern.

I am coming to the area of micro-targeting. The sentiments that have been expressed on content that is harmful are strong and clear in the House. That is one half of the picture. The other half of the picture is the targeting. There is the question of content as well. This measure goes a long way to regulating it, but there is also the matter of targeting and how people are reached. I am keen to note two areas in particular. The Bill sets the age of a child at 16 years. I would prefer if the age was 18 years because in most areas a child is construed as being 18 years or under, with the exception of the sub-clause in the general data protection regulation. We could go with what section 29 of the general data protection regulation, which refers to a child of 18 years.

We already have a law on the Statute Book. Senator Lynn Ruane and I won this amendment in the debate on the general data protection regulation. It specifically states that it shall be an offence under the Act for any company or corporate body to process the personal data of a child for the purposes of direct marketing, profiling or micro-targeting. Such an offence shall be punishable by administrative fine. That is already the law, but the problem is that it has not been commenced by the Government and no date has been set.

**Acting Chairman (Senator Catherine Noone):** The Senator has one minute left.

**Senator Alice-Mary Higgins:** This is my key point. Let us work together on this legislation. Let us start by commencing the legislation already on the Statute Book to counter situations like gambling. There are situations involving companies advertising what are supposedly health products that are extremely dangerous to young people. We know that marketing lists are used all the time for profiling. A child may have indicated a vulnerability. Perhaps the child has been looking at a site around her personal appearance and so forth. That can become part of a profile that allows a company to target such a child with messages.

We have legislation on the Statute Book. If commenced, that legislation would mean that at least such activities, where there is commercial intent in the targeting of vulnerable young persons, would be diminished significantly. It would mean we would not have a situation whereby a company can have a profile of a vulnerable young person that can be shared and used by others. A company may have knowledge of persons who have indicated vulnerability in one space. That information may be shared with others who may use it to target those persons. Often this occurs with unsolicited messages that can push people further along routes of self-harm or self-endangerment.

I realise this is a matter for the Minister for Justice and Equality. I appeal to the Minister of State to pass on my appeal as a first step and set a date for commencement. I look forward to taking the other aspect relating to harmful content further in future. I commend the Senator.

**Senator Victor Boyhan:** I warmly welcome the Minister of State. It is great to see him back as a Minister of State. I thank my colleague and fellow Independent Senator, Senator Joan Freeman, and my other Independent colleagues who have co-signed the Bill. When Senator Freeman contacted me I did not have to think twice because she is known for her record in safeguarding and protecting children. Other Senators have alluded to this also. She has a strong record in this area and in the area of mental health. She touched on self-harm, suicide, self-esteem and vulnerability. These are all important issues that affect young people and older people.

It is strange when people talk about younger people because we are all vulnerable. We all have our moments. No one likes to be criticised and certainly no one wants to be humiliated through a medium outside his or her control on the Internet or through all the technologies that go with it. Politicians are all aware of that. There is not one politician who, at some point, has not had an experience relating to Facebook or some form of social media. This is a risk.

Senator Lombard referred to an international dimension. There are local, national and international dimensions in all of this. We should consider this in the context of the European Union and how we can address these issues at that level. We all know that if we go outside the European Union then we have roaming charges. People know where we travel because of our use of technology. There are mechanisms. People do not fail to send the bill to customers. Therefore, we can track people down. As I said before, the iPhone is a powerful tool. If abused or misused it can do extraordinary damage to people's heads, old and young. That is an important point.

I wish to recap to be sure and clear what we are talking about in what this Bill is attempting to do. The Bill aims to regulate legal but age-inappropriate content by way of take-down enforcement procedures. This procedure will operate where material falls within the definition of harmful material set out in the Bill. I recommend that everyone should read the explanatory memorandum that comes with the Bill. It clearly sets out the matter. We do not want any ambiguity. It is clearly set down in the explanatory memorandum and it is important that we should say as much.

Earlier, Senator Freeman talked about the 33 Internet service providers in Ireland registered with the Internet Service Providers Association of Ireland. None has uniform consistent complaints procedures or uniform actions to respond to complaints. That is a concerning fact. These are the difficulties that must be addressed and taken on board. There was talk about the model in Australia. We do not have to go that far. There is a European dimension to this.

Senator Freeman has put this matter on the table. She has put the heads of this Bill up for discussion. Clearly we are in the early stages of it, but I encourage all groups, parties and people involved, whether in the House or outside the House, to come and make contact with Senator Freeman or anyone else in Leinster House with their ideas and suggestions.

Senator Freeman referred to Professor Mary Aiken coming in to make a presentation. Perhaps it should be somewhere more formal than the audio-visual room because it requires more analysis than simply ten minutes of an AV presentation. The suggestion is a good one and I would like if Senator Freeman proceeded with it. I know that the Senator has worked well with

her contacts to progress this matter.

The point raised by Senator Lorraine Clifford-Lee is a good one. I am glad Fianna Fáil will introduce legislation proposing the appointment of a digital safety commissioner. No one has a monopoly on this issue and that proposal should be implemented. The Taoiseach talked about this, changed his mind and then said he was not sure. We all recognise there is a problem that needs to be addressed. We are all concerned about people's health and well-being and the impact of information technology. We should, therefore, pursue the idea of having a digital safety commissioner. We should use this Bill as the basis for powerful legislation that attempts to regulate and address the serious shortcomings in this area. I thank Senator Freeman for her work and wish this legislation well as it goes through the various Stages.

**Acting Chairman (Senator Catherine Noone):** I should allow the Leader to speak now but Senator Craughwell has been waiting to speak since the debate commenced.

**Senator Gerard P. Craughwell:** I thank the Leader for giving way.

**Acting Chairman (Senator Catherine Noone):** I was referring to the order of the House. Senator Craughwell did not ask that it be changed.

**Senator Jerry Buttimer:** It is always good to oblige a willing colleague.

**Senator Gerard P. Craughwell:** The Minister of State, Deputy Canney, is a good Galwegian and a great Minister of State. I welcome him back to the House and to a ministerial role. He will serve that role well while serving his constituency well also. I am delighted to see him back in the job. In my previous life, I managed 300 personal computers, an open Internet connection and an e-learning platform for a college of further education. Throughout my entire time doing that, from 1995 until I became the president of the Teachers Union of Ireland, TUI, I fought for uncensored, free access to all platforms for my students. I hold the right to free speech and free engagement as a dear and cherished thing to which we should all have access. In saying that, the Bill brought forward by my colleague, Senator Freeman, is essential because there is an age at which free access is fine but only to a certain degree.

In my first week as president of the Teachers Union of Ireland I had to visit a school where two 12-year-old girls had committed suicide. Shortly afterwards, I had a meeting with the principal of the school. He made a point that is worth putting repeating because there are people who will claim this is nanny state legislation that seeks to control things. The principal told me that while children come to school at 9 a.m. and go home at 4 p.m., somehow or other he is responsible for them 24/7 between 1 September and 30 June. He told me that when the children go home their parents, acting as responsible parents do, ensure they are fed nourishing food, do their homework exercises and whatever chores have to be done around the house and insist they wash, clean their teeth, say their prayers, if religious, and get into bed. The one thing the parents do not do, however, is take digital devices off their children. Instead, they allow them to go to bed with a mobile phone and access to the Internet, texting, WhatsApp and the various other platforms.

In the couple of years I travelled around second level schools, I saw some of the things that are done via social media, not only student to student but, in some cases, student to teacher. We suddenly realise that while social media, on which the Minister of State and I are both active, is a wonderful tool, by God, we pay a high price for it in terms of some of the things said on some of the platforms we use. I recall looking at my Twitter account one weekend. It came

to the stage where I had to step away from it because it would have had a serious impact on my mental health. Some of the statements made on these social platforms are outrageous. People can say and do as they want.

During my time in the education and e-learning environment, we were given a lecture by a representative of one of the Internet search engine providers. The individual in question spoke at length about how his company's search engine would revolutionise education because it would provide free access to accurate information. One man at the lecture put up his hand and asked if it was true that the company provided only limited access to information in China. The response was that it did so because the Chinese Government would not allow full access. In that case, the questioner stated, the search engine company was not giving full access to factual information everywhere. He continued by asking if this meant it was possible to control access to information and content. The response was that this was possible. This cuts straight to Senator Freeman's Bill as it shows that Internet service and search engine providers can control and manage what is out there in the ether. Senator Higgins spoke about applications such as WhatsApp messaging, as well as plain, straightforward text messaging. While the Bill goes a long way towards controlling information, we need to make provision for liability for unsolicited person-to-person messages or messages with dangerous content.

I will support the Bill. I hope to be able to add to it some of the measures in my Bill on digital equipment in schools. I also hope other measures will be added to the Bill over time.

