



DÍOSPÓIREACHTAÍ PARLAIMINTE
PARLIAMENTARY DEBATES

SEANAD ÉIREANN

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

Business of Seanad	587
Commencement Matters	588
Road Projects Status	588
Rail Services	590
Services for People with Disabilities	592
An Bord Pleanála Applications	594
Messages from Dáil	597
Order of Business	597
Report of Committee of Selection: Motion	610
Appropriation Bill 2018 [Certified Money Bill]: Second and Subsequent Stages	610
Appropriation Bill 2018: Motion for Earlier Signature	615
Houses of the Oireachtas Commission (Amendment) Bill 2018: Second and Subsequent Stages	615
European Investment Fund Agreement Bill 2018: Motion for Earlier Signature	619
Business of Seanad	619
Judicial Appointments Commission Bill 2017: Committee Stage (Resumed)	619
Conflict in Yemen: Motion	644
Local Government Bill 2018: Committee and Remaining Stages	652
Message from Dáil	702

SEANAD ÉIREANN

Dé Céadaoin, 19 Nollaig 2018

Wednesday, 19 December 2018

Chuaigh an Cathaoirleach i gceannas ar 10.30 a.m.

*Machnamh agus Paidir.
Reflection and Prayer.*

Business of Seanad

An Cathaoirleach: I have received notice from Senator Frank Feighan that, on the motion for the Commencement of the House today, he proposes to raise the following matter:

The need for the Minister for Transport, Tourism and Sport to provide an update on the major road schemes planned for the N4 from Mullingar to Sligo.

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

The need for the Minister for Transport, Tourism and Sport, in conjunction with the National Transport Authority, to consider an increase in the capacity of the northern commuter rail line.

I have also received notice from Senator Rose Conway-Walsh of the following matter:

The need for the Minister for Health to make a statement on the closure of the day centre in Áras Attracta, County Mayo.

I have also received notice from Senator Michelle Mulherin of the following matter:

The need for the Minister for Housing, Planning and Local Government to outline the reason for delays on the part of An Bord Pleanála in making planning decisions, particularly on environmentally designated lands.

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

The need for the Minister for Health to outline if the drug Pembro, pembrolizumab, will be made available to all cervical cancer patients.

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

The need for the Minister of State with responsibility for the Office of Public Works and

flood relief to provide an update on the Glashaboy flood relief scheme, County Cork.

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

The need for the Minister for Transport, Tourism and Sport to consider Lios na gConring fort in Clonakilty, County Cork, as a tourism opportunity.

The matters raised by Senators Frank Feighan, Lorraine-Clifford Lee, Rose Conway-Walsh, Michelle Mulherin, Martin Conway and Colm Burke are suitable for discussion. I have selected the matters raised by Senators Frank Feighan, Lorraine Clifford-Lee, Rose Conway-Walsh and Michelle Mulherin and they will be taken now. Senators Martin Conway and Colm Burke may give notice on another day of the matters they wish to raise. I regret that I have had to rule out of order the matter raised by Senator Tim Lombard on the grounds that the Minister has no official responsibility in the matter.

Commencement Matters

Road Projects Status

Senator Frank Feighan: I thank the Minister for taking up my invitation to discuss these important road schemes along the N4. As he knows, the N4 is a major carriageway to the north-west region. It is a national primary road running from Dublin to the north west and Sligo. It goes without saying the N4 is a vital artery to this region. There are three major schemes currently planned along the route and it is imperative that we continue to upgrade this national route for a number of reasons. These upgrades will improve road safety for road users, alleviate traffic congestion and reduce journey time to allow people to plan their journeys more accurately. They will undoubtedly generate significant economic benefits for local economies along the route.

The planned Mullingar to Longford-Roskeel road scheme comprises about 50 km of dual carriageway and has been in the pipeline for some time. The preferred route corridor was announced in June 2010 and the plan is to upgrade the stretch between the N4 Dromod Roskeel bypass and the N4 Mullingar bypass. According to Transport Infrastructure Ireland, TII, it is in a category of pre-appraisal. The N4, Carrick-on-Shannon to Dromod, upgrade involves an 11 km stretch and according to the TII website, it is also in the category of pre-appraisal. The Minister might shed some light on what exactly this means.

Earlier this year, I was glad to note that my colleague, the Minister for Finance, Deputy Donohoe, earmarked an extra €1.26 billion for spending on roads and other transport between 2018 and 2021. As part of that, funding approval was given to the N4 Collooney to Castlebaldwin road project in Sligo, news which has been welcomed by all of us. I understand the 15 km road widening project involves an overall investment value of over €100 million and undoubtedly will improve safety on this stretch of road which has, unfortunately, seen so many fatalities in the past four decades. I thank the Minister for helping to ensure funding for this project, which has been long awaited.

It is clear that more focus is being placed by the Government on improving infrastructure and a blueprint for this is contained in Project 2040. As the Taoiseach said during his recent

visit to Sligo, Project 2040 consists of a national spatial plan that is backed up with real money. The money follows the plan and, in the next ten years, all regions and urban centres, particularly the north west, will be linked to Dublin by a high-quality road network. It is clear that the Government's Project 2040 plan is being implemented. Next year alone, I understand we will have a 25% increase in infrastructure spending. I hope my region, the north west, will get a fair share of that funding. I commend the many public representatives, local authorities, chambers of commerce and community groups that continue to campaign hard to ensure that the N4 will benefit from significant investment.

Minister for Transport, Tourism and Sport (Deputy Shane Ross): I thank the Senator for raising this very important matter. I must first emphasise that as Minister for Transport, Tourism and Sport, I have responsibility for overall policy and funding in respect of the national roads programme. Under the Roads Acts 1993 to 2015, the planning, construction and improvement of individual road projects is a matter for Transport Infrastructure Ireland in conjunction with the local authorities concerned.

The national development plan, NDP, which has been developed by Government to underpin the successful implementation of the new national planning framework, NPF, provides the strategic and financial framework for TII's national roads programme for the period from 2018 to 2027. The proposed N4, Mullingar to Longford-Rooskey and Carrick-on-Shannon to Dromod, road improvement schemes are included in the NDP among a number of major national road schemes that were identified for progression through pre-appraisal and early planning during 2018. The N4, Mullingar to Longford-Rooskey, road scheme is approximately 52 km and located on a trans-European network transport, TEN-T, route. This scheme will improve the regional connectivity to the north west, which is a strategic priority of the national planning framework. A project pre-appraisal plan was submitted to my Department and the plan has been found to be compliant with the public spending code and the common appraisal framework, thus allowing it to progress to the next stage in terms of planning and design. The tender process for the engagement of technical advisers to progress the planning and design is now under way.

The N4 Carrick-on-Shannon to Dromod road project is also on a TEN-T route and comprises the improvement of a 21 km section of the N4 national primary route between Drumharlow townland in County Roscommon, north of Carrick-on-Shannon, and Faulties townland south of Aghamore in County Leitrim. The proposed project involves the provision of a bypass of Carrick-on-Shannon, including a new bridge crossing the River Shannon and an upgrade of the existing N4 between Tully and Faulties townlands, in County Leitrim. This scheme was previously progressed through phases 1 and 2 of TII's project management guidelines 2010. A preferred route corridor was selected and is included in Leitrim County Council's county development plan 2015 to 2021. The project was suspended in 2012 due to the unprecedented economic downturn. The scheme was subject to pre-appraisal to establish compliance with the requirements of the public spending code and the common appraisal framework for transport projects and programmes and to determine the prioritisation of the projects to be developed during the period of the NDP. The tender process for the engagement of technical advisers to progress planning and design is under way.

The N4, Collooney to Castlebaldwin, road scheme is one of the major national infrastructure projects included in the NDP for appraisal and delivery. It is required for regional connectivity and to support the ambition for development of the Border region and accessibility to the north west. It forms part of the N4 national primary route from Dublin to Sligo, which is identified as

a strategic radial corridor, and also forms part of the TEN-T comprehensive network. This project involves the upgrading of a substandard narrow section of the N4 to type 2 dual carriageway from the existing N41-N17 Toberbridge roundabout in Collooney to Cloghoge Lower, south of Castlebaldwin village, a total length of 14.7 km, of which 11.2 km is offline. An Bord Pleanála approved the proposed development of the N4 Collooney to Castlebaldwin scheme in 2014. All advance works have been completed and land purchase is 90% complete. Sligo County Council has now received tenders for the main construction contract. Government approval is required prior to the award of the project as it will cost in excess of €100 million. It is expected that a contractor will be appointed early in the new year. There are many expected benefits from the proposed scheme. An improved level of safety will reduce the number of fatalities. Improved conditions for pedestrians and cyclists wishing to access local services will increase their safety on the road and lead to environmental benefits, including reduced emissions and improved water quality.

The delivery of large-scale infrastructure projects is complex and costly and takes a lot of time. As Minister, I am, of course, keen to see the projects included in the NDP progressed as quickly as possible. However, I stress that any timeframe for the delivery of these projects is dependent on obtaining the necessary consents at various critical stages, including at the route selection, detailed design and tender stages. Meeting the requirements of the public spending code and planning consent from An Bord Pleanála and an adequate capital budget are also critical to delivering these projects.

Senator Frank Feighan: There are a lot of projects that will contribute to this road, but we continue to look enviously at the motorways from Galway, Limerick, Cork, Waterford and Belfast to Dublin. The area certainly needs better links with the capital city. I am delighted that certain projects are earmarked in the 2040 plan and I thank the Minister for taking the time to come to the House to answer my questions.

Rail Services

Senator Lorraine Clifford-Lee: I thank the Minister for attending to discuss the very important matter of severe congestion on the northern commuter line, which runs right through north County Dublin to bring commuters from Europe's fastest growing population area right into the city every day to work or access education and healthcare facilities. There are serious levels of congestion on the line, in particular in and around Donabate where I live. By the time the train gets to Donabate during peak times, it is already at capacity and it is very difficult to even board. When people manage to get on, conditions on the trains are not acceptable.

Fingal is the fastest growing area in Europe and we are absorbing a lot of the housing need in north County Dublin. Planning is taking place to build thousands of houses in Donabate in particular as well as in every town and village in north County Dublin. People move to north County Dublin to access housing and a high quality of life. While that high quality of life can be had there, commuting conditions are a serious issue. People move to Donabate because there is a train station in the village, which is very useful for commuting into the city. However, many people who move to the village do not realise that trains are at capacity. There has been a 5% increase in passenger numbers on the northern line year on year. People who have been living in Donabate for a long number of years are distressed at the capacity issues.

I ask the Minister to prioritise the northern line. Ring-fenced funding is required to provide

extra carriages as an immediate solution but we also need more direct buses to provide for peak-time commuting to the city centre. People cannot access trains as it is and are getting up earlier and earlier just to squeeze on. It is having a severe impact on the quality of life of people in Donabate and right across north County Dublin, including Rush, Lusk, Skerries and Balbriggan, and it is not acceptable. The M1 is congested as it is and the road infrastructure in north County Dublin is at bursting point. We face a real crisis. I want the Minister to come with me to Donabate to see for himself the conditions people have to endure. People are at breaking point. I want him to see first-hand what is happening and to provide an immediate solution for the people of Donabate and north County Dublin more generally.

Deputy Shane Ross: I thank Senator Clifford-Lee for raising this problem which is one I am familiar with in my own constituency and a lot of other areas. Transport is crowded in certain areas. In some ways, it is a problem we should welcome in that it means there are far more people going to work and there is greater demand for public transport. However, I agree that there are difficulties about capacity and that there are too many passengers for too few carriages in certain areas. It is something we are addressing, as is the National Transport Authority, NTA, with growing energy and as quickly as possible.