We must keep front and centre that we are talking about children who are the most vulnerable in our society. Children have access to content which is age inappropriate. As Senator Ó Céidigh said, they have access to instructions on how to commit suicide and diets that are supposed to make people slim and good-looking but which are probably killing them or doing serious harm. As a society, we have to take responsibility for that. Unfortunately, the Minister for Communications, Climate Change and Environment, Deputy Bruton, will carry the can for it.

We have to expedite this legislation and pass it quickly. It needs to be beefed up and I know Senator Freeman will be open to including additional provisions. I commend the Senator and thank her for bringing forward the Bill. It is important that it is in the public domain and people are talking about this issue. A national conversation is needed on what we find acceptable for our children. As an educator, the Minister of State will also have concerns and will have seen in his professional career how good information technology can be in education and how harmful it can be when misused.

**Senator Jerry Buttimer:** I welcome the Minister of State, Deputy Canney. I am delighted he is back in ministerial office. I have always found him to be very courteous, conscientious and helpful. I welcome Senator Freeman's Bill, which presents us with an important opportunity to have a debate on providing protection in the digital world. Many of us have been involved long before today in promulgating the need for cybersafety. Senator Lombard and I have been working together on this area. The issues extend beyond those addressed in the Bill to the issues of young people gambling and loot boxes.

A startling report last week found a 400% increase in child gambling in the UK. What would a comparable report find about our country? It is important that this discussion is held. I commend Senator Freeman on introducing the Bill. We need to ensure we do not operate in a silo mentality. Many issues in the digital world, including parental control and the various risks children and young teenagers face online, whether cyberbullying, texting and sexting or

predators. This is about creating knowledge and awareness, communicating information and ensuring there is oversight. That is important.

This is not just about having a digital safety commissioner or what the Taoiseach said or did not say. It is about making sure that people understand that what goes online remains online. Many of us have been involved with schools, community groups and parents associations to ensure we provide the best code of practice and information for parents, guardians and young people.

I am particularly concerned about some of the practices that have crept into the gaming sector. I am not trying to denigrate the gaming industry which provides much valuable employment and is a great resource in the country. However, in some cases, it is linked with behaviour that we need to discuss in the context of what the Bill is trying to achieve. A recent report from the UK Gambling Commission states 25,000 children between the ages of 11 and 16 years are problem gamblers, with many learning how to bet via computer games and social media. This raises the question as to whether we are all turning a blind eye to and sleep-walking into future problems. For this reason, with a good friend, Mr. Eoin Barry, I met Mr. David Sweeney, SC, from the Interactive Software Federation of Europe, ISFE, and, Mr. Alan Duggan, director of the Galway Film Centre who hails from the same county as the Minister of State, to discuss the issue of loot boxes and the gaming sector and work with them in partnership to bring about best practice.

I very much welcome the debate tonight and the bringing forward of solutions. However, solutions must come from the ground up, not from the top down. It cannot be about big brother watching or, as Senator Craughwell stated, about the nanny state. It is about all of us seeking collective buy-in to ensure the future generation of young people is not, as I said, sleep-walking into problems.

There is a need for more information and data to be gleaned and parsed through and analysed to determine how we can make the digital world a better one to navigate and achieve better outcomes. We all benefit from the digital world and the cyberworld but, equally, there are areas in which greater vigilance is required. A proper debate is needed on mental health and online safety and there are practices that can be outlawed. When I chaired the hearings on the Protection of Life During Pregnancy Bill 2013, many of us were subjected to the most vitriolic emails. I was impressed that when I brought one such email to the attention of gardaí in Harcourt Street in Dublin, they were able to trace the computer from which the email had been sent to a particular location, even though it had been routed through many parts of eastern Europe. I was most impressed that An Garda Síochána was able to trace it back to a particular person, and I commend the gardaí involved on doing so.

Senator Freeman and I are not on a crusade against gaming or the digital world but we must ensure that best practice is followed. We need to address issues that have so far not been addressed. When I met the Minister of State at the Department of Justice and Equality, Deputy Stanton, I was enthused and taken by his sincerity. All of us have an obligation to promulgate ideas on various aspects of the cyberworld to help people access information. I commend all those involved in many different helpline activities providing a resource and assistance for people.

Part of our difficulty is that there is a generation of people who do not understand what happens online and perhaps have a hands-off approach to their children's activity. We need to edu-

cate parents and young people. I was struck by Senator Lombard's remarks about his daughter. Many of us will have nieces and nephews who are much more proficient online than we will ever be. That presents its own challenge.

Tonight's debate is a starting point to enable the continuation of the work being done. I hope we will work in collaboration, rather than with a silo mentality. It is not about one size fitting all but about ensuring we strengthen regulation without being overprescriptive or becoming a nanny state. At the same time, we must make sure online material is safe and we put in place proper controls, as we have done with alcohol and gambling and in many other areas.

On a wider point, this country has an issue with gambling, particularly online gambling, that we need to address. I hope we will tackle that issue. I commend Senator Freeman on introducing the Bill which gives us an opportunity to discuss this issue.

**Acting Chairman (Senator Gerry Horkan):** I welcome the Minister of State, Deputy Canney. Is it his first time back?

**Minister of State at the Department of Communications, Climate Action and Environment (Deputy Seán Canney):** It is my maiden voyage.

**Acting Chairman (Senator Gerry Horkan):** I am delighted to see him here.

**Deputy Seán Canney:** I thank Senator Freeman and her co-sponsors for introducing this Private Members' Bill. As has been said, the online world brings enormous benefits. We see these benefits in our everyday lives, from small business owners using new technologies to improve their products and services to families communicating with loved ones abroad in an instant. However, as the online world becomes more present in our day-to-day lives, we are increasingly aware that it presents risks, especially to vulnerable members of society, including children.

On behalf of the Government, I thank Senator Freeman for the work she has put into producing the Bill. The intention of the legislation is to ensure children do not have the opportunity to access content which is manifestly designed and intended to have a negative impact on their health and well-being. The Bill seeks to achieve this by putting in place a notice and take-down system for harmful material to be enforced by the Commission for Communications Regulation, ComReg.

The type of material which Senator Freeman is seeking to have removed from the Internet or blocked from Irish audiences represents some of the worst examples of harmful content available online. Any website, the sole purpose of which is to encourage children or any user to commit self-harm or suicide or to engage in practices which are detrimental to their health, for example, pro-anorexia websites, represents the worst of humanity.

Online safety for all but especially for children is a priority for the Government. For this reason, the Government will not oppose the passage of Senator Freeman's Bill. Our commitment to online safety is most clearly demonstrated by the publication and ongoing implementation of the Action Plan for Online Safety 2018-19.

Appearing before the Joint Committee on Communications, Climate Action and Environment recently, the Minister, Deputy Richard Bruton, stated the era of self-regulation in this area was over. If this Oireachtas is to pass legislation, we must ensure that any proposal is robust

and meets the urgent public policy objective of protecting children online. Following his recent appointment, the Minister sought urgent legal advice from the Attorney General. That advice will be important.

The House will be aware that in July the Taoiseach launched the Government's action plan for online safety, which is the first of its kind in this country. The plan commits the six key Departments, namely, the Departments of Communications, Climate Action and Environment; Business, Enterprise and Innovation; Justice and Equality; Education and Skills; Health; and Children and Youth Affairs, to implementing or substantially progressing 25 actions before the end of 2019. The plan is a whole-of-government approach to online safety, which reflects the fact that there can be no single Department with responsibility for the Internet as the Internet cuts across all policy areas and remits. The actions contained in the plan are wide-ranging and include education, guidance and awareness-raising measures, legislative measures and the establishment of robust monitoring and implementation structures. Senators have spoken about these different aspects.

I take the opportunity to highlight some of the highly important work ongoing under the action plan. The National Advisory Council for Online Safety which I chair was established as part of the action plan. The council is a multi-stakeholder forum with a broad membership drawn from key stakeholder groups, including non-governmental organisations and industry.

#### *6 o'clock*

The terms of reference of the council are designed to make the most of the experience and knowledge of its members. They include providing advice for the Government on online safety issues, identifying emerging online safety issues where the Government may need to take action, inputting into the development of a wide range of online safety guidance materials and reviewing national and international research. The council has met twice since its establishment in October and has set up subgroups to progress its work, including conducting a foundational online safety research project in 2019. It is my intention that the work of the council be transparent and that the minutes of its meetings therefore be available on the website of the Department of Communications, Climate Action and Environment. 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 regarding the Digital Safety Commissioner Bill 2017. That Bill, which was introduced by Deputy Ó Laoghaire, seeks to tackle online safety issues in a similar way to the Senator's Bill by putting in place a "notice and take down" system for "harmful digital communications". An important difference between the Bills is that the "notice and take down" system proposed in the Deputy's Bill would apply to content, whereas the system proposed in the Senator's Bill would appear to apply to websites or services as a whole. As I have said, the views of the Attorney General on the establishment of a digital safety commissioner have been sought. Many of the same legal issues arise in respect of the Senator's Bill, a number of which I will briefly outline.