The NTA has statutory responsibility for the planning and delivery of transport infrastructure and services in the greater Dublin area, including in consultation with Iarnród Éireann for the provision of rail fleet. The NTA's transport strategy for the greater Dublin area for 2016 to 2035 provides the overarching framework for the planning and delivery of transport infrastructure and services in the greater Dublin area over the next two decades. The national development plan, NDP, provides a national level framework for the delivery of transport infrastructure over the next ten years. Both the NTA's statutory transport strategy and the NDP provide for the DART expansion programme, with the NDP committing €2 billion in Exchequer funding to the programme and prioritising the delivery of the non-tunnel elements for delivery by 2027. As part of that programme, the northern line will be electrified. Electrification as far as Balbriggan is expected to be delivered by 2022. The proposed enhancements to the heavy rail system will create an integrated rail network which will deliver a very substantial increase in peak-hour capacity on all commuter lines in the greater Dublin area, including the northern line.

Public transport passenger numbers have increased in recent years, reflecting broader economic and employment growth. Rail passenger numbers have similarly increased across the network and in particular on the commuter network in the greater Dublin area. While these increases are welcome, they clearly place pressure on the capacity of the network. The NTA and Iarnród Éireann have made and are continuing to make service and infrastructure improvements to address these pressures. In September this year, the DART moved toward a ten-minute service during the core operating day. Since the introduction of the new services, the NTA and Iarnród Éireann have monitored the impact on the broader commuter network and made adjustments as necessary in response to any issues identified. A number of additional services in the morning peak period on the northern side of the network have recently been approved and these will provide additional capacity. All peak-time DART services are now operated using six or eight car train sets which will provide a moderate increase in capacity. In addition, the revised timetable launched at the start of the month means additional off-peak capacity has been added to the northern line to provide passengers with additional travel options throughout the day. These are all immediate measures which will enhance overall capacity but, obviously, other medium and long-term measures are required.

Key to all of this is the provision of additional rail fleet. In the medium term, it had been

hoped to refurbish a number of older trains with a view to their reintroduction to service. However, following a tender process, the overall cost of the refurbishment tripled as compared with initial estimates. The refurbishment proposal simply does not represent value for money. However, the need for additional rail fleet remains and the NTA and Iarnród Éireann have begun a process of identifying the potential of acquiring second-hand rail fleet by means of either lease or purchase. The Senator may be aware that this is complicated by the fact that the Irish rail network operates to a different gauge than that of the UK and most other European countries and that any second-hand vehicles would require modification for Irish use. A decision on the viability of the second-hand vehicle option will be made shortly, following market availability and procurement options analysis.

In the longer term, and as part of the DART expansion programme, there is a need to increase the fleet significantly in any event. Work on developing tender documentation and train specifications for the proposed bi-mode fleet of rail vehicles is progressing. The formal procurement notice seeking interested train manufacturers is expected to issue before year end, and a formal contract for the new fleet is expected to be signed in 2019.

As can be seen, a number of measures are either already in place or planned. These measures are designed to deal with the increased numbers of passengers availing of services on our rail network. I am confident that the improvements planned in the short, medium and long term will enhance services along this important commuter line.

Senator Lorraine Clifford-Lee: Most of what the Minister stated relates to the DART line. This is of no use to people living in Donabate, Rush, Lusk, Skerries or Balbriggan because they are not on the DART line. The Minister indicated that he expects the DART to be expanded as far as Balbriggan by 2022, but we have been hearing that for many years. The date keeps getting pushed out further. As a result, I do not believe anyone will get any comfort from the answer in that regard. The other commuter lines will be electrified before the northern line. Is there any capacity to use the fleet on the other lines and move it onto the northern line just to add some extra carriages to the trains already operating on it? The Minister also indicated that “A formal contract for the new fleet is expected to be signed in 2019.” When will this fleet actually be operational?

An Cathaoirleach: We are over the time allocated. I ask the Minister to be brief.

Deputy Shane Ross: Those are all operational matters. I will refer them to the NTA.

An Cathaoirleach: Short and sweet. That concludes the Minister’s work.

Services for People with Disabilities

An Cathaoirleach: I welcome the Minister of State, Deputy Jim Daly.

Senator Rose Conway-Walsh: I thank the Minister of State for coming before the House to discuss this matter. Áras Attracta is a residential respite day service for adults with intellectual disabilities in County Mayo. The HSE directly manages Áras Attracta which, as the Minister of State knows, works in partnership with other statutory and voluntary organisations to deliver intellectual disability services to the population of County Mayo. I will not go over the challenges that residents of Áras Attracta, their families and many of the staff have faced.

I know there is a change plan in process. What I want to ascertain is the level of consultation that has taken place with residents, users of the day services and the families. I want to ensure that the services and supports that users need are there now and guaranteed into the long term. I also want to ensure the centre is kept within the remit of the HSE and that parts of it are not privatised and given to organisations whose priority is profit maximisation. Furthermore, I want to ensure the staff are protected within the system in order that their terms and conditions are also protected. As for the day users specifically, I want to ensure that the people and their families who have made life decisions to be near Áras Attracta - that is, buying their homes and settling there - will not now find that the service users will be moved to Ballina or other locations throughout the county. These are the assurances I seek from the Minister of State.

Minister of State at the Department of Health (Deputy Jim Daly): I thank the Senator for raising this important matter, which I am taking on behalf of my colleague, the Minister of State with responsibility for disabilities, Deputy Finian McGrath.

This is a time of major change in the delivery of social care in this country, and the HSE has embarked on a transformation programme, Transforming Lives, which aims to put the citizen at the heart of everything we do. One of the central aims of this programme is to strive to ensure that every one of our citizens has an effective right, free from discrimination, to contribute to the economic, social and cultural life of our country and, in doing so, to achieve the best outcomes possible for themselves and their families. The Minister of State, Deputy Finian McGrath, has been very encouraged in recent years to see the number of organisations nationwide that are immersing themselves wholeheartedly in the transformation programme.

Traditional adult day services have, for the most part, been organised as segregated services, separate from local communities and offering limited options, experiences and choices. New Directions is one of the key policy documents contained in the HSE's Transforming Lives programme. It sets out an approach to day services that envisages all the supports available in communities that will be mobilised in order that people with disabilities have the widest choice and options as to how to live their lives and spend their time. New Directions sets out 12 supports that should be available to people with disabilities using day services. It proposes that day services should take the form of individualised outcome-focused supports to allow adults using those services to live lives of their choosing and in accordance with their own wishes, needs and aspirations. New Directions highlights three underlying principles which should underpin services - namely, person-centredness, community inclusion and active citizenship - in order to provide the best outcomes for individuals with a disability.

Áras Attracta day services are transitioning in line with New Directions policy. The HSE currently provides day services on site at Áras Attracta. However, this is not in keeping with the requirements of New Directions policy because it is located within a congregated setting. Day services at Áras Attracta will close at the end of 2018 and a service provider called Praxis has been appointed to provide the new day service under the New Directions policy from January 2019, based in Ballina. Provision has been made to accommodate all current service users attending Áras Attracta day services in this new day service or, if more appropriate to their needs, to another service model. Staff will be reassigned to other areas of service within Áras Attracta or Mayo Community Living.

Senator Rose Conway-Walsh: I thank the Minister of State for his response. The crux of the matter is that the geography of Mayo means that it is not acceptable to expect people to travel from one end of the county to the other to access day services. Furthermore, we do not

know anything about the service provider, Praxis. Is this a privatising of the services? Will Praxis be based in Ballina? Will someone from Kiltimagh with special needs and intellectual challenges be expected to travel from Kiltimagh to, say, Ballina each day? I ask the Ministers of State, Deputies Jim Daly and Finian McGrath, to look at this situation, visit the area and get to know its geography to know that some of the challenges and barriers being put before service users and their families are not acceptable.

An Cathaoirleach: Perhaps the Minister of State, Deputy Jim Daly, could ask the Minister of State, Deputy Finian McGrath, to make direct contact with the Senator.

Deputy Jim Daly: Yes.

An Cathaoirleach: The geography of Mayo is a little like that of west Cork; it is sprawling and there are long distances involved.

Deputy Jim Daly: Change always brings about challenges but also opportunities. I suggest the Senator engage with HSE management locally, which is overseeing the minute details of this and the individual issue the Senator raises. The local management would be quite happy to engage with her on the specific circumstances.

Senator Rose Conway-Walsh: I only wish to ensure no one will be left behind.

An Cathaoirleach: That is understandable, especially at this time of the year.

An Bord Pleanála Applications

Senator Michelle Mulherin: I would like to lay bare before the House the frustration, incredulity and anger of people in north and east Mayo regarding An Bord Pleanála's delay in making a planning decision for the N26 and a new bridge at Cloongullane, Swinford. It will be two years in March since an oral hearing on the building of a new bridge was held. *11 o'clock* The current bridge is on the national primary network, and is not fit even for the 20th century; it was built in the 19th century. It is a hazard and a danger, and is not in keeping with the objectives for national primary routes. Two years have almost passed. An Bord Pleanála had been issuing queries on account of environmental concerns until last July due to the presence of freshwater pearl mussels and alluvial woodland. All of those queries were answered at the end of July and a decision was expected on 30 November, which was an indicative date provided by An Bord Pleanála. Since then, the date has been pushed back. The lands are located in a special area of conservation, SAC, and there are populations living there, including those in Swinford, Foxford and Ballina. There is a road in the area; it is not a wilderness. It is a place where human beings have legitimate objectives. The Mayo industries group and the chamber of commerce recognise that this is long overdue. This delay comes after the refusal by An Bord Pleanála of a new scheme for the N26, which would have provided for transport between Ballina and Bohola, in 2010 on environmental grounds because of the overdesign of a road in a SAC and because of the presence of whooper swans.

Fisheries have no objection to this, and neither does the National Parks and Wildlife Service, NPWS, yet we still do not have a decision. This also applies to a new bridge at Glenisland on the R312, which has been delayed, even though there is funding in place for it, because of the presence of freshwater pearl mussels. In Galway, the road project on the N59 between Ough-

terard and Maam Cross has, after many years, received permission, with many conditions, including that there must be a negotiation with the NPWS at every stage. This is unprecedented, and it is unclear how it will proceed. Permission has been refused for the N59 road project between Maam Cross and Clifden. The ring road around Galway has been refused because it falls within an SAC; the new proposition involves tunnelling around Menlo underneath an SAC. The frustration stems from the fact that everybody is passing us out. Money cannot be spent because planning permission cannot be secured. Does the Minister of State believe this is acceptable? How will we achieve our objective, under Project Ireland 2040, of building up rural areas when planning permission cannot be secured to develop basic strategic infrastructure? What is being done to address this?

Is this a resources issue within An Bord Pleanála? Is it a reflection of the quality of the planning applications coming before it or is it, as I would contend, that we have failed to get a handle on developing areas that are designated as SACs? What is happening in respect of streamlined procedures under strategic infrastructure development legislation? A few years ago a review of the operation of An Bord Pleanála was ordered and recommendations were made to improve it. What is the status of that, particularly in light of the delays in the Apple decision? Is our planning system fit for purpose? Is An Bord Pleanála properly resourced? People in north Mayo are ready to march because of this bridge. What is the Government going to do to respond to these reasonable people who are asking reasonable questions but who are angry?