I will first address the issue of the definition of "harmful materials" in the Bill. The definition in section 3(2) of the Bill contains four parts. In the first three parts of this subsection, the Senator has set out to define the type of activity that could be regulated. This type of definitional work is absent from the Digital Safety Commissioner Bill. The fourth part of the subsection refers to content containing "encouragement of any unsafe practices which would severely endanger the health and wellbeing of the child". Section 3(4) provides that the Minister for Children and Youth Affairs or the Minister for Communications, Climate Action and

Environment may make regulations specifying “further circumstances in which material is to be regarded as harmful”. Given the serious and criminal nature of the sanctions provided for in section 5 of the Bill, the language here would need to be clearer as to whether the proposed regulatory authority, in this case the Commission for Communications Regulation, would be required to interpret this part of the definition or whether this part of the definition would only be in effect once regulations had been prepared by either Minister.

I move to the jurisdictional issues in the Bill. Section 7 provides that a person may be tried in the State for the criminal offence set out in section 5. Section 7 also includes an extraterritorial provision for an Irish person or resident to be tried in an Irish court for acts that are an offence in any other state. These provisions would need to be carefully considered in that they seek to recognise in Irish law the laws which are or may be in place in other countries. This may be legally problematic and would need to be further explored.

Another issue raised in the Bill is the blocking of non-harmful material. Section 4(5) of the Bill provides that ComReg may require a service provider to take steps which would block users from accessing non-offending material. This issue arises because the “notice and take down” system proposed in the Bill would apply to services and websites as a whole, rather than the offending content itself. Under this proposal a website which hosts a large volume of legitimate material of a social or business nature may be made unavailable to Irish users on the basis that it hosts or has hosted offending content. In creating a new law in this area, the Oireachtas will have to balance the fundamental rights of all members of society, including the right to freedom of expression, which is protected by the Constitution and the European Court of Human Rights. It will be important to ensure this section would not have any unintended consequences and end up restricting legitimate free speech.

If the Bill were to provide for users to make a complaint to the service provider in the first instance and, if they were not happy with the response of the service provider, to then make a complaint to the regulator, it could be a way to ensure complaints about “harmful materials” are dealt with quickly and the offending content removed rather than entire services. This would also be in line with global best practice and the European Union liability framework for online platforms set out in the eCommerce directive.

Online safety is for all but especially for children. It is a priority of the Government. It is one we are pursuing through the Action Plan for Online Safety 2018-19 and at a European level - for example, through the upcoming implementation of the audiovisual media services directive. As I said, the Government will not oppose the passage of the Senator’s Bill on Second Stage. Given the similarities between the intention of this Bill and that of the Digital Safety Commissioner Bill 2017, it might be useful for the Oireachtas Joint Committee on Communications, Climate Action and Environment to consider the issues identified in the Bill.

**Acting Chairman (Senator Gerry Horkan):** I note the Minister of State has a closing statement also. He can only speak once. Is he happy with his contribution?

**Deputy Seán Canney:** That is it.

**Acting Chairman (Senator Gerry Horkan):** Perfect. I call Senator Freeman to conclude.

**Senator Joan Freeman:** I thank the Minister of State and welcome his comments and concerns. I truly want to work really hard with him on this, on making the amendments and changes required, and I do understand there is a lot of work involved. The problem I have is

that things are quite slow in the Oireachtas. Senator Lombard made the point that his seven year old probably knows more about the Internet than he does. A number of Senators made similar points. I would not say “probably”; I would say “absolutely”. A startling fact I did not mention earlier is that 3% of children up to the age of two years have a smartphone, so this must be done very quickly. I do not mean we should rush it such that we make a bags of it. I am saying we should work on it very quickly together in order that we can pass it through the Seanad and then on to the Dáil. When I talk about the speed required, what I am saying is that every day, every month, every year, children get to know things far more quickly and have far more access than we can ever imagine. One Senator spoke about parental control, which sounds absolutely reasonable. As we heard from Senator Lombard, however, most parents have no idea what their children are looking at. There is a cartoon I am sure the Minister of State has heard of called “Peppa Pig”. I have heard of it recently because I have four grandchildren. There are videos online of a bad Peppa Pig who kills not only his family but also her three best friends. We are exposing children to the utmost horrors that neither the Minister of State nor I would ever have dreamt of.

I thank the Minister of State again for not opposing the Bill on Second Stage. I thank the Senators who are wonderfully supportive of the Bill. Again, I know we have a lot of work to do. I thank in particular Senators Ó Céidigh, Boyhan and McDowell for putting their names to the Bill. I would very much like if the Minister of State and I could meet his team in January to look at all the areas of the Bill he mentioned as needing to be amended and added to. Let us not drag this out. Let us really work hard on it. God knows how long the Government will last, but let us be able to look back and say that at least we tried to do something very positive for children. We must do something now.

Question put and agreed to.

Committee Stage ordered for Tuesday, 18 December 2018.

*Sitting suspended at 6.10 p.m. and resumed at 7 p.m.*

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

### SECTION 37

Question again proposed: “That section 37 stand part of the Bill.”

**Senator Michael McDowell:** On the previous occasion we were discussing the meaning of section 37, insofar as it disapplies Chapters 1 and 2 of Part 7 of the Bill to a judicial office to which section 44 applies. This means it disapplies the provisions of sections 38 to 43, inclusive, to the offices of the Chief Justice, the President of the High Court or the President of the Court of Appeal. This would be all very well, except when we go to section 38 we find that the dis-applied provisions include information on the selection procedures and other matters being set out in a published statement and the advertisement of an invitation for selection applications. It also disapplies provisions to do with applications for appointment to judicial office. The provisions of sections 40 to 43, inclusive, which deal with health and other issues, are also disapplied with regard to appointments to those offices.

Why is this being done? Section 37 really makes no sense unless the commission is extracted completely from the process of appointing persons to the position of President of the High Court, President of the Court of Appeal or Chief Justice. There is no logical reason to disapply these general provisions unless section 44 is amended. This is the point I find a little bit disturbing. The Minister has had plenty of time and he has complained about the amount of time the Bill has taken, to indicate and table an amendment to section 44 that we could consider on Committee Stage. He has not done this. He is keeping his cards close to his chest. Has the Government come to a view that section 44 cannot stand part of the Bill? Is this why section 37 is being left in?

**Senator David Norris:** I am seeking the Minister's guidance because section 37 just states, "Nothing in this Chapter or Chapter 2 shall be construed as being applicable to a judicial office to which section 44 applies". I follow Senator McDowell in taking it that this refers to the Chief Justice, the President of the Court of Appeal and the President of the High Court as these are the officials named. The explanatory memorandum states something I do not quite understand. Perhaps the Bill has been reordered in some way and the numbering is wrong or perhaps there is a reason I have not seen this. It deals with the principle condition to be satisfied, which is that the committee will not recommend a person unless the practice requirements set out in the Courts (Supplemental Provisions) Act 1961 are fulfilled. The explanatory memorandum states:

*Section 37* provides that in addition to the provision that recommendations be based on merit pursuant to section 7, a relevant committee shall not recommend the name of a person to the Minister unless the relevant practice requirements set out in the Courts (Supplemental Provisions) Act 1961 are complied with. A relevant committee must also ensure that the requirements in the published statement(s) are complied with.

I do not really follow that. Will the Minister say if this is the appropriate explanation in the explanatory memorandum? Perhaps he can tell me if I have mistaken something or it has been renumbered. It does not seem to deal directly with the material either in section 37 or section 44.

**Minister for Justice and Equality (Deputy Charles Flanagan):** I do not wish to disturb Senators in any way but I am on record as having said I will be coming back on Report Stage with appropriate provisions in respect of dealing with section 44 appointments. I am giving appropriate consideration as to whether it might be expanded and further developed. I want a framework for dealing with what may be regarded as the three most senior appointments. Whatever precise arrangement is arrived at, I will ensure that all the appropriate criteria will necessarily apply to all posts. I am not minded to table an amendment at this stage but I am very keen to examine, in detail, the Bill as amended on Committee Stage. I will then proceed to Government with the issues which I regard as outstanding. I will bring a message from Senators relating to certain points which we have spent some time discussing. I am minded to deal distinctly with senior appointments.

I am very keen to reach a position of finality on what precisely is meant by senior appointments, in the knowledge that specific reference is made in section 44 to what constitutes the top three. All the necessary criteria should, of necessity, apply to all posts and they will do. I will come back on Report Stage in response to the very strong representations made by Senator McDowell and others regarding senior appointments.