Minister of State at the Department of Housing, Planning and Local Government (Deputy Damien English): I thank the Senator for raising this important matter and for making clear the anger and frustration experienced locally with various planning decisions. I get the sense of how important it is both to her, as a Senator and a local representative, but also to the people in the area.

With regard to the operation of An Bord Pleanála, under section 30 of the Planning and Development Act 2000, I am precluded from discussing any individual planning cases, which as the Senator will be aware, are matters for the appropriate planning authority or, in this case, An Bord Pleanála. My comments will be general and will discuss what we are doing to ensure-----

Senator Michelle Mulherin: There is plenty of material.

Deputy Damien English: -----An Bord Pleanála can make quicker decision and better quality planning decisions, which is most important. Under section 126 of the Planning and Development Act 2000, as amended, the board has a statutory objective to determine planning appeals and other relevant cases within 18 weeks. Where the board does not consider it possible or appropriate to reach a decision within 18 weeks, for example because of the particular complexities of a case, such as environmental or habitat related complexities, the impacts of a proposed development on environmentally designated lands requiring careful consideration, or the requirement to hold an oral hearing, it will inform the parties of the reasons for this, and will indicate when it intends to make its decision. It is acknowledged that there has been a reduction generally in the board's compliance rate in determining cases within the statutory objective period over the past year which can be attributed to a number of factors, including a general increase in cases received by the board. For example, there was an increase of almost 12% in the number of normal planning appeals received in 2017 compared to 2016. This caseload intake has continued to further increase in 2018. At end-November 2018, the compliance rate for determining normal planning appeals within the 18-week statutory objective period stood at 35%, and at 41% for all planning cases the board has to deal with. This is admittedly down on previ-

ous years. However, a range of measures have been taken to address this, including the appointment of additional board members and a number of internal measures within the organisation. Both the Minister for Housing, Planning and Local Government, Deputy Eoghan Murphy, and I are satisfied that these will enable the board to significantly improve its compliance rate in the near term. In the 11 months to end November 2018, the number of cases decided by the board was 2,564, a 29% increase on the same period last year. The board's output is now averaging in excess of 250 cases per month and, in November alone, the board decided more than 290 cases, or 30% more cases than the caseload intake it received that month.

On large housing developments, it is important to note that new streamlined arrangements have been introduced to enable planning applications for strategic housing developments, SHDs, to be made directly to the board. People often ask us if this is the reason other applications take longer. It is not the case because additional staff have been employed for that. At the end of November 2018, 47 strategic housing development planning applications had been made with the board issuing decisions in 36 cases, all of which were made within the prescribed 16 week timeframe, delivering a 100% compliance rate in these cases and giving permission for a total of 6,761 houses and apartments and 4,479 student accommodation bed spaces. It is important to mention the students because we have many future third-level college students here in the Gallery. It is important that they know there will be student bed spaces in the years to come and that is why it is important that we put that planning in place today.

In addition, planning appeals in respect of housing developments of 30 units or more are prioritised, reflecting the priority attached to housing developments by the board. With regard to resourcing, the board currently has a complement of 11 members, including an extra board member engaged in June 2018 and a new chairperson who took up duty on 30 October 2018, and employs over 150 staff members. Taking this and the increased Exchequer grant of €18.5 million for the board in 2019, a 7% increase on the 2018 budget, into account, I am satisfied that the board has sufficient and necessary resources to perform its statutory functions. My Department will continue to monitor and liaise closely with the board to ensure that it has the appropriate resources to support it in the performance of its functions and so that decisions are made in an efficient and timely manner.

I cannot comment specifically on the Senator's case in Mayo but the Minister, Deputy Murphy, and I believe the resources are in place for the board to be able to improve the timeline. I hope that will lead to a decision very soon on the very worthy project the Senator has highlighted.

Senator Michelle Mulherin: That response does not recognise particular challenges that face lands designated under the birds and habitats directive. There is no cognisance of this. I amended my Commencement matter-----

An Cathaoirleach: It was refused by the Minister's office.

Senator Michelle Mulherin: I amended it, following consultation, to highlight that specific issue. I beg the indulgence of the Cathaoirleach on a slightly off-topic issue.

An Cathaoirleach: We are well over the limit now.

Senator Michelle Mulherin: We are finishing up before Christmas and I want to ask the Minister of State for an update, though he does not have to give it here, on critical information about the pyrite remediation scheme for Mayo which we understood was to be in place before

the end of December.

An Cathaoirleach: The Senator is testing my indulgence.

Senator Michelle Mulherin: I know. The Cathaoirleach is very generous.

An Cathaoirleach: The Minister of State will communicate with the Senator on that matter.

Deputy Damien English: With regard to the main matter raised, I cannot deal with one specific case, but the resources are there and some planning applications are very detailed and complicated with regard to environmental legislation. The board has access to the resources it needs to bring in the required personnel to make those decisions and advise it. In our view, the board is now in a position to make a judgment soon on that case and others.

With regard to the mica and pyrite schemes for Mayo and Donegal, in the budget in October, the Government committed to having a scheme and in the past couple of months, our Department has been working on schemes that we think would suit. That has to happen both in Mayo and Donegal. Those schemes will go to the Cabinet soon, I hope in January. That is the next phase. The Government has committed to putting a scheme in place and bringing it through. We are committed to helping people who are in a very difficult situation with regard to houses and homes in Mayo and Donegal.

Messages from Dáil

An Cathaoirleach: On 18 December 2018 Dáil Éireann passed the Health Insurance (Amendment) Bill, to which the agreement of Seanad Éireann is desired. On 18 December 2018 Dáil Éireann passed the Houses of the Oireachtas Commission (Amendment) Bill 2018, to which the agreement of Seanad Éireann is desired. On 18 December 2018 Dáil Éireann passed the Public Service Superannuation (Age of Retirement) Bill 2018 which is considered by Article 20.2.2° to be a Bill initiated in Dáil Éireann, to which the agreement of Seanad Éireann is desired. On 18 December 2018 Dáil Éireann passed the Appropriation Bill 2018 which is sent herewith to Seanad Éireann for its recommendations. On 18 December 2018 Dáil Éireann passed the European Investment Fund Agreement Bill 2018, without amendment.

Sitting suspended at 11.15 a.m. and resumed at 11.30 a.m.

Order of Business

Senator Jerry Buttimer: The Order of Business is No. 1, motion re tenth report of Committee of Selection, to be taken without debate at the conclusion of the Order of Business; No. 2, Appropriation Bill 2018 [*Certified Money Bill*] - all Stages, to be taken at the conclusion of No. 1, with the contributions of group spokespersons on Second Stage not to exceed six minutes each, those of all other Senators not to exceed four minutes each, the Minister to be given not less than four minutes to reply, Committee and Remaining Stages to be taken immediately thereafter; No. 3, motion for earlier signature of the Appropriation Bill 2018, to be taken without debate at the conclusion of No. 2; No. 4, Houses of the Oireachtas Commission (Amendment) Bill 2018 - all Stages, to be taken at the conclusion of No. 3, with the contributions of group spokespersons on Second Stage not to exceed six minutes each, those of all other Sena-

tors not to exceed four minutes each, the Minister to be given not less than four minutes to reply, Committee and Remaining Stages to be taken immediately thereafter; No. 5, motion for earlier signature of the European Investment Fund Agreement Bill 2018, to be taken without debate at the conclusion of No. 4; No. 6, Judicial Appointments Commission Bill 2017 - Committee Stage, resumed, to be taken at 2.30 p.m. or at the conclusion of No. 5, whichever is the later, and adjourned at 5.30 p.m., if not previously concluded; No. 7, Private Members' business, Parental Leave (Amendment) Bill 2017 - Committee Stage, to be taken at 5.30 p.m., with the time allocated for the debate not to exceed two hours; No. 82, non-Government motion No. 13, all-party motion re conflict in Yemen, to be taken at the conclusion of No. 7 and conclude after 40 minutes, with the contributions of group spokespersons who may share time not to exceed five minutes each and the Minister to be given not less than four minutes to close the debate; and No. 8, Local Government Bill 2018 - Committee and Remaining Stages, to be taken at the conclusion of No. 82, non-Government motion No. 13.

An Cathaoirleach: May we have clarification on No. 6? The Leader has said it is to be adjourned at 5.30 p.m. but my note states 6.30 p.m.

Senator Jerry Buttimer: As the Minister has to go to the Dáil for a Topical Issue matter, rather than suspend the sitting of the House and reconvene, it is more appropriate, in the interests of the Minister and the House, for us to conclude at 5.30 p.m.

An Cathaoirleach: That is fine. That clarifies the matter.

Senator Lorraine Clifford-Lee: I want to raise an issue that is very sensitive but it is one that should be raised. I would like the Minister for Health to come to the Seanad for a debate on the very difficult topic of concealed pregnancies and births. I raise this in light of the very tragic case in Balbriggan over the weekend. As legislators, we should discuss this in a sensitive but determined fashion. Concealed births and pregnancies echo back to a distant, dark time in our history, but it is not in the past, it is happening today and to a certain cohort of women who feel they cannot disclose that they are pregnant and do not get the correct medical treatment they need. They are in every community across the country. This is something we need to discuss.

Concealed pregnancies can lead to tragic outcomes for the mother herself and her baby. Data are not properly collected and that is the first starting point. We need to have a very clear picture of what is happening and then we can work out why it is happening and what proper supports can be put in place. That is the reason I would like the Minister to come to the Seanad for a coherent and substantial debate on this topic because the issue must be tackled. There is a tendency to not discuss such matters because of their sensitivity, but it is incumbent on us as legislators and as policy makers to have the discussion once and for all.

In the past year there have been four infant deaths linked with concealed pregnancies and that is just what has been reported in the media. As the data are not collected properly we do not know what is happening and we do not have a clear picture. The issue must be examined from an interdisciplinary perspective to develop clear care pathways for women. We must end the stigmatisation of women who conceal pregnancy and birth. The media play a very strong role in the changing of the narrative regarding concealed pregnancies and births. Very clear options need to be presented to women. From studies that have been done in this regard the issue of adoption came up. We are not providing information or even suggesting adoption as an option for women. Many of the women who were interviewed said they would like to get some information in that regard. We must also decriminalise the concealment of pregnancies. A couple

of years ago an Irish girl in Australia was charged with concealing her pregnancy, which ended in a stillbirth. Criminalisation leads to a chilling effect on women who are already in a very difficult position. Concealment must be decriminalised immediately.

The only recent study that has been carried out in this country on concealed births is the case study that has been conducted by Dr. Sylvia Murphy Tighe from the University of Limerick and Professor Joan Lalor from Trinity College, Dublin. The study concluded that nearly all of the women had a deep emotional trauma from childhood, or through adulthood, and that led to them concealing their pregnancy. I would like the Minister to come to the House in order that we can have a debate on this topic. As Members can imagine, it is a very live issue in north County Dublin and we want it to be discussed. The Minister has made great strides in women's healthcare but this is a very important piece of the jigsaw and I would appreciate if he could come to the House for a debate on the topic.

Senator Gerard P. Craughwell: Regrettably, the British Prime Minister has decided to play a sort of brinkmanship game. We read this morning that troops have been mobilised to prepare for a hard Brexit. Earlier this week, Brigadier General Ger Aherne retired and he gave a detailed interview to Seán O'Rourke on Radio One, with respect to the lack of preparedness in Ireland regarding to the management of a border. He referred in particular to the failures of the White Paper, insofar as it has redistributed the majority of troops in a line south of Dublin and Galway, with two battalions left north of that. Ireland is not ready to man a border and the Defence Forces have now identified a further 100 crossings along the Border.

The time has come for us to show our hand. The risk of a border is something nobody on this island wants and we are constantly told by the British Government that it does not want a border. We are also told that the people in the North of Ireland do not want a border. However, I read this morning that one of the peers from the North of Ireland, Lord Kilclooney, says this is going to be bonanza time for the UK – the pound is going to fall, exports will rise and everything will be hunky-dory. It is time for truth on Brexit. I believe that while we are putting contingency plans in place for customs officials, we have failed to examine, at least in the open, how we are going to manage a border. There is no way that we can have an open border in a hard Brexit. It is going to be extremely difficult to have an open border in a soft Brexit. We must address that issue as a matter of urgency. I would like to hear some utterances from the Government with respect to whether it has war gamed the management of troops being moved to a Border area.

We are about to enter what we might call the winter of discontent from the public service. Nurses have voted for strike action and two of the teachers' unions are totally opposed to the current pay conditions. There are so many demands on the public purse, between health and education and all of the other services that are given by the State and I do not know how they are going to be met.

Senator Jerry Buttimer: That is the problem. The Senator is right.

Senator Gerard P. Craughwell: The one thing we need to do is engage now before we finish up with patients in hospitals with no nurses to look after them. We heard of 35 nurses this week who could not get a working visa. That is outrageous in the current environment. The Minister must bring in the unions and find out how we can move forward. The pay deal has not worked. It has been rejected by the majority of the key front-line services. We will have to bring in the unions early in January before we finish up with services being ground to a halt as

a result of industrial action. I urge the Leader to get the Minister to come to the House as early as possible in January to discuss the matter.

Senator Rose Conway-Walsh: I can hardly believe I am standing here to say this today. It relates to the junior bondholders of Anglo Irish Bank who were given the full value of their bonds from the Irish Bank Resolution Corporation, IBRC, to the value of €270 million. Those are the banks that we have already paid €35 billion, between Anglo Irish Bank and Irish Nationwide Building Society. People right across the State have paid that money. The payments are not alone made by the current population but those who will be born in the future and they will have to pay it for many years to come. That is completely unacceptable.

We were told time and again, including by my own county man, Deputy Enda Kenny, and by Deputy Burton, that it would never happen, that junior bondholders would not be paid, yet now we see they are being paid. The problem I have is that the Government has clearly not explored all of the legal options available to it to stop the payments being made. The junior bondholders are gamblers, speculators and hedge funds. It is very clear to me that they are being put before the interests of citizens, the people who need the money most. There is a pattern here in terms of the priority that is given to banks, bondholders and the elite of this country, who are running the country. I am not sure what the Government is doing. Last week an executive of Irish Nationwide Building Society was given a measly penalty for reckless lending. It is unbelievable and unacceptable. The Minister for Finance, Deputy Donohoe, said last week that it was a highlight in that the final dividend payment was being paid and it far exceeded his expectations. It beggars belief if that is an indication of his expectations for the ordinary citizens of this country. In the meantime, we have children who are waiting on a political decision by the Government. I will cite only one group of children. A small number of children are waiting for the drug, Spinraza, which would cost a fraction of that amount, yet the Government is dragging its heels and will not make the political decision to grant the funding for the drug so that those children have a chance to survive and have a normal quality of life. The Minister did not even answer the letter that was sent by one of the children, probably the last letter that child will be able to write, because Spinraza is being refused to her. He sent back the photographs. He would not even respond to the letter, and yet we jump as high as we have to jump in terms of the junior bondholders, the speculators and the gamblers who have collectively ruined this country and continue to be facilitated by the Government.

Senator Paul Gavan: Well said.

Senator Ivana Bacik: I thank all colleagues who contributed to the special debate on Thursday to mark the centenary of women's suffrage and note the contribution of the Vótáil 100 programme in the Houses of the Oireachtas. Now that the exhibition has been taken down from the Seanad anteroom I again thank all those who worked so hard to make the Vótáil 100 programme such a success, including you, a Chathaoirligh, and the Ceann Comhairle who provided the resources necessary for the programme. I refer in particular to the great work done by the communications unit under Derek Dignam, Liam O'Brien and others who worked so hard all through the year on the programme. It was a model in terms of collaboration between the Houses of the Oireachtas and the other national cultural institutions, notably the National Museum of Ireland, the National Gallery of Ireland and the National Library of Ireland. We are still getting so many requests from around the country for the Vótáil 100 badges and to tell them more about the programme of events that we ran. I thank everyone involved, in particular my colleagues in this House and in the other House who were on the committee with me, including Senators McFadden, Conway-Walsh and Higgins. I just wanted to note that again.

I echo Senator Clifford-Lee's words on the need for a debate on the very sad incident of concealed pregnancy and concealed birth highlighted in a recent case. Tragically, it is something that happens from time to time. As Senator Clifford-Lee said, it has echoes of the past. In particular for those of us of a certain age there are echoes of the tragic Ann Lovett case. I also echo Senator Clifford-Lee's words about the need for more research. I am familiar with the work done by my colleague, Professor Joan Lalor, in Trinity College Dublin and Dr. Sylvia Murphy Tighe, but there is very little research beyond what they have conducted into the incidence of concealed pregnancy and birth. It requires significant resources to conduct such research and it would be well worth having a debate and putting it to the Minister for Health that we need to hear more and to learn more about the incidence of concealed pregnancy and birth and the causal factors and especially how we can prevent it from happening, and reach out to the women and girls involved.

I also ask the Leader for a debate in the new year on Brexit. As others said, we are seeing a period of brinkmanship. The hope of a managed withdrawal seems to be receding. For many of us, the need for a second referendum which one hopes would produce a different result becomes much more pressing with every new day and every new incidence of chaos in the British Government and among MPs at Westminster. I know that we have had a number of debates on Brexit but it would be worth getting an update early in the new year when we return to hear what are the plans here. Senator Craughwell has asked what are the contingency plans in the appalling event of a no-deal Brexit.

I wish all well for Christmas and the new year.

Senator Gabrielle McFadden: Last year RTÉ reported a loss of €6.4 million, despite a subvention from the State in the form of licence fees of €186 million. Given that level of loss it was a source of great disappointment to me to hear last week of the large salaries paid to top earners in the State broadcaster. For example, one of them received a pay rise of €50,000 to give him a total income of €150,000 per annum, at a time when inflation is negligible. At that rate, the broadcaster in question will have earned the average industrial wage by the end of January. One should not get me wrong; I am not picking on just one in particular, I believe all of the salaries of the top earners in RTÉ are excessive. My point is not about one individual. I question the approach to salaries in general at the State broadcaster. The level of salaries seems to be too high and such significant increases seem unwarranted.

The treatment of some of the top earners in RTÉ seems very much at variance to the treatment of Martina Fitzgerald the previous week. From my experience, she is a consummate professional. I was shocked and disappointed to hear that her contract as a political correspondent was not renewed. The only reason I can think of for the non-renewal of her contract is the fact that she shone a light on the gender pay gap in RTÉ. It is hard for me to reconcile how management in RTÉ is that sensitive to criticism and at the same time can award pay increases to individuals that are more than the average industrial wage. That is not to mention the 160 odd workers at RTÉ who may have been misclassified as self-employed, resulting in them losing out on certain employment benefits. I ask the Leader to invite the Minister to the House in the new year, first, so that we can hear his opinion, and, second, perhaps we could have a debate on same.

Senator Jennifer Murnane O'Connor: I was contacted last week by constituents concerning a report that there may be a shortage of allocations of special education teachers next year. A new allocation system was introduced in 2017, which allocated special education staff

based on factors such as number of students, the number of children with complex needs, standardised test results, gender spread and if there was disadvantaged status. The new allocation system was intended to replace the old allocation which provided for staff for children with common difficulties, but if a child had a disability or complex educational needs the school would only receive extra teaching hours following a professional assessment. The new system brought in an extra 900 special teachers last year and it was intended to provide a further 100 this year. The Minister must come to the House to clarify that the increase will remain in place for the next two-year cycle and that there will be no further cuts to the number of special education teachers. That is crucial.

Another issue brought to my attention is that schools should be given plenty of notice of allocations in order to sort clustering arrangements. The need for more notice was a big issue last year. School enrolments are at a peak of more than 500,000 in primary schools and the numbers are increasing at second level at a rapid rate. I would like the Minister to address this House and reassure parents that they will not have to fight again for teaching posts they already fought for.

Previous speakers referred to the need to support nurses. We must support them, and we must also be supportive of teachers, paramedics, gardaí and front-line staff. That will be a very big issue next year. We in the Seanad and Deputies must support those who provide front-line services.

Senator Victor Boyhan: I will not go into the Local Government Bill 2018 at this stage because we will have time tonight. The Minister of State, Deputy Phelan, made a good and positive suggestion last night, that we would have an all-day session in the Seanad on the role of local government with an emphasis on elected mayors. I presume he meant executive elected mayors. I am aware the Leader was present for most of the debate, including that part of it. Would the Leader consider timetabling such a debate at some stage in January? It was a good suggestion from the Minister of State and he is committed to it. It would be a very good opportunity for the House to discuss this complex issue of devolved powers.

I thank the Government and acknowledge that the Planning Regulator, as set out and envisaged under the Planning and Development (Amendment) Act 2018, was formally announced.

An official from the Department is taking the job and I acknowledge the Government's commitment to driving it with a very fast timeline. The Bill was only enacted very recently and, after a competitive interview process, there has been the announcement of the appointment of a new planning regulator. It is welcome and the Joint Committee on Housing, Planning and Local Government, rather than the Seanad, should invite the new director to appear. I acknowledge the speed and efficiency in setting out the interview process and independently determining a suitable and capable candidate.

Senator Colm Burke: I wish to raise concerns about something that occurred yesterday. I was at a committee at which there was a vote and three Senators voted, meaning that it was a tied vote and the proposal to accept a report was lost. A Dáil Deputy implied that
12 o'clock the vote was not valid because three Senators had voted and Senators were not directly elected. There is the Constitution and the joint committees consist of both Deputies and Senators. Therefore, I was really taken aback in a comment such as that being made when a decision had been democratically taken. When Dáil Deputies make remarks like that, it is not welcome and those who are on joint committees should accept that Senators have the same rights as Dáil Deputies.

Senator Jerry Buttimer: Hear, hear.

Senator Colm Burke: As the decision did not go the way of the committee member in question, there was a remark about it. We had this in the case of the Sláintecare report, from which Senators were excluded. This is wrong and unfair.

My understanding is the cost of the new national children's hospital project will be €1.433 billion, an increase of €450 million. This is something on which we should have a debate in the new year. In the Joint Committee on Health this morning, we decided to ask the Department of Public Expenditure and Reform, the Department of Health and representatives on the board of the national children's hospital to appear before us to provide clarification on this new cost increase. It is important there is full accountability to the taxpayers of this country and it would also be helpful to discuss the matter in this House.

Senator Paul Gavan: It is welcome that we will be debating the situation in Yemen later this evening and I thank the Leader for providing time for the debate. I acknowledge the work of Senator Alice-Mary Higgins in getting it lined up. It will be very worthwhile.