**Senator David Norris:** The Minister did not address my confusion about the explanatory

memorandum.

**Deputy Charles Flanagan:** As is the case in the normal processing of legislation, the explanatory memorandum will probably bear a date which is the date when the Bill was initially circulated. It will have changed significantly in its composition since.

**Senator David Norris:** I had imagined I had got the wrong section and now see that section 36 limits the application. Section 37 should probably read “section 36”. It is the wrong number.

**Deputy Charles Flanagan:** Some of the numbers have been changed. I will certainly be happy to provide Senator Norris with a note on where the memorandum corresponds and does not correspond with the Bill as amended by the Dáil.

**Senator David Norris:** It will take into account future sections.

**Deputy Charles Flanagan:** Yes.

**Senator David Norris:** I thank the Minister. That would be very helpful.

**Senator Michael McDowell:** I am glad to hear what the Minister has said. The more I have reflected on section 44 and on whether it should be wide or narrow or should apply purely to the Chief Justice, the President of the Court of Appeal and the President of the High Court rather than to ordinary members of those courts, the more convinced I have become of the merits of making the broader case which I have made.

I wish to outline, for the information of other members of the Government who may take an interest in these proceedings, my particular reasoning in relation to this matter. One of the things this Bill seems to ignore in its present structure is the fact that every member of the High Court, man or woman, is *ex officio*, and is entitled, when invited by the President of the Court of Appeal or the Chief Justice, to serve as an ordinary member of the Supreme Court in any particular case. To become a member of the High Court, as the law stands, one has effectively to be franked as a person who is suitable when invited to sit on the Court of Appeal and to sit as an ordinary member of the Supreme Court. It is part of the job and nobody should be on the High Court if they are not capable of discharging that function when they are invited to serve on a temporary basis. There are no grades of judicial capacity as between the High Court, the Court of Appeal and the Supreme Court. It is not a pyramid structure with a judge of one calibre in one court while a judge of another calibre can only be in the second or third court. If every single judge of the High Court can, when invited, serve as an ordinary judge of the Court of Appeal and the Supreme Court, the corollary of that is that, on becoming a High Court judge, a person is deemed to be somebody who can serve on the other two appellate courts.

This Bill should not even remotely attempt to state that, once a person is on the High Court or the Court of Appeal, he or she has to persuade the judicial appointments commission, whether that be composed of judges, lawyers or lay people, that they are suitable to be a permanent member of a court of which they can, as a matter of law, be a temporary member. I am not trying to put up a barbed wire fence or to rope off the High Court-----

**Deputy Charles Flanagan:** The Senator might be more familiar with this than me.

**Senator Michael McDowell:** -----from the Court of Appeal or the Supreme Court. I am not saying, for reasons of intellectual snobbery or any such reason, that the members should not

apply to the judicial appointments commission. It is because nobody should be on one of those courts who is not capable of functioning when invited on the Court of Appeal or the Supreme Court. There are not two tiers of Judiciary in the High Court. There are not class B judges whom nobody would touch with a barge pole, who should never be asked to participate in the hearing of an appeal because they are in some sense inferior or of a lower grade. They are *ex officio* capable of discharging the function of an ordinary judge of the Court of Appeal or the Supreme Court. It is precisely for that reason that there is no rhyme or reason in asking them to submit themselves to another group who will re-evaluate them or ask if they should be there permanently rather than just temporarily. They are capable of doing both. That is why I am offering the Minister, in a constructive and friendly way if I can, a coherent intellectual reason for saying that serving members of the High Court, the Court of Appeal and the Supreme Court should not be asked to resubmit any application to a body at any stage. They have already passed the test. They are already deemed to be capable of discharging the functions of ordinary judges of those courts.

I am not going to push the matter much further. I know the Minister started off with the position, which I fully understand, that the three presidencies were to have this special arrangement. Everybody else who was to be considered for appointment had to go via the commission and be the subject of a shortlisting arrangement. The fact that a judge has been put on the High Court effectively shortlists and qualifies him or her to be an ordinary member of the Supreme Court when requested to act. Therefore he or she has passed all the relevant tests. I have to nail down this point; the question then is whether he or she should be a permanent member of the Supreme Court or just somebody who may be asked by the Chief Justice to act up, so to speak, from time to time. Under the Constitution, that latter question, whether Mr. or Ms Justice Bloys, a member of the High Court, should be in the Court of Appeal or the Supreme Court, is one for the Government alone to decide. It is the Government that decides the composition of the Supreme Court. The Government looks to the kind of Supreme Court it wants. It looks to the kind of judges that are available to it, and others, to make up the kind of Supreme Court it wants and it makes its selection. It is a governmental matter. A re-evaluation of each judge by a group of outsiders is not needed. When I say “outsiders” I mean outside of Government, not outside of the practice of law. The Government does not need to be told that a man or woman who has been serving on the High Court for ten years must be re-evaluated to see if he or she should be a member of the Supreme Court. That function is reserved for the Government. It is my view that the spirit of this legislation is an attack on that constitutional prerogative of the Government. It is designed to say the Government can theoretically select Mr. Justice Norris and put him into the Supreme Court but it cannot really do so. The legislation will make it very embarrassing for the Government to do so unless the candidate has gone to the judicial appointments commission and somehow persuaded it that he is all right from the point of view of background, social representation, gender balance, the whole lot.

**Senator David Norris:** I am very gender balanced.

**Senator Michael McDowell:** Exactly.

**Senator David Norris:** There is no doubt about that.

**Senator Michael McDowell:** The legislation would require the candidate to be selected as one of a list of three to be appointed to a vacancy.

I believe the entire High Court is a shortlist for appointment to the Court of Appeal and

under the Constitution the entire High Court and the Court of Appeal are the shortlist for appointment to the Supreme Court. We do not need some further evaluation. We do not need people's health examined. We do not need them to apply and be interviewed by other people. It is a prerogative of Government to make a choice from that short list.

The exception to that is where a judge has been directly appointed as a member of the Supreme Court from being a practitioner. That has happened in some cases. There is a serving member of the current Supreme Court who fits into this category. I have no problem with somebody in those circumstances being asked to submit to some form of evaluation or to show some interest. I have no objection to that. However, I am also very clear that if the Government decides, notwithstanding the provisions of this legislation, to simply ask such a person to accept appointment to the Supreme Court, there is no constitutional reason that he or she should not be appointed without involving the commission at all. The Minister and I are at one on this.

The advantage of the commission that I can see is that people, particularly people who are not serving members of the High Court, the Court of Appeal or the Supreme Court, who might be interested in appointment to any of those courts are "encouraged", in inverted commas, to feel there is an outside agency to which they can make an application. They are encouraged to feel that this agency will look at them fairly and squarely, on a par with judges, and conclude that the Government should consider them when it makes an appointment. Therefore, the advantage of the Judicial Appointments Advisory Board as it currently stands and of this commission, however exactly it ends up, is this; people who heretofore have felt they have no particular *entrée* into the category of people the Government would even consider appointing have some method of coming to the attention of a body which takes a look at them, says they are good, bad or indifferent and shortlists some of them for consideration for appointment to the Judiciary by the Government.

This is the point. Once someone is a member of the senior Judiciary, he or she is already part of a shortlist as a matter of law. It is wrong to tell people on what is in effect a statutory shortlist of people who can be appointed by the Government without further ado that this does not count for anything. It is wrong to tell them that they must resubmit themselves to a body whose function is to consider for appointment to the courts people who are not judges at all, and they must start again among those candidates. It attacks the spirit of the Constitution.

Going back to the particular, it is very clear to me that section 37, as it stands, is explained by the fact that an entirely different avenue to appointment to three separate offices, the presidencies of the Supreme Court, the Court of Appeal and the High Court, was contemplated by the Bill as originally drafted. However, Dáil Éireann in its wisdom decided that even those positions should be ones for which there should be no access to a shortlist, say through the judicial appointments commission. That is why we are in a slightly strange position where the Minister is now asking us to accept a section saying that nothing in chapters 1 and 2 of Part 7 will apply to certain senior positions, without definitively coming down on one side or the other on the question of what those senior positions are. He has produced a slightly anomalous arrangement whereby some criteria that look as if they should be applicable to all judicial appointments are effectively disapplied. I do not want to prolong the matter any further.

**An Leas-Chathaoirleach:** I think we are in agreement.

**Senator David Norris:** I could not hear the Chair. He was mumbling.

**Senator Michael McDowell:** Having said all of that, as far as I am concerned, the distinction between section 44 appointments, as envisaged, and other appointments is not valid for the reasons that I have explained. The only distinction I see is between serving members of the superior courts at all three levels who are *ex officio* qualified to function in the upper two courts and there should be no involvement of any other agency except the Government in making a decision as to which of them should be appointed.