I ask for a debate in the new year on the broader issue of foreign affairs. I wish to ask where our independent voice is as a country because, under the Government, it seems to have disappeared. I will cite a few examples of this. We expelled two Russian diplomats earlier this year, on the say-so of MI6 because there was no evidence at the time. I contrast that with our response to Saudi Arabia after the horrific killing of Jamal Khashoggi, when we did absolutely nothing. There are 52 people employed by the Saudi Arabian Embassy here, the same number as in the British Embassy. One can expect such a figure for staff in the UK Embassy but what are the 52 Saudi diplomats actually doing here? It is astounding that there are so many staff employed here.

The second example is Palestine, in respect of which the continual refusal of the Government to apply the decision of the Dáil to recognise the State of Palestine is hugely disappointing, as is the refusal to get on board with Senator Black's Economic Activities (Occupied Territories) Bill. It seems we are not prepared to do anything that might upset the American Administration or the US chamber of commerce.

The third example is PESCO. We know from Médecins sans Frontières that 14,000 migrants have been driven back to Libya this year. That is against international law and against a promise made by the European Union not to allow them to be driven back to be sold as slaves, tortured, raped and mutilated. There has been no comment from the Tánaiste and Minister for Foreign Affairs and Trade on this issue.

The final example is the air strikes on Syria, with which we were happy to go along because we "understood" them. This is supposed to be an independent country with an independent foreign policy. That has vanished under the Government, which is why I am calling for a debate in the new year.

Senator Tim Lombard: Senator Colm Burke was treated in an appalling manner at the meeting of the joint committee yesterday. I missed the meeting but the Leader needs to address the issue because we have parity in those committees.

An Cathaoirleach: In joint committees, Senators have the same status as Deputies. I do not want to know which Deputy raised the objection but he or she should be reminded that the

people of this country had a referendum on whether to retain the Seanad, which was passed three or four years ago.

Senator Colm Burke: It was stated we did not have the right to vote. In fairness, one committee member voted against the proposal so it was not that Senators voted in one way.

Senator Tim Lombard: An issue I have been chasing for many months is how we deal with Irish Water. In my part of the world, a water main has broken 18 times in the past 14 months. There was a gate valve so that the village, Ballinhassig, could be fed from both sides. Irish Water has announced that it will look at the issue but it must do a cost-benefit analysis of putting in another gate valve. It involves half a day's work for two men in a place where there are two pubs, one restaurant and a childcare centre. I would love to know if Irish Water has done a cost-benefit analysis of the impact of trade to this village over the past 14 months or looked at the number of times staff and kids have been sent home. The bureaucratic face of Irish Water needs to be looked at. We got an email in our office at 8 a.m. today telling us it was going to put a gate valve in, but only after a cost-benefit analysis. Nobody has looked at how this village has suffered in the past year and we need to have a debate with the Minister of State with responsibility for local government to ask him who is doing a cost-benefit analysis on Irish Water. People deserve better service and this is an issue the Minister has to look at with a view to getting better representation on the ground.

Senator Kevin Humphreys: In the past year problems relating to poorly built apartments during the boom have been raised on the Order of Business and in Commencement matters but we have no holistic approach to the issue. Only recently, residents from the Beacon South Quarter protested outside the Dáil because they are being asked to raise €50,000 to €60,000 per household to fix the problems resulting from the lack of regulation and the lack of inspections during the building boom. Many decisions were made by past Governments to lower standards and these people are suffering from the fallout from that. In an apartment block in Dublin 8, residents are being asked for up to €28,000 per unit to fix fire issues. We need an holistic approach to this to get a solution, even if it is just in the form of low-interest loans for residents to deal with these issues. The Housing Finance Agency lends at 1% and the residents should have access to that to fix the problems of the past. They do not see the recovery because they have such enormous bills to get their homes back into a position where they can live safely. I ask for a debate, not on individual complexes but on how we can resolve this issue.

I campaigned long and hard on the issue of short-term lettings and thought we had a solution when the Minister announced we would have legislation by Christmas, to be implemented in June, to control short-term lettings. We have not seen that legislation. I was on several websites yesterday and saw units which are now back up and taking bookings for all of next summer. It appears the platforms no longer believe there will be legislation and regulation and are taking holiday bookings all the way through next summer. We need clarity on this issue but I hoped we would have had it before Christmas. We were promised clarity before Christmas but we are still waiting for it. We have had the spin in the media but we have not seen the draft legislation.

Senator Paddy Burke: I was astounded to hear what Senator Colm Burke said about the joint committee. It should be remembered that a joint committee cannot meet unless it has a quorum which includes at least one Senator. It could only be ignorance for any Deputy to raise an issue in the fashion described.

I support Senator Lombard's request for a debate in the House in the new year on Irish Wa-

ter. The time is right to have a debate on the company's progress and how it is functioning. Are there efficiencies to be made and can more be done? What is the company doing on the ground to extend group water schemes and sewerage and water facilities in small and medium-sized towns? There is then, of course, the issue of the proposal to bring water from the River Shannon to Dublin. We could have a worthwhile debate on all that in the new year. It is a number of years since water services were separated from local authorities and it would be useful to see how Irish Water is progressing. I ask the Leader to arrange an early debate on the issue in the new year.

Senator Ned O'Sullivan: I join in the expressions of goodwill to the Cathaoirleach, staff and Members and express my sincere condolences to our Clerk, Mr. Martin Groves. I was not present yesterday to do so. I thank the Clerk, Mr. Groves, the Clerk Assistant, Ms Bridget Doody, the staff and the ushers for their kindness during the year.

I listened to the contributions of Senators. I also attended the joint committee meeting referred to as a substitute for another member. I was shocked to hear a certain Deputy insinuate that Senators had no right to attend or vote. We were too shocked to comment on the spot. The matter should be taken up at whatever forum the Cathaoirleach or the Leader considers appropriate. I regard it as a serious attitude for a Deputy to express that in some way we are an inferior species here and that the Constitution and Seanad stand for nothing.

Senator Diarmuid Wilson: This is the Upper House.

Senator Ned O'Sullivan: Yes. I come late to the case in Roscommon as I was not in the Chamber yesterday. I join Members who have condemned utterly the lawless behaviour of a bunch of vigilantes who acted in a paramilitary way to inflict serious injuries on other persons. Thank God, there was no loss of life, but it is nevertheless one of the most serious incidents of lawlessness in this country. Even though there was no loss of life, one is very much reminded of the atrocities that were part of our everyday lives when the provisionals were carrying out their outrageous campaign in the North. There are strong undertones of paramilitary organisation going on here at a time of significant difficulty in the relationship between these two islands and between North and South in the context of Brexit. I appeal to all parties to tone down their rhetoric, albeit in the spirit of Christmas, I will not mention a particular party. Law and order is important to people and parties in Dáil Éireann and Seanad Éireann have an obligation to support the forces of law and order and condemn outright the actions of illegal paramilitary persons. There is no place for balaclavas on any side of this debate whether they are worn by people protecting property or by people attacking life and property. I will not repeat what the Taoiseach said yesterday, but he spoke for every right-thinking person in Ireland when he said it.

Senator Jerry Buttimer: I thank the 13 Members for their contributions on the Order of Business. I begin by agreeing wholeheartedly with Senator Lorraine Clifford-Lee on her fine contribution, as well as with Senator Bacik. The story of baby Belle in Balbriggan is one we have all been upset and moved by. I listened yesterday morning to members of An Garda Síochána making an appeal to the mother of the little baby who was stillborn to come forward. She is not being regarded from a criminal perspective; rather gardaí are concerned for her welfare. We all share the view expressed this morning in the House that one infant death is too many but, as Senator Clifford-Lee said, there have been four this year alone.

Senator Lorraine Clifford-Lee: That we know of. The data are not being collected.

Senator Jerry Buttimer: That we know of, yes. I agree. The Senator referred to a study. There is also a PhD thesis by Dr. Murphy Tighe which speaks to issues around psychology. There is a major need to have that debate, not least because it may help women to realise they are not on their own and to offer them support. It is also about looking after the health and welfare of that young mother today. I will be happy to have that debate because the Senator is correct that there must be clear and direct pathways to care. I commend her for raising the matter and hope all of us can assist and be there through our work for some mother this morning, or for anybody.

Senator Craughwell raised the issue of Brexit. The point he makes is one about which we need to be careful. The Government has been engaged in contingency planning and preparation and it is working with the other 26 member states involved to ensure there is a publication from the Commission this week. We will make an update available to the House before the Christmas recess if we can. The Government is preparing for all eventualities and contingency planning for Brexit is ongoing in all Departments, as it has been for more than a year. The Government has mandated all Departments to give the highest priority to plans for a no-deal or disorderly Brexit. It is somewhat premature to be talking of members of the Defence Forces on the Border. We all agree that there should be no return to a hard border and we all want to see a deal struck and agreed. The British Prime Minister has her own difficulties but the priority for our Government is that we will have the deal enacted as agreed and continue to ensure there is no hard border on our island. I would be happy to have the Minister come to the House early in the new year for a debate on Brexit.

Senator Craughwell referred also to the decision of the INMO and looking after public sector workers, as did Senator Murnane O'Connor. It is a bit rich to listen for her to talk about looking after front-line staff when it was her party in government that decimated the lives, incomes and supports of nurses.

Senator Jennifer Murnane O'Connor: We are nearly eight years on.

Senator Jerry Buttimer: I know but Fianna Fáil cut numbers, pay and services and now comes to the House seeking to be all things to all people.

Senator Jennifer Murnane O'Connor: We will support the teachers and the nurses. We are eight years on.

Senator Gabrielle McFadden: But we are still paying for it.

Senator Lorraine Clifford-Lee: They say Ireland is booming.

Senator Jennifer Murnane O'Connor: Where is the recovery?

Senator Paul Gavan: Fianna Fáil just endorsed the Government for another year.

An Cathaoirleach: Please, Senators.

Senator Jerry Buttimer: The recovery is happening. More people are back at work, income levels are up and poverty is down. Will I keep going for Senator Murnane O'Connor? This is a better Government and a better country than it was the way Fianna Fáil left it in 2007.

Senator Lorraine Clifford-Lee: Poverty levels have increased.

Senator Jerry Buttimer: The Senator should read the report-----

Senator Jennifer Murnane O'Connor: That is why the teachers are not happy and that is why there are 10,000 people on the housing list.

An Cathaoirleach: If Senator Murnane O'Connor keeps interrupting, I will suspend the sitting for half an hour. She might not be here at 11 p.m. but others will. The Senator put a question to the Leader and I gave her ample time to do so. I ask her to allow the Leader to respond. If she is not happy with the response, she can raise the matter again tomorrow.

Senator Diarmuid Wilson: It is difficult to listen to the lies.

Senator Jerry Buttimer: I have not told any lies.

Senator Diarmuid Wilson: The Leader has not told the truth.

Senator Jerry Buttimer: I know that it is upsetting for some Senators that the Government is doing a good job and that income levels have risen. I urge Senators to look at the CSO survey of income and living conditions which contains the facts. It does not contain fake news but facts. It does not contain the spin from the fifth floor of Leinster House 2000 but real facts.

Senator Paul Gavan: Surely the Leader means the fourth floor of Leinster House 2000.

Senator Jerry Buttimer: No, we are on the fourth floor.

Senator Paul Gavan: Precisely.

Senator Jennifer Murnane O'Connor: The Leader cannot even get the floor right.

Senator Jerry Buttimer: During our time in opposition, we were on the fifth floor.

I wish to return to the important point Senator Craughwell made. He has suggested we are facing a winter of discontent, which is disappointing. There is a public sector pay mechanism in place to allow for discussion and the hammering out of deals, etc. It is disappointing that we now have a plethora of unions coming forward with more demands. While that is their right, we must balance expectation against reality in terms of what we can afford. I hope that there will be no strikes. It is important to understand that the Minister for Public Expenditure and Reform is committed, with the rest of the Government, to reaching with the various unions an overall public service stability agreement that will serve us well. We all know what happened in the past when we did not have collective bargaining. It is important that we continue with this model into the future.

Senator Conway-Walsh referred to bondholders. It is important to point out that the State has benefited to the tune of €1.2 billion. That money will be used to improve our Exchequer borrowing requirement, thus reducing our level of debt. This debt reduction will mean that more money will be available for services and for prescription drugs, which were also mentioned. While I understand where the Senator is coming from, I must also point out that the Attorney General advised the Government that not paying the subordinate bondholders would not stand up to constitutional challenge. The Government must listen to the advice of the Attorney General, as the Senator knows. It is important to recognise that the Government has done a good job in term of managing all of the elements involved and getting money back for the State, which it is now using to benefit the people.

On behalf of the House, I congratulate Senator Bacik on her work on the committee that was involved in the Vótáil 100 commemorations. The display in the anteroom, the debate we had here last week and the ongoing series of debates and engagements in respect of Vótáil 100 are testimony to the importance of the Oireachtas and a tribute to the leadership of all Members of the House, particularly Senator Bacik. I thank all Members who worked on it, as well as staff of the communications unit and the Houses of the Oireachtas. They made a tremendous contribution. Senator Bacik specifically mentioned Mr. Derek Dignam. I would also like to thank him for his work. Congratulations again to all involved.

I am happy to organise a debate on Brexit in the new year and a motion will go before the Committee on Procedure and Privileges today regarding the Brexit committee. Senator McFadden referred to the losses incurred by RTÉ, the national broadcaster, and the inordinately high salaries being paid to some who work for the organisation. It beggars belief when one sees some of the salaries involved. I know that people work hard in RTÉ but some of the salaries being paid are incredible. While I am on the subject of RTÉ, I congratulate Ms Martina Fitzgerald on her work as a political editor. I do not want to get involved in the internal machinations in RTÉ but her departure is disappointing for those of us who have got to know Ms Fitzgerald on a professional and personal level. Every day she brings balance, insight and fairness to her job. We will all miss her. I thank her for her work and express the hope that RTÉ will reconsider its decision. I do not want to get involved in the internal appointments procedure in the organisation but do want to thank Ms Fitzgerald and wish her continued success in her career.

Senator Murnane O'Connor referred to special needs education. A new assessment model has been introduced and each school is given an allocation based on its size, the profile of students and so on. Furthermore, under the review of the special needs assistant scheme, there are now 15,000 special needs assistants working in our education system, which is an increase of 42% since 2011. I agree with the Senator that the entire special needs education model must be reviewed, including resource allocation, transport services, access to speech and language and occupational therapies and so on. It is frustrating for everyone that there are young boys and girls in school who do not have the resources they need. That beggars belief, particularly when one considers that we have increased the budget for education substantially. There have been significant changes in the education system in recent years but the Senator's point is both valid and well made.

Senator Boyhan referred to the Local Government Bill. It is my intention to have a debate on local government in the new year, specifically on the issue of directly elected mayors. Senator Boyhan will be glad to hear that we were in contact with the Minister's office this morning to arrange such a debate for the end of January. I acknowledge Senator Boyhan's remarks on the planning and development regulator.

Senators Colm Burke, Lombard, Paddy Burke and Ned O'Sullivan raised the important issue of the role of Members of the Upper House in the committee system of the Oireachtas. I express my disappointment at the lack of understanding and the downright ignorance displayed by a Member of the Lower House yesterday. The Cathaoirleach will not allow me to name the individual Deputy but it is disappointing that a Member of the Oireachtas should behave in that way simply because a Bill proposed by that Member did not get through. As the Cathaoirleach has pointed out, we are required under the Constitution to be part of the Oireachtas. A joint committee cannot sit unless at least one Senator is present. We have the right to vote and contribute at committee meetings. Many Members of this House have made excellent contributions at committee-----

Senator Diarmuid Wilson: The people voted to retain this House. We should ask them the same question about the Lower House and see what response we get.

Senator Jerry Buttimer: We will not put that question just yet.

Senator Diarmuid Wilson: We should include Deputy Bríd Smith in the question.

Senator Jerry Buttimer: The remarks were unhelpful.

Senator Diarmuid Wilson: That is her name but she is unknown to most people.

Senator Jerry Buttimer: Irrespective of political ideology, we should stand up for one another in this House. It was also disappointing that Members of the Seanad were not involved in the committee that drew up the Sláintecare report. The Houses of the Oireachtas Commission Bill will come before the House this afternoon and I hope Members here will speak about the need for us, as Members of the Upper House and as public representatives, to be given a fair and equitable hearing, adequate resources and appropriate responsibilities. I will come back to that issue when we are discussing the aforementioned Bill because some of the carry on is less than helpful and unacceptable.

We had a discussion on the national children's hospital yesterday on the Order of Business. The cost is of concern. It is disappointing to hear that the projected cost of the hospital has increased by approximately €400 million, which may have an impact on other projects.

Senator Gavan's interpretation of the Government's foreign policy is a bit like the voodoo economics of Sinn Féin.

Senator Paul Gavan: The Leader should get a new cliché for next year because that one is well and truly worn out.

Senator Diarmuid Wilson: He is trying.

Senator Rose Conway-Walsh: He is very trying.

Senator Jerry Buttimer: Sinn Féin's one dimensional view of the world order is, at times, incomprehensible. I must say that, with the Tánaiste, Deputy Coveney, and the Ministers of State, Deputies Cannon and McEntee, we have a very fine team in the Department of Foreign Affairs and Trade who are playing a significant role across the world in promoting peace, reconciliation and human rights through a multiplicity of programmes and services. We are also well served by our diplomats around the world. The Government's view of foreign policy is totally at variance with that of Senator Gavan. Our reputation is not as diminished as the Senator suggested this morning. I would be happy to have that debate in the new year.

Senators Lombard and Paddy Burke raised the issue of Irish Water. I am familiar with the issue in Ballinhassig. For those who are not from Cork, Ballinhassig is an important community, which has been bedevilled over the supply of water. It requires an intervention by Irish Water. I am not as proficient in engineering as Senator Lombard, but the matter could be resolved quickly. I would be happy to have that debate in the new year. Irish Water is there to serve the customer and community, as well as being an entity looking after other parts of Government's business.

Senator Humphreys spoke about planning for apartments. I agree with him that none of us

wants to go back to having the kinds of issues in Priory Hall. Last year, the Minister, Deputy Eoghan Murphy, published the guidelines for apartments. Apartment and multi-unit living is becoming increasingly popular. We all want stable urban housing with designs that are fit for the 21st century and not in any way like Priory Hall. I hope we will have that debate in the new year. I would also be happy to have a debate on short-term lets.

Senator Ned O’Sullivan raised the Roscommon case, which we discussed on the Order of Business yesterday. It is important to recognise there are two sides to the story. We can never condone thuggery or violence in any shape or form. As he said, we are lucky that nobody was killed in the incident. Yesterday, the Taoiseach made the point that it was on foot of a court order. As I said yesterday, it needs engagement by all sides to bring resolution to the matter. None of us wants people to be evicted or to lose their family home or property.

I thank Members for their contributions. I look forward to the debates in the rest of the day.

Order of Business agreed to.

Report of Committee of Selection: Motion

An Leas-Chathaoirleach: I move:

That the Tenth Report of the Committee of Selection be laid before the Seanad.

Question put and agreed to.

Appropriation Bill 2018 [Certified Money Bill]: Second and Subsequent Stages

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

Acting Chairman (Senator Diarmuid Wilson): I welcome the Minister of State at the Department of Finance, Deputy O’Donovan.

Minister of State at the Department of Finance (Deputy Patrick O’Donovan): The Bill is an essential element of financial housekeeping that must be concluded by both Houses of the Oireachtas before the end of the year.

The Bill serves two primary purposes. First, it is necessary to authorise in law all of the expenditure that has been undertaken in 2018 on the basis of the Estimates that have been voted on by the Dáil during the year. Section 1 and Schedule 1 set out the amounts to be appropriated for supply services. These relate to the amounts included in the Revised Estimates for 2018 voted by the Dáil earlier this year and the Supplementary Estimates voted by the Dáil on 12 December. These Estimates amount to €50.9 billion. The comparable amount in the Appropriation Act 2017 was €46.7 billion. The amount to be appropriated this year, therefore, represents an increase of €4.2 billion on last year’s net voted expenditure.

The second key purpose of the Bill is to provide a legal basis for spending to continue into 2019. The passage of the Bill allows continued funding, in the period before the 2019 Estimates are approved, in the areas of social welfare payments from the social protection Vote, Exchequer pay and pensions, and other voted expenditure. If the Bill were not enacted before

the end of December, there would be no authority to spend any voted moneys in 2019 from the start of January until approval of the 2019 Estimates, since this authority for 2019, as contained in the Central Fund (Permanent Provisions) Act 1965, is based on the amounts provided for in the Appropriation Act 2018.

Under the rolling multi-annual capital envelopes introduced in budget 2004 Departments may carry over, from the current year to the following year, unspent capital up to a maximum of 10% of voted capital. The multi-annual system is designed to improve the efficiency and effectiveness of the management by Departments and agencies of capital programmes and projects. It recognises the difficulties inherent in the planning and profiling of capital expenditure and acknowledges that capital projects may be subject to delays. The carryover facility allows for a portion of unspent moneys, which would have been lost to the capital programmes and projects concerned under the annual system of allocating capital, to be made available for spending on programme priorities in the subsequent year.

The Appropriation Act determines definitively the capital amounts that may be carried over to the following year. The aggregate amount of proposed capital carryover from 2018 into 2019 is €93 million, which represents 1.6% of the total Exchequer capital programme of almost €6 billion for 2018. The amount carried over from 2017 into 2018 was €70.3 million.

The proposed amounts to be carried over by Vote are set out in Schedule 2. The 2019 Revised Estimates Volume sets out detailed financial and key performance information for Departments and offices. In Part II of the Estimates, for each Vote availing of the capital carryover facility, a table is included listing the amounts to be deferred by subhead.

Certain Exchequer liabilities and social welfare payments are due for payment by electronic funds transfer on 1 and 2 January 2019. With the banking system closed on 1 January 2019, funding will need to be in place in departmental bank accounts before the end of this year to meet those liabilities on a timely basis. That is the most fundamental part of the Bill and on that basis, I will ask the House to give its approval.

In addition, An Post needs to be prefunded before the end of the 2018 in respect of certain benefit payments due in the first week of January 2019, in order to physically transfer cash to their network of post offices throughout the country.

These Exchequer pay and pension and social welfare payments will form part of the supply services for 2019, and, consequently, the funds to cover these costs will be included in amounts disbursed from the Central Fund to the Paymaster General's account as part of the 2019 supply issues. These costs will come under moneys voted in 2019 in respect of which the usual processes and mechanisms for voted moneys in 2019 will apply.

In line with last year, section 3 includes a specific provision to allow for an advance, not exceeding €250 million, from the Central Fund to the Paymaster General's supply account, with this advance then being repaid to the Central Fund in January.