**An Leas-Chathaoirleach:** I think there is agreement on this point.

**Senator David Norris:** I would not bank on it.

**Senator Jerry Buttimer:** On a point of information, if I could, as Leader, acknowledge the presence in the Gallery of a former colleague and Deputy, Mrs. Áine Brady. She is very welcome.

**Senator Martin Conway:** I would like to concur with that welcome.

**Senator David Norris:** Hear, hear. I would like to third it.

I strongly agree with my colleague and friend, Senator McDowell, that it seems absurd that a group of people, including the Chief Justice, should be forced to apply to this external group composed of persons, experts and consultants.

**Deputy Charles Flanagan:** This is an embarrassment according to Senator McDowell. It is an embarrassment to go through a selection process. That is really what we are saying.

**Senator David Norris:** We are not at all. The Minister must listen more intently.

**Deputy Charles Flanagan:** Senator McDowell described it as an embarrassment and this is the nub of the argument.

**Senator David Norris:** I am speaking now.

**Senator Jerry Buttimer:** There is only one Chair.

**Senator David Norris:** I am not doing anything to the Chair.

**An Leas-Chathaoirleach:** Senator Norris has the floor. He should make his point.

**Senator David Norris:** Should the process apply to these people? They have to apply to the persons, consultants and experts and all the rest of the blather despite the fact that they are *ex officio* deemed to be suitable to sit on the Supreme Court. If they are suitable in one instance, how can they not be suitable? Why do they have to do this? This is one of the things wrong with this wonderful country, we are drowning in unmitigated bureaucracy. I got a thing from some crowd demanding that I sign up to 12 pages about sexual harassment and bullying. I shoved it straight in the bin because that is where it belongs. I have never sexually harassed anybody. It is part of my difficulties in life. That is why I am on my own.

**An Leas-Chathaoirleach:** Senator Norris was right to put it in the bin. It has damn all to do with section 37, with respect.

**Senator David Norris:** The Chair is quite right. I will return to the section and address particularly Senator McDowell's amendment. It reintroduces the Government's original sec-

tion and extends the senior judicial appointment process-----

**An Leas-Chathaoirleach:** There is no amendment on section 37.

**Senator David Norris:** Yes, there is.

**An Leas-Chathaoirleach:** I have section 37 here.

**Senator David Norris:** I am sorry, it is in section 44, which is consequential. They are all related.

**An Leas-Chathaoirleach:** We are dealing with section 37 on its own.

**Senator David Norris:** Section 37 applies directly to section 44. Section 44 is explicitly mentioned in the one sentence that deals with this matter. I think I am perfectly entitled to talk about section 44.

**Deputy Charles Flanagan:** It might be noted that the Senator's guests have left.

**Senator David Norris:** We have driven them out. They are not my guests.

**Deputy Charles Flanagan:** They are no longer here.

**An Leas-Chathaoirleach:** We are on section 37.

**Senator David Norris:** Section 37 explicitly states: "Nothing in this chapter or chapter 2 shall be construed as being applicable to a judicial office to which section 44 applies". Section 44 is bang in the middle of it. It is directly germane, as is Senator McDowell's amendment and he has already spoken about his amendment because it is directly relevant.

**An Leas-Chathaoirleach:** There is no amendment to section 37.

**Senator David Norris:** There is an amendment to section 44 and we were talking about that section.

**An Leas-Chathaoirleach:** We will come to that amendment.

**Senator Jerry Buttimer:** Senators should respect the Chair.

**An Leas-Chathaoirleach:** We will come to the amendment to section 44. Members should address section 37, please.

**Senator David Norris:** I beg your pardon.

**An Leas-Chathaoirleach:** We will deal with that amendment when we come to section 44. We are on section 37.

**Senator David Norris:** It is not section 34 but section 44. I wonder why the Chair takes this aggressive attitude towards me because he allowed Senator McDowell to expatiate-----

**An Leas-Chathaoirleach:** Senator Norris is the father of the House and I have never been aggressive to him. He is the father of the House and I have never been other than respectful.

**Senator Jerry Buttimer:** Whatever can be said about Senator Coghlan, he is not aggressive by nature, to be fair to him.

**Senator David Norris:** He is passive aggressive.

**Senator Jerry Buttimer:** He is not that either.

**An Leas-Chathaoirleach:** That is not relevant.

**Senator David Norris:** It is not relevant, but section 44 is relevant. I want to say this amendment codifies a procedure that the Government has adopted in recent senior court appointments and it follows that this process should continue on a statutory basis. That is directly relevant.

Actually, when I look at the situation in its global context, I get a feeling that we are really whistling in the wind. Only Senator McDowell and I were in the House when we commenced this evening.

**Senator Jerry Buttimer:** That does not matter.

**Senator David Norris:** It does matter.

**Senator Jerry Buttimer:** It is not relevant.

**Senator David Norris:** There was nobody here. Senator Buttimer will see how relevant it is in a minute.

**An Leas-Chathaoirleach:** It is not relevant to section 37.

**Senator David Norris:** There was not a single person from the Government or the Opposition, only Senator McDowell and me. Are we the Legislature? I am sorry to say I feel a quorum coming on.

**An Leas-Chathaoirleach:** Is Senator Norris calling for a quorum?

**Senator David Norris:** I am. It is the only thing that will shut Senator Buttimer up.

**Senator Jerry Buttimer:** It will not.

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

**Senator David Norris:** If I could say over the karaoke from the backbenches that it would be impossible to discuss this section.

**Senator Anthony Lawlor:** Who is the karaoke? The Senator has a full quorum.

**Senator David Norris:** The Senator should stop barracking.

**Senator Anthony Lawlor:** I am not barracking. I am just delighted that the Senator will discuss the section.

**Senator David Norris:** I am ashamed of this coming from the same county as my own.

**An Leas-Chathaoirleach:** Order, please. Senator Norris to speak without interruption.

**Senator David Norris:** I am talking about Laois. How dare the Senator call it Laois-Offaly.

**An Leas-Chathaoirleach:** Please do not engage the Senator in conversation.

**Senator David Norris:** I will not.

**Senator Neale Richmond:** It is Queen's County.

**Senator David Norris:** Oh no, she was an awful old bitch, Queen Mary.

I will discuss the impact of the amendment on section 37. I see that the Minister is waving his pencil.

**Deputy Charles Flanagan:** If I could intervene briefly, it might be of assistance to Senator Norris. I very much agree with what Senator Norris is saying and would like the opportunity to engage with him in some detail on the amendment. However, we are not dealing with the amendment.

**An Leas-Chathaoirleach:** No, we are not.

**Deputy Charles Flanagan:** The amendment is No. 83a under section 44. If there was any means by which we could move on to section 44 I would be very happy to take Senator Norris's points on board. I agree with him that we should discuss the amendment but I would be out of order if I replied to his exhortations on an amendment to which we are precluded from addressing.

**An Leas-Chathaoirleach:** As I said, we are on section 37.

**Deputy Charles Flanagan:** Yes, but I would ask the Leas-Chathaoirleach once again to exercise his discretion-----

**An Leas-Chathaoirleach:** I am doing my very best. I have already said -----

**Deputy Charles Flanagan:** -----to allow us.

**Senator David Norris:** It will take the same amount of time whether we discuss it now or on the amendment.

**Deputy Charles Flanagan:** It is a question of whether we are in or out of order.

**Senator David Norris:** My legal advice -----

**An Leas-Chathaoirleach:** Senator Norris, we must avoid repetition, please.

**Senator David Norris:** I have not repeated anything.

**An Leas-Chathaoirleach:** No, the Senator has been. He has been going on about an amendment that is in a different section.

**Senator David Norris:** That is not repetition.

**An Leas-Chathaoirleach:** The Senator should speak to section 37, please.

**Senator David Norris:** The Chairman is going against my legal advice, which is from a former Attorney General, former Minister for justice, former senior counsel-----

**An Leas-Chathaoirleach:** The Senator should proceed.

**Senator David Norris:** -----and current Senator.

**Senator Michelle Mulherin:** He has had his day. This is history.

**Senator Anthony Lawlor:** Did he not lose his job?

**An Leas-Chathaoirleach:** The Senators should not be encouraging him.

**Senator Michelle Mulherin:** It sounds like “The Mikado”.

**Senator David Norris:** No, it is “Patience”.

**An Leas-Chathaoirleach:** The Senator is out of order, please. He is trying to make a joke of this. We are on section 37. He is to stop rambling. I want to put the question.

**Senator David Norris:** Okay, fine. It seems daft that we are having a ruling-----

**Senator Jerry Buttimer:** On a point of order, it is important that we have a certain amount of decorum in the House. I made the point last night that I understand there is a certain amount of filibustering going on by some Members, not by all. The House has an obligation and it behoves us that when we make our deliberations, we do so on the relevant section and amendment. I have great respect for Senator Norris but some of the behaviour in discussing the Bill does not befit the Chamber. To be fair to Senator McDowell, he has always maintained decorum in the presentation of his points. I urge Members to respect the Chair and understand we are dealing with legislation with which some Members have an inordinate difficulty, which I respect. However, it does not befit the House that we act in a manner that is cavalier, disrespectful and condescending to many of us. I am being honest.

**Senator David Norris:** The Leader is correct that Senator McDowell is not filibustering; I am and I regard it as a perfectly legitimate political tactic to get rid of a Bill that is absolutely ridiculous and outrageous. I will continue to filibuster unless and until Standing Orders of this House remove the possibility to do so. I remember one wonderful occasion when Senator Pól Ó Foighíl spoke for three hours in English and then repeated it the next morning as Gaelige.

**Senator Anthony Lawlor:** Is this a history lesson?

**An Leas-Chathaoirleach:** I am going to put the question.

**Senator David Norris:** Fine. Off you go.

Question put.

The Seanad divided by electronic means.

**Senator David Norris:** In view of the extraordinary narrowness of the vote, 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, 21; Níl, 8.	
Tá	Níl
Burke, Colm.	Boyhan, Victor.
Butler, Ray.	Craughwell, Gerard P.

Buttimer, Jerry.	Humphreys, Kevin.
Byrne, Maria.	Marshall, Ian.
Conway-Walsh, Rose.	McDowell, Michael.
Conway, Martin.	Norris, David.
Devine, Máire.	Ó Céidigh, Pádraig.
Dolan, John.	Wilson, Diarmuid.
Feighan, Frank.	
Gavan, Paul.	
Lawlor, Anthony.	
Lombard, Tim.	
Mac Lochlainn, Pádraig.	
McFadden, Gabrielle.	
Mulherin, Michelle.	
Noone, Catherine.	
O'Donnell, Kieran.	
O'Mahony, John.	
Reilly, James.	
Richmond, Neale.	
Warfield, Fintan.	

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

Question declared carried.

## SECTION 38

**Senator Michael McDowell:** I move amendment No. 83a:

In page 27, line 16, after “Part” to insert “, and notwithstanding the provisions of *section 37*”.

This amendment would provide that section 38, effectively, would not be disapplied by section 37. The structure of the Bill, as it currently applies, indicates that section 38 will not apply to senior appointments, whatever they may end up being, under section 44. By inserting these words, “and notwithstanding the provisions of *section 37*”, it would be made clearer that in all cases and for all appointments, the commission would be required to publish “information on the selection procedures and the other matters that are set out in a published statement”, as well as for all appointments invited “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 that in all cases it should be enabled to “do such other things as it considers necessary to enable the commission to perform its function in relation to selecting persons to be the subject of a recommendation for appointment to judicial office”. In effect, as I read section 37 which the Minister has insisted remain in the Bill, it is intended that it will disapply section 38 in the case of some appointments. I am trying to ensure it would apply to all appointments, not just to a majority of them.

**Deputy Charles Flanagan:** The Senator's proposal is to add the words “, and notwithstanding the provisions of *section 37*”, to the introductory part of what would be section 38, with the aim of reversing what the Seanad has just agreed to in section 37 on the basis that it stands part of the Bill. The section disapplies the various provisions of chapters 1 and 2 in Part 7.

**Senator Michael McDowell:** It reapplies them.

**Deputy Charles Flanagan:** No. It disapplies the various provisions of chapters 1 and 2 in Part 7 in the process set out in section 44 which concerns the recommendation arrangements for the three most senior judicial positions. In other words, the proposed addition of the words “, and notwithstanding the provisions of *section 37*” by the Senator and others would ensure, conversely, that the provisions of section 38 would extend to these three posts. I am, therefore, not minded to accept the amendment.

I do not wish to unduly detain Senators, but I remind them of the import and history of section 37. It was a provision included in the Bill, as initiated. I go back to Senator Norris's point about the original ordering of sections. It was originally section 39. It served as a general explanatory provision to the effect that chapters 1 and 2 in Part 7 did not apply to the procedures for certain senior judicial posts, namely, the top three senior judicial positions, which are provided for separately in section 44 in chapter 3 in this Part. Chapter 1 comprises sections 37 to 39, inclusive, and sets out the functions of the commission insofar as the general explanatory provision is concerned. Chapter 2 comprises sections 40 to 43, inclusive, and sets out the specific requirements in the recommendation of names by the commission and the procedures to be applied.

I restate my policy in bringing forward the Bill. The top three positions are that of Chief Justice, President of the Court of Appeal and President of the High Court. I believed that because of the particular demands and requirements of these posts, they should be subject to a process that could be regarded as distinct and separate from the selection of other candidates. I am still very much of that view. I am not of the view that similar considerations need to be applied to all ordinary judges of the Supreme Court, the Court of Appeal and the High Court.

I will refer briefly to the points made by Senator McDowell in support of his alternative process as he spoke about them being, *ex officio*, entitled to serve because they might have done so, albeit on a temporary basis. I am not sure if there is a similar arrangement across the public service. For example, I can cite numerous instances where a deputy or an assistant Secretary General acts up for a period as Secretary General, albeit on a temporary basis, and I am not sure if the same rigour as applied by the Senator to this precedent is applicable in such cases. That is when the position of Secretary General becomes vacant. The fact that somebody has acted up does not proffer the entitlement the Senator deems to be appropriate in the case of a court. I do not subscribe to the view that because someone is suitable for a position, he or she is entitled to that position. That appears to be the import of what the Senator-----

**Senator David Norris:** Such a person is entitled to be considered.

**Deputy Charles Flanagan:** Of course he or she is entitled to due consideration. That would take place under the basis of this Bill. I think Senator McDowell addressed his real issue when he said it would be embarrassing for certain people to have to endure a selection process. To my mind, that forms the basis of much of the opposition coming from Senators.

**Senator David Norris:** Does the Minister think it would be demeaning for such a person?

**Deputy Charles Flanagan:** The word Senator McDowell used was “embarrassing”.

**Senator David Norris:** It would be very demeaning also.

**Deputy Charles Flanagan:** The Senator may well consider it to be demeaning, but I do not. Equally, I would not consider it to be an embarrassment. That is where there is a real divergence of opinion between Senators and the Government. I remain firmly of the view that the particular demands and requirements of senior judicial positions warrant serious consideration being given to a process that can be regarded as separate and distinct, which is what I wanted. The section that was originally included in the Bill to provide for this was deleted on Committee Stage in the Dáil. Deputy Clare Daly and I tabled amendments on Report Stage in the Dáil to reinstate the section in question. As a result of the acceptance of one of those amendments by the Dáil, what was section 39 of this Bill when it was initiated is now section 37 of the Bill before us. The wording of the section has not changed, but the number of the section has. The Senator referred to the positioning of the numbers, but I am not sure if he noticed the change.

**Senator Michael McDowell:** I did.

**Deputy Charles Flanagan:** The last time we considered this Bill, we discussed the proposed disapplication of certain provisions to certain senior posts. I accept Senator McDowell’s point that this is significant and important. I have already indicated this evening, as I did on the last occasion, that I intend to bring forward an amendment on Report Stage as a solution to the position of the most senior appointments. I urge Senators to give it due and careful consideration. The proposed amendment will ensure any conditions - they may be referred to as “obstacles” by Senator McDowell - under Chapter 2 of Part 6 that need to apply will, in effect, apply. If we are to have some kind of bespoke recommendation process relating to the top posts, of course we will need to ensure the general run of application and recommendation procedures will not apply to such posts. That is why, in any event, the provisions of section 37 of the Bill are needed from a drafting point of view. I want to labour the point that I intend to have a separate and distinct arrangement for us to consider on Report Stage. I acknowledge that the Senator and I differ on this issue as far as the whole range of court appointments is concerned. I am very keen for us to reach agreement on an approach to section 44. I urge Senators to acknowledge the importance of having the top three positions distinct and separate. I ask them to assist in ensuring that is the case by reaching an appropriate and suitable agreement on how best this can be managed within section 44.

**Senator David Norris:** Another difficulty with the synchronicity of the numbers became clear to me when I read the explanatory memorandum:

Making of recommendations: certain functions

Section 40 provides that the Commission may make available information on the selection procedures through such means as it considers appropriate. The Commission must advertise for applications for selection for appointment to judicial office.

I think that very clearly refers to the section at which we are looking. I will be very brief on this occasion. I have to bow and show deference to Senator McDowell’s legal expertise but I am not entirely convinced that the phrase “notwithstanding the provisions of section 37” will actually have the effect of reversing it. I would prefer something like “and the provisions of

section 37 do not apply in this instance” to be included in the Bill. If we include the word “notwithstanding”, it will mean that section 37 will be kind of put to one side. It will not mean that it will be absolutely negated. That is what I think, but maybe I am wrong. I am just wondering. Perhaps the House might hear from Senator McDowell on this point.