The signed Act is required by the Comptroller and Auditor General for clearance of the end-year issues from the Exchequer. Under Article 25.2.1° of the Constitution the President may not sign a Bill earlier than the fifth day after the date on which the Bill is presented to him. However, there is provision in Article 25.2.2° whereby, at the request of the Government, with the prior concurrence of Seanad Éireann, the President may sign a Bill on an earlier date than the fifth day mentioned. In view of the urgency of this Bill, the provision in Article 25.2.2° is

sought and a motion to this effect is placed before the Seanad. Such an earlier signature motion has also been sought for the Appropriation Bill in previous years.

I have remarked that the legislation is an essential element of housekeeping which those of us in both Houses of the Oireachtas are required to undertake. Its passage will authorise in law all of the expenditure that has been undertaken in 2018 on the basis of the Estimates voted by the Dáil during the year. Of fundamental importance to those who depend on our essential public services, the passage of the Bill will also ensure that payments funded from voted expenditure in 2018, such as housing assistance payments, jobseeker's allowance, disability allowance, pay across the public sector, and all other pay and pensions funded from voted money, can continue to be funded in 2019 in the period before the Dáil approves the 2019 Estimates. I commend the Bill to the House.

Acting Chairman (Senator Diarmuid Wilson): I thank the Minister of State.

Senator Ned O'Sullivan: I welcome the Minister of State to the House in a week where we heard very good news for the Shannon Foynes Port Company which is in his constituency and of which I was a commissioner and director for 16 years. I am sure the Minister of State and me are on the one word.

Fianna Fáil supports this technical legislation. The Bill gives statutory authority for the amounts Voted by the Dáil during the year. These amounts include the original Estimates, Further Revised Estimates and Supplementary Estimates. It also provides for sums deferred into the year ended 31 December 2019. The term "capital supply service and purpose" means a supply service Voted by the Dáil, the purpose of which is to create an asset intended for the use on a continuing basis within an expected life of more than one year. These are sums for which surrender is deferred into 2019. These are mostly salaries and expenses for 14 offices and Departments of Government to allow for the continuing supply of services. Fianna Fáil supports the Bill because if it was not approved by the House, there would be nothing to spend in January of next year and that would be a poor look out.

Senator Paul Gavan: I welcome the Minister of State.

Sinn Féin supports this Bill. While it is essentially an exercise in legislative housekeeping, it provides an important focus on where the expenditure of the State is directed for the coming year. We tend to forget the huge sums of money involved when passing Estimates and the budget. I am pleased that in the past few years, there have been debates in the Oireachtas on this. While no one wishes to hold up the passage of the Bill, this debate gives us a chance to focus on where these sums are spent. I will make a couple of brief remarks on health expenditure before I finish.

So far this year, the HSE has spent more than €114 million on costly agency and locum doctors, nurses and other staff in order to fill posts left vacant due to the recruitment and retention crisis. This paints a picture of a health service that is running on empty. This will be no surprise to the Minister of State as he will know that our local hospital in Limerick had the dubious celebration at the beginning of last month of having its 10,000th patient on a trolley. The situation has gone from bad to worse and, regrettably, has continued to do so in the past seven or eight years. The statistics speak for themselves. This paints a picture of a health service that is running on empty. In an alternative budget which was costed by the Minister of State's Department Sinn Féin has shown that one could pay off the health overspend and fund the health service to

address the myriad of crises and deliver additional new services, all the while making sure it was done in a sustainable and fair way.

Using short-term volatile increases in corporation tax smacks of desperation and shows a lack of vision to fund vital services for the future. Let us consider the Supplementary Estimates for health. One can see that an increase of €655 million is needed to fill the ever-increasing funding black hole. Even though we want to see this money spent, it is important that the public are not misled. The reason this extra money is needed at the end of the year is due to the chronic under-investment in the health service. It does not represent actual investment in the future of the health service. A lot of this money is spent on expensive short-term measures that are designed to simply keep the show on the road. Having said that, Sinn Féin is happy to support the Bill.

Acting Chairman (Senator Diarmuid Wilson): I call the former Cathaoirleach, Senator Paddy Burke.

Senator Paddy Burke: I welcome the Minister of State back to the House to discuss the Appropriation Bill. It does not seem that long since we discussed the last one. The years are passing quickly.

I welcome the Bill and the way we can now spend money. I compliment the Government on the way it has looked after the finances of the State in order that we have money to spend. I welcome the healthy state of finances and congratulate the Minister on same.

As previous speakers said, this is a housekeeping exercise. It brings things together at the end of the season and makes financial provision for certain budgets over the Christmas period and into early next year. There would be an outcry if nobody received their pension, salary, social welfare or whatever until the middle of next January. The legislation enables all the necessary provisions to take place in an orderly fashion in the next couple of weeks. I welcome the Bill and the good state of finances. It is welcome that the economy has grown so well that we have more money to spend this year than last year.

I mention a number of issues to the Minister of State. First, I congratulate a local company in my home patch called Wills Brothers. The company undertook a big road scheme from Tuam to Gort in County Galway. The road was brought in on time and on budget. Companies like the Wills Brothers should be held up as a role model for businesses in terms of how business is done and can be done.

The Government should consider overspends, in particular the overspend that has been forecast for the national children's hospital. Everything that was needed could not be gauged for in the original provision. However, when there is an overspend of such magnitude, the Government should consider the issues, particularly overspends on Government contracts and proposals because it is the taxpayers and the Exchequer that must pay.

Minister of State at the Department of Finance (Deputy Patrick O'Donovan): I thank the Members who expressed their support for the Bill. I will respond to a few points that have been made. Senator Ned O'Sullivan is dead right that the Shannon Foynes Port Company is a great example for everyone in our area of north Kerry and mid-west region. It is a semi-State company that has the power, capability and drive to deliver to a region. In this case it has delivered for the country in terms of the amount of cargo that the roads project can handle.

In response to the comments made by the Sinn Féin spokesperson, his party opposed everything that we did for the previous seven years. At least he and his party are consistent with their opposition in terms of what we are trying to do today. However, the legislation has been supported because the Estimates have gone through committee and been accepted by all the committees.

Senator Gavan commented on the mid-west region and the University Hospital Limerick. I agree with him that the situation at the hospital is far from acceptable. In fact, it is completely unacceptable. Recently, I had to avail of the hospital's services. There is a new accident and emergency unit but, unfortunately, there is a chronic shortage of beds. We are only catching up with the 2009 level now because we were unable to invest. The accident and emergency units in Nenagh, Ennis and St. John's were taken out. We now have a situation where the Minister for Health has committed to providing a modular unit that will increase bed capacity. There is further investment planned under Project Ireland 2040.

I am concerned about the comments Senator Gavan made about corporation tax. Given that the mid-west has been the largest beneficiary of inward investment in the past few years in terms of job creation, any signal that would go from this House, particularly anything other than consistency and a determination to retain the corporation tax would be something that many of the companies that have invested in Limerick and created jobs in Limerick, both in my constituency and his, would be very nervous of. I know that Senator Ned O'Sullivan's party and Senator Paddy Burke, from my own party, would be at one with me in saying there should be no deviation from the corporation tax policy that has been pursued by all Governments up to now.

Senator Paul Gavan: On a point of order, I never suggested a deviation from the policy.

Deputy Patrick O'Donovan: In terms of Senator Paddy Burke's proposal for the overspend, he is absolutely right. The Minister for Public Expenditure and Reform and I are very conscious of the fact that as we embark on Project Ireland 2040 and so are about to spend €116 billion, we do not want to have the situation that we had in previous national development plans where projects came in over cost and, in many cases, did not deliver what they set out to deliver. It is on that basis that a specific project delivery team has been established in the Department of Public Expenditure and Reform to make sure real-time data are provided for the Minister on a regular basis. We have done that because when projects overspend across line Departments, it is back to the Minister that they come with a begging bowl in order to fix the problem. The Senator is right. We are conscious of the matter and determined that there will be no overspend this time. An overspend of 1% or more on a project that costs in excess of €2 billion is a lot of money and we know what we could do with that money. I welcome Senators' support for the Bill which is important because it allows Government to pay people from 1 January onwards. I thank the Acting Chairman, Senator Wilson, for his indulgence.

Question put and agreed to.

Bill put through Committee, reported without recommendation, received for final consideration and ordered to be returned to the Dáil.

Appropriation Bill 2018: Motion for Earlier Signature

Senator Paddy Burke: I move:

19 December 2018

That, pursuant to subsection 2° of section 2 of Article 25 of the Constitution, Seanad Éireann concurs with the Government in a request to the President to sign the Appropriation Bill 2018 on a date which is earlier than the fifth day after the date on which the Bill has been presented to him.

Question put and agreed to.

Houses of the Oireachtas Commission (Amendment) Bill 2018: Second and Subsequent Stages

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

Minister of State at the Department of Public Expenditure and Reform (Deputy Patrick O’Donovan): I am pleased to present 2018 to the House. It passed all Stages in the Dáil yesterday.

The Houses of the Oireachtas Commission came into existence on 1 January 2004 under the Houses of the Oireachtas Commission Act 2003. The founding commission legislation in 2003 led, in summary, to two consequences: (1) that the commission became the sanctioning authority for expenditure, staff numbers, up to the grade of principal officer, and the provision of services and related matters to the Oireachtas; and (2) the system for the allocation of budgets to the Oireachtas changed from the annual Civil Service Estimates and Vote procedure to a different process involving a three-year budget drawn from the Central Fund. The new budget is set every three years following negotiations with the Department of Public Expenditure and Reform. The budget is approved at political level by the commission and the amending legislation is passed by both Houses. Under the terms of the inaugural commission Act, a three-year budget, covering the period 2004 to 2006, was provided for the commission. Further Acts were enacted in 2006, 2009, 2012 and 2015. A new Oireachtas commission Act is now required as a matter of priority, as the financing provided under the 2015 Act expires as of 31 December next.

As Senators will be aware, the Oireachtas commission oversees the provision of services for the Houses and their Members by the Houses of the Oireachtas Service, the parliamentary administration, in accordance with the commission Acts. The primary functions of the commission are to provide for the running of the Houses of the Oireachtas, to act as governing body of the service, to consider and determine policy in respect of the service and to oversee the implementation of that policy by the Secretary General. The commission is not responsible for the management and day-to-day operations of the Houses. The Secretary General has overall responsibility for these functions in accordance with the commission Acts. Neither does the commission set the level of remuneration payable to Members of the Houses. Salaries, pensions and allowances are determined by the Minister for Public Expenditure and Reform.

The commission is accountable to the Parliament and presents annual reports of its work to both Houses, together with estimates and accounts of its expenditure. The Houses of the Oireachtas Service is the public service body which administers the Houses of the Oireachtas on behalf of the commission as the governing authority. The functions of the service are set out in legislation as the provision of professional advice and support services to the commission, the Houses and their committees and Members of the Houses. The primary purpose of this Bill is to make available the funding for the commission in the coming three years. The Bill proposes to make available to the commission a sum not exceeding €422.27 million to carry

out its functions for the three-year period from 1 January 2019 to 31 December 2021. This sum has been agreed between the commission and my Department and takes into account foreseen expenditure over the three-year period. The figure of €422.27 million over three years comprises €149 million in 2019, €136 million in 2020 and €137 million in 2021 and represents a €53 million, or 14%, increase on the 2016-18 allocation. The major elements of this increase relate to a once-off general election allocation of €9 million, supporting Dáil reform measures, which has resulted in an increase in staffing and for the extension of the committee support, the provision for FEMPI pay restoration measures and the delivery of a three-year Oireachtas digital transformation programme, which has been costed at €22 million. The Estimates for 2020 and 2021 show a decrease from the 2019 levels, due primarily to a reduction in general election-related costs.