**Senator Michael McDowell:** I agree with Senator Norris that using the word “notwithstanding” is not as clear as simply saying the previous section does not apply to this section at all. The procedures of this House mean that if I were to propose an amendment saying that the previous section does not apply, I would be told that the House had just decided that it does apply and I would be seen to be asking the House to reverse a decision it had just made. I am trying to carve out this section from the rest of the two chapters in order to provide that section 38 will have general application. The Minister has widened the debate-----

**Senator David Norris:** I am awfully sorry, but I notice that once again, the only Members who are present in addition to Senator McDowell and me are two-----

**Senator Michael McDowell:** There are a few things that I would like to say to the Minister before the Senator asks for a wider audience.

**Senator David Norris:** I am not calling for a quorum. I was just making an observation.

**Senator Michael McDowell:** If I may say so, the Minister is my audience on this occasion. I agree with the Minister that the positions of Chief Justice, President of the Court of Appeal and President of the High Court are different from the ordinary positions in those courts. That is because the Chief Justice, for instance, has significant other functions, such as chairing the Courts Service, and various other functions in law. Since we amended the Constitution, the holders of the three positions I have mentioned - instead of two previously - sit on the Council of State. The Chief Justice serves on the Presidential Commission when it is required to function because the President is abroad or whatever. Likewise, the President of the High Court has huge functions with regard to disqualification of solicitors, wards of court, administration of the High Court and all the rest of it. The President of the Court of Appeal has weighty responsibilities in organising the business of that court. I agree with the Minister, if this is the point he is making, that those positions require administrative skills which are not just simply judicial skills. One could be a brilliant judge and a very poor President of the High Court if one is not into the business of organising one’s fellow members of the High Court, which involves allocating duties to them, getting them to do this, that and the other, and organising and administering the wards of court office. The President of the High Court gets to do all kinds of other things such as supervising the activities of the professional regulatory bodies, including the Law Society’s activities in relation to the discipline of solicitors and the like. I accept that those three positions are different from other positions. I do accept that proposition. I am not denying that there is that difference but I do ask the Minister why it is that he will not trust the judicial appointments commission to have the same function in relation to them as he does for an ordinary judge of the Supreme Court. What is it about this group of people that he suddenly says they are not getting their hands on making a recommendation for the President of the High Court, that it is too important or sensitive for such people, that the Government and senior judges will decide and there will not be lay involvement? What is the rationale for that? Just to say that again, the Minister says these are very important positions, that he wants to have a special procedure for appointing them, that he wants to have a committee of senior judges who will give advice to the Government on these matters and that he does not want the judicial appointments commission to have a function in relation to them.

Why? Why does this body, which is so brilliant at everything else, suddenly become so useless when it comes to those three positions? The answer is because they do not know. I presume that the answer is that he does not trust them to come up with the recommendations for the President of the High Court or whatever else. The Minister would prefer if the Government made that decision by itself, in consultation with senior judges, if it likes to do, but he does not want all of this gobbledygook about reflecting the diversity of society to come into it at all. He is saying that he wants a particular type of person to be President of the High Court and that is a skilled administrator who is capable of doing all those functions.

This is a double-edged sword. The Minister says these are very important positions of a senior kind.

**Deputy Charles Flanagan:** You are wielding the sword on both edges.

**Senator Michael McDowell:** Exactly.

**Acting Chairman (Senator Gerard P. Craughwell):** Through the Chair, please.

**Senator Michael McDowell:** I remember the late John Patrick Wilson, the former Tánaiste, teaching me Latin in Gonzaga College. The phrase was *gladium anceps*, a double-edged sword which would go in either direction. The Minister has come here and said suddenly that he wants to take these three positions away from the judicial appointments commission.

**Deputy Charles Flanagan:** No, not suddenly.

**Senator Michael McDowell:** So do I, by the way. Why does he want to do that? I know why I want to do so. I want a rationalisation from the Minister as to why he thinks this group of people would not be a good group to make a shortlist of people for consideration by the Government.

I will tell the Minister why. It is because he does not really trust them to know the insides and outsides of what is involved in the matter. They are not sufficiently skilled to give him advice on who should be the Chief Justice-----

**Senator David Norris:** That is why you need a double-edged sword: to get at the insides and the outsides.

**Senator Michael McDowell:** Yes.

**Acting Chairman (Senator Gerard P. Craughwell):** Through the Chair, please.

**Senator David Norris:** Through the Chair.

**Senator Michael McDowell:** They do not know enough to make a recommendation, or even draw up a shortlist, as to who should be President of the High Court. Why not? They are skilled when it suits the Minister. These are people who are going to be selected from all sorts of life. They are going to be rushed through by the Public Appointments Service. They are going to be approved by Members of the Oireachtas, but suddenly-----

**Senator David Norris:** And gender fluid.

**Senator Michael McDowell:** They will be wonderful people. They will have all of the qualifications that are required.

**Senator David Norris:** Diversity.

**Senator Michael McDowell:** Diversity and all the rest of it, but when it comes to making a decision of this kind, the Minister is saying no, they are not to have a function in this, that it is a governmental function on which the Government will take advice from senior judges but not from a majority lay body. Where is the reasoning and justification for that distinction? I can see it a mile away. It is that the Government would prefer to trust its own judgment on these matters to that of a group of people selected in the manner set out in this legislation, in draft form, for the selection and organisation of the lay majority judicial appointments commission.

I am not trying to be smart. I am asking the Minister to justify why the commission cannot address itself to that issue in a manner that he would be prepared to accept. Why does he propose to come back with section 44 to keep it a million miles away from those three positions? The answer must be that he does not trust it to do as good a job as the Government being advised by the Attorney General and three senior judges. The Minister does not trust the commission on the selection of those three positions to do as good a job as his soon to be formulated revised section 44 would.

That makes my point for me. It makes my point for me that this group of people are not to be trusted with certain functions because, on this evidence, they do not know sufficiently much to give advice. Otherwise, the amendment made in the Dáil, which-----

**Senator David Norris:** Sufficiently much is tautology.

**Senator Michael McDowell:** I am sorry, they do not know sufficient to advise the Government or to draw up a shortlist with which the Minister would be happy. That underlines the fact that a lay majority group is not as good, in some circumstances, as a non-lay majority group.

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

**Senator Michael McDowell:** It is not a group whose judgment would be relied on as much as on the advice of a group of people who knew more about how the courts function.

I conceded that those three positions have administrative characteristics, which could justify them being put into a separate category. I make the point, however, that the selection of a High Court judge, or the making of a selection between five, ten or 15 High Court judges who are willing to be appointed as ordinary members of the Supreme Court or to be a Supreme Court judge, is just as important a decision, in many respects, as deciding which of the three most senior members of the Court of Appeal should become President of that court, and it is one on which the Government itself should make the decision. It is one on which, frankly, the views of a judicial appointments commission are not of any real value. That is why the present Judicial Appointments Advisory Board makes it very clear that where the Government proposes to appoint a judge of, say, the Court of Appeal, to be a Supreme Court judge, it can do it without any involvement of any people from outside the Government.

The Minister disturbed me greatly by talking about Secretaries General acting up as if this is a Secretary General acting up kind of decision. The constitutional role of members of the Supreme Court, not merely under Article 26 but generally, is to determine what the Constitution means for the people. It is a central function. Every single member of the Supreme Court is performing a central function in our democracy. The decision as to who should do it and who should not do it is just as important as whether Senator Norris or me would make a bet-

ter administrator if either of us were a judge. The decision as to where one wants a liberal or a conservative is just as crucial to how the Constitution actually functions and what it actually means in the end as to whether the President of the High Court is better or worse than some other member of the Judiciary in running the Office of the Wards of Court. They are all important functions, but there is this notion that somehow - I think it is held by officials in the Department of Justice and Equality, a Department for which I have great respect - it does not matter who is appointed to the Supreme Court or the one thing that does not matter in terms of who is appointed to the Supreme Court is the Government's view because they are a crowd of eejits in Government Buildings.

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

**Senator Michael McDowell:** Let us have some people who really know about it; let us have a lay majority and let us give them a shortlist which they are bound to consider.