While the funding issue is the primary purpose of the Bill, the opportunity is also being taken to make a number of technical amendments. I would like to provide Senators with details of the amendments.

Section 1 defines the principal Act as referred to in the Bill.

Section 2 amends the definitions of “Officer of the Houses of the Oireachtas” and “Oireachtas Committee” used in the principal Act.

Section 3 contains a number of amendments to section 4 of the principal Act, namely, the clarification of the current position regarding amendments to the Oireachtas (Allowances to Members) Act 1962, which enables the granting of secretarial facilities to Members of the Houses of the Oireachtas; a provision to enable the commission to make fiscal and economic advice and information available to Members of the Oireachtas and Oireachtas committees. This is to provide a statutory underpinning for the work of the Parliamentary Budget Office which provides this service as part of the Houses of the Oireachtas Service under the commission. Section 3 also provides for a provision to review of An Caighdeán Oifigiúil, the official standard of the Irish language to be used in legislation, to provide for a maximum review period of ten years and a new provision that enables the commission to initiate, defend or seek to participate in legal proceedings without the prior authorisation from the Houses of the Oireachtas, in specified circumstances.

Section 4 amends section 5 of the principal Act to provide funding for expenditure incurred by the commission during the three period from 1 January 2019. The amount for that period is capped at €422.27 million.

Section 5 provides for the establishment within the Houses of the Oireachtas Service of an office to be known as the Parliamentary Budget Office, PBO.

Section 6 provides for the establishment within the Houses of the Oireachtas Service of an office to be known as the Office of Parliamentary Legal Advisers.

Section 7 amends Schedule 1 to the principal Act to include the single public service pension scheme for members of staff of the commission and Members of the Houses of the Oireachtas.

Section 8 sets out the Short Title, collective citation and commencement date for the Bill.

I commend the Bill to the House.

Senator Ned O’Sullivan: Fianna Fáil supports this Bill which is technical legislation that

must be passed every three years to provide for expenditure incurred by the Houses of the Oireachtas Commission. Without it, staff salaries would not be paid in 2019. The Bill permits money to be provided by the Central Fund. The commission is an independent body but it needs a budget. The Bill will give the commission a budget of €422.27 million from 1 January 2019 to 31 December 2021. This money will be used to run the Dáil, Seanad and committees and to pay staff working for the Houses of the Oireachtas. There are a number of other technical provisions in the Bill. Most notably, sections 5 and 6 will place the PBO and the Office of Parliamentary Legal Advisers on an independent statutory footing.

These offices will be independent bodies within the commission. I am pleased to be a member of the commission. It is a body which works exceptionally well under the chairmanship of the Ceann Comhairle who gives it 100% of his time and attention. We have the privilege of being served by some leading members of staff, including our acting Clerk of the Seanad who is present. I am also able to access advice and information at the highest level. There will naturally always be a certain amount of tension between the commission and the permanent government in the Department. Without going into any details, that kind of tension can be healthy. However, it is important to remember that the commission was set up to independently run these Houses, and it is important that we preserve and protect it at all times.

Senator Gerard P. Craughwell: I am also a member of the commission. I also welcome the Bill. It provides for important aspects of the running of the House. I particularly welcome the addition of the PBO which will provide independent budgetary information for Members and the Office of Parliamentary Legal Advisers. I welcome the Bill and thank the Minister of State for bringing it to the House. I will support it.

Senator Paul Gavan: This is a technical Bill. It is necessary; we recognise that. We support the Bill.

Senator Paddy Burke: I welcome the Bill. I am a former member of the commission. I do not believe the Bill goes far enough. There is an awful lot more we can do as an Oireachtas. I was on the recent trip to Australia and was amazed at how the parliament there deals with national school and secondary school children and the educational programmes in place for them. They are brought in at Christmas time to sing in the parliament. It is unbelievable. We are not doing anything like that and could do an awful lot more.

I also want to mention Seanad reform. While everyone wants to be involved in extending the franchise to the public, there is no talk about real reform of this House and how it works, and the additional staffing requirements reform would entail. I ask the Minister of State to have a look at this issue. There is no point in changing the electoral position and how people are elected to this House. There has never been such a diverse House in the history of the Seanad. That is the type of Seanad the people want. They have it, but we are not getting what we want to go with it. The finances should be put in place to enable that to happen. The budget for the Houses of the Oireachtas should be increased.

Minister of State at the Department of Finance (Deputy Patrick O'Donovan): I welcome the support of the Senators. It is important to remember that the commission is a separate entity from the Executive, as is right and proper. Senator Ned O'Sullivan has said the role of the Department of Public Expenditure and Reform is to make sure money becomes available. As a Member, I avail of the services provided by the commission and it is in my interests, as

much as everyone else's, that the best service is available. I believe we have a good service.

Two elements of the Bill - budgetary oversight and legal services - have been expanded. Provision for choir stalls is perhaps something that the commission could look at; providing opportunities for singing is certainly something that is beyond the scope of the Department of Public Expenditure and Reform.

I agree with Senator Paddy Burke on the issue of Seanad reform. Some madcap ideas are being thrown around and I do not know how workable they are. It has been suggested people opt for a particular panel and then seek to become an elector of that panel. I do not know if that is workable or how it could be done. I do not know how many registers of electors we would have or how one could identify almost 2.5 million potential voters in particular panels. Perhaps I am naive and this can be done on a wing and a prayer, but I agree with the Senator that we have to have an honest conversation about the Seanad. I brought a Bill through the Seanad after robust discussion with a group of Senators who had read it. I took it to the Dáil last night and it became something of a farce. There is scope within Departments to initiate more legislation in this Chamber. Having commenced several Bills here now, either on my own behalf or on behalf of the Minister for Finance, Deputy Donohoe, it is clear that there is a better level of debate here. It is obvious in many cases that the Members contributing to the debate have read the Bill, whereas Members stood up in the Dáil last night who did not know what they were talking about and who obviously had not read the Bill and were trying to undo an awful lot of the good work that had commenced in the Seanad. There are two commissioners present. It would not be appropriate for the Executive to dictate terms to the commission. If it is the case that schools from Castlebar, Ballina and Belmullet want to come up and regale the Seanad with "Jingle Bells", I am sure Senator Ned O'Sullivan can facilitate them.

Acting Chairman (Senator Diarmuid Wilson): The Minister of State is always welcome in this House and in the unlikely event that he seeks membership of this House, he would be welcome also.

Deputy Patrick O'Donovan: I will put the Acting Chairman down for a song.

Question put and agreed to.

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

European Investment Fund Agreement Bill 2018: Motion for Earlier Signature

Senator Paddy Burke: I move:

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

Question put and agreed to.

Sitting suspended at 1.10 p.m. and resumed at 2.30 p.m.

19 December 2018

Business of Seanad

Senator Jerry Buttimer: I propose an amendment to the Order of Business: “That, notwithstanding anything in today’s Order, No. 7 will not be taken today and that No. 82, non-Government motion No. 13, will be taken on the adjournment of No. 6.”

An Leas-Chathaoirleach: Is that agreed? Agreed.

Judicial Appointments Commission Bill 2017: Committee Stage (Resumed)

SECTION 38

Debate resumed on amendment No. 83a:

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

- (Senator Michael McDowell)

An Leas-Chathaoirleach: Senator McDowell is in possession.

Senator Michael McDowell: I have said all I wanted to say on the amendment.

An Leas-Chathaoirleach: That is rather pleasant. Does anyone else wish to contribute? Does Senator Bacik wish to contribute, given that Senator McDowell has said everything he wishes to say on the amendment?

Senator Ivana Bacik: I do not have anything further to add on the amendment.

An Leas-Chathaoirleach: Does the Minister wish to comment?

Minister for Justice and Equality (Deputy Charles Flanagan): No, I suggest we put the amendment.

(Interruptions).

An Leas-Chathaoirleach: I do not wish to hear too many voices.

Deputy Charles Flanagan: If the Chair wishes to take the opportunity to invite any other comment-----

An Leas-Chathaoirleach: The Chair will rule. I do not wish to hear voices simultaneously. The Minister is not a Member of the House.

Amendment put:

The Committee divided: Tá, 13; Níl, 17.	
Tá	Níl
Bacik, Ivana.	Burke, Colm.
Boyhan, Victor.	Butler, Ray.
Clifford-Lee, Lorraine.	Buttimer, Jerry.

Daly, Mark.	Byrne, Maria.
Gallagher, Robbie.	Conway, Martin.
Humphreys, Kevin.	Feighan, Frank.
Leyden, Terry.	Lawlor, Anthony.
Marshall, Ian.	Lombard, Tim.
McDowell, Michael.	McFadden, Gabrielle.
Murnane O'Connor, Jennifer.	Mulherin, Michelle.
Nash, Gerald.	Noone, Catherine.
O'Sullivan, Ned.	O'Donnell, Kieran.
Wilson, Diarmuid.	O'Mahony, John.
	Ó Donnghaile, Niall.
	Reilly, James.
	Richmond, Neale.
	Warfield, Fintan.

Tellers: Tá, Senators Ivana Bacik and Michael McDowell; Níl, Senators Gabrielle McFadden and James Reilly.

Amendment declared lost.

An Leas-Chathaoirleach: Amendments Nos. 84, 85 and 85a are related. Amendment No. 85a is a physical alternative to amendment No. 85. The amendments may be discussed together, by agreement. Is that agreed? Agreed.

Senator Ivana Bacik: I move amendment No. 84:

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

“ (2) Without prejudice to the generality of *subsection (1)(c)*, the Commission may, as the occasion requires, directly invite a particular person (including a person who is for the time being a serving judge or a relevant office holder within the meaning of section 41(5)) to make an application to be considered for selection; such an invitation shall not constitute or give rise to preferential consideration by the Commission of an application made in response to such an invitation. ”.

The grouping comprises my two amendments, amendments Nos. 84 and 85, and Senator McDowell's amendment No. 85a. My two amendments relate to section 38 and seek to insert a new subsection concerning the power of the commission to directly invite a particular person, including a serving judge or relevant officeholder, to make an application to be considered for selection.

I note an error in the drafting of the amendment where it refers to section 41(5), which no longer-----

An Leas-Chathaoirleach: I am advised that can be dealt with on Report Stage.

Senator Ivana Bacik: That is fine. I wished only to ensure it was noted on the record in case I needed to refer to it on Report Stage.

The amendments seek to draw a distinction between those who are serving judges or relevant officeholders and other potential applicants, conscious that section 39 of the Bill provides for applications for appointment to judicial office through section 39(1), which allows for an applicant to be “a person who is for the time being a serving judge a relevant office holder” and which goes on to require that the person shall make an application to the commission if he or she wishes to be considered for judicial office. In amendments Nos. 84 and 85, combined, we are seeking to take out of section 39(1) the reference to serving judges or relevant officeholders and make a separate provision for serving judges or relevant officeholders in order to enable the commission to directly invite such persons, and others, to make an application to be considered for selection. Amendment No. 84 makes it clear that the power to make such an invitation does not constitute or give rise to preferential consideration by the commission. It simply gives the commission power to invite directly a particular person to make an application to be considered for selection rather than leaving it up to the person to make the application to the commission, as in section 39 as currently constituted.

Our amendments Nos. 86 and 87, which are coming up shortly, are different and relate to gender balance. The gender balance in the Judiciary is, in fact, better than in many other common law countries but it is well established that, from time to time, to achieve greater diversity in any profession, including