**Deputy Charles Flanagan:** A garage man, to quote the Senator.

**Senator Michael McDowell:** That would be far better, but I reject that idea completely. I am not very keen either on installing the Judiciary in a position where it would have a pulpit view in the selection of the Chief Justice. A new Government might take a different view from that of the Judiciary of who should or should not be the next Chief Justice. Asking the Presidents of the various courts to furnish a report with a short list to the Government is not a very healthy development. I was present when two Chief Justices were appointed. I am not going to go into detail, but it was a matter for the Government to consider and discuss. It did not need a group of whatever complexion or even the Judiciary tapping the Minister on the shoulder to say Jo or Josephine Blogg would be better than Jane or James Smith. I do not think the Judiciary should have a significant role to play in making recommendations as to who the Chief Justice should be. That is a bad idea. I know that in the situation as I found it it was perfectly open to the Attorney General to go to the outgoing or soon to be retiring Chief Justice to discuss the question of succession with him or her. That was open to being done and the Attorney General to come back to the Minister for Justice and Equality to say the name, or the Minister for Justice and Equality could have done it and asked the Attorney General who the front runners were. It is perfectly reasonable for a Minister to ask, but in the end it is a matter for the Government to make up its mind on the issue. The intervention of others is not of assistance.

I will go back to my starting point, if we are to be logical, that if one does not trust the Judicial Appointments Commission to make recommendations to the Presidents of the three superior courts, why not? Is there some reason they would not ask for people to be evaluated by the Judicial Appointments Commission appointment to these three positions and that reasoning does not apply in being an ordinary member of any of those courts? I do not see the logic in it.

I read a remark attributed to one member of the Government that somehow Law Library insiders were opposed to this legislation. I will tell Members what Law Library insiders and outsiders and all members of the legal profession, barristers and solicitors, are concerned about. It is the question of whether this legislation will improve or disimprove the quality of the Judiciary and whether it will make it more or less likely that people who would make good judges will be frightened away by a process in which they would have to submit themselves for evaluation in a beauty parade and then be rejected off a short list for consideration by the Cabinet. What I find is that it is not a matter about Law Library insiders but people who care about the constitutional fabric of the country. It is about people who care for the Constitution. They ask

whether the Bill will produce different and better judges or if it is all window dressing.

The Minister invited me to go down the road of thinking that this is similar to an official acting up as Secretary General, but it is not. Once an individual is made a judge of the High Court, under the Constitution he or she is given the function in an individual case of making a full and original determination on issues such as the constitutionality of an Act. Every single member of the High Court has that power. Once one becomes a member of the High Court, as legislation has it in place, one becomes somebody whom the Chief Justice or the President of the Court of Appeal can tap on the shoulder to ask to participate in the affairs of the Supreme Court or the Court of Appeal, as the case may be. This is not theoretical. I have been involved in a case before the Court of Appeal in which High Court judges were sitting with Appeal Court judges. I do not know whether it was due to a shortage of numbers or prior conflicts-----

**Senator David Norris:** Punchestown

**Senator Michael McDowell:** I have seen them and they function in exactly the same way as ordinary members of that court. One takes them as if they were ordinary members of the court because they have been invited to act as ordinary members of the court. It is not like saying they are civil servants who are acting up; rather, they are different. Under the Constitution, a judge has significant power and is being asked to act in a different capacity. What the Minister is saying is that he or she cannot be appointed to act in that different capacity on a permanent basis, unless he or she submits himself or herself to scrutiny outside the governmental structure to see whether he or she should be shortlisted to carry out such a function. I am wholly opposed to that principle and it will not improve the Judiciary; rather, it will seriously inhibit members of it in indicating a willingness to accept appointment to the Court of Appeal and the Supreme Court.

The Minister makes fun of my use of the term “embarrassment”. If someone has been a judge of the High Court for 20 years and would like the Government to consider appointing him or her to the Supreme Court, he or she will write a letter to the Secretary to the Government and simply say:

Dear Secretary,

I understand there is a vacancy coming up in the next three months or whatever time period. I would like the Cabinet to be aware that I am ready and willing to accept appointment, if the Cabinet considers that to be appropriate.

That is not canvassing. It is simply saying, “I am here.”

**Senator David Norris:** Barkis is willing.

**Senator Michael McDowell:** That is all a judge has to do. Under what is being put in place, as the Minister told us on the last occasion - I will not go back over the terms in which he told us - that will not be permitted in the future. The only way in which a person who has served for ten or 15 years in the High Court will be able to signal to the Government his or her willingness to serve as a member of the Court of Appeal or the Supreme Court is by entering into a competitive process with the Judicial Appointments Commission, whereby applications will be submitted, applicants will be interviewed and their names may or not be included in a secret list that will go to the Government. They may or may not be told - we have never had a clear explanation - that they were or were not shortlisted. That is what is going on.

The Minister may make light of the phrase “embarrassing” but if a person has been functioning as a High Court judge for ten or 15 years and all he or she wants to do is signal availability - the person is a humble High Court judge who fully appreciates they may have better judges than him or her - that is their business - but only wants to inform them that he or she is available - I see nothing wrong in that procedure. If one wants, in these circumstances-----

**Senator David Norris:** I am distressed to see that we are, once again, reduced to three Members. I wonder could we have a few more Members here.

**Acting Chairman (Senator Gerard P. Craughwell):** Is Senator Norris calling for a quorum?

**Senator David Norris:** I think that is what it is called. I am unfamiliar with the term.

**Acting Chairman (Senator Gerard P. Craughwell):** Is that agreed?

**Senator David Norris:** It does not have to be agreed.

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

**Acting Chairman (Senator Gerard P. Craughwell):** Senator McDowell has the floor.

**Senator Anthony Lawlor:** On a point of order, who called for the quorum?

**Acting Chairman (Senator Gerard P. Craughwell):** Senator Norris.

**Senator Anthony Lawlor:** Senator Norris has gone home.

**Acting Chairman (Senator Gerard P. Craughwell):** Senator Norris has left the room.

**Senator Anthony Lawlor:** Has the Senator gone home?

**Acting Chairman (Senator Gerard P. Craughwell):** Please, Senator.

**Senator Anthony Lawlor:** Senator Norris has gone home.

**Acting Chairman (Senator Gerard P. Craughwell):** Senator Lawlor should resume his seat.

**Senator Anthony Lawlor:** That is okay. I am merely clarifying that Senator Norris has gone home.

**Acting Chairman (Senator Gerard P. Craughwell):** Senator Norris is not in the building.

**Senator Gabrielle McFadden:** The Senator has gone home laughing.

**Acting Chairman (Senator Gerard P. Craughwell):** Senator McDowell has the floor.

**Senator Michael McDowell:** I am content to simply say this. It is something, by the way, I am glad that there are more Senators here to listen to. We are being told that, to fill the position of President of the Court of Appeal, President of the High Court and-----

**Senator Anthony Lawlor:** On a point of order, we have discussed this on a number of

occasions previously. I have been here on a number of occasions and this issue has come up constantly.

**Acting Chairman (Senator Gerard P. Craughwell):** Senator McDowell has the floor. I appreciate Senator Lawlor's concerns. Senator McDowell is entitled to make his case.

**Senator Anthony Lawlor:** The Acting Chairman, Senator Craughwell, has put his name to this amendment.

**Acting Chairman (Senator Gerard P. Craughwell):** That is not a point of order.

**Senator Anthony Lawlor:** The Acting Chairman has put his name to this amendment.

**Acting Chairman (Senator Gerard P. Craughwell):** Of course, I have.

**Senator Anthony Lawlor:** Is it impartial that Senator Craughwell should also be in the Chair?

**Acting Chairman (Senator Gerard P. Craughwell):** I am quite entitled to do so. I am acting in an impartial capacity. Senator McDowell has the floor and I ask him to resume.

**Senator Michael McDowell:** I made the point - simply, for those who were not here - that, as far as I am concerned, it is strange that the Minister is contemplating having a separate system of appointing the three senior presidencies in the superior courts, excluding-----

**Deputy Charles Flanagan:** With which the Senator agrees.

**Senator Michael McDowell:** -----the commission.

**Deputy Charles Flanagan:** With which the Senator agrees.

**Senator Michael McDowell:** I do agree.

**Acting Chairman (Senator Gerard P. Craughwell):** The Minister will get an opportunity to reply.

**Deputy Charles Flanagan:** Indeed, I will.

**Acting Chairman (Senator Gerard P. Craughwell):** Probably not today.

**Senator Michael McDowell:** I am glad that the Minister acknowledges that we are in accord on this matter but I am wondering why it is. I know why I think the judicial appointments commission should not be involved but the Minister will not say why it will not be involved. I am saying it is because the Minister does not trust the commission to come up with the right persons to fill those positions and he is uncomfortable with the idea that the commission would draw up a shortlist for Government. The Minister is of the view that such a shortlist would be inferior to the recommendations of the committee that the Minister originally set out in the Bill. I am merely making the point that the Minister does not trust them to carry out certain functions as well as he trusts the present situation, that is, that the views of senior judges can be taken and the Government can make up its own mind.

Progress reported; Committee to sit again.

The Seanad adjourned at 9 p.m. until 10.30 a.m. on Thursday, 13 December 2018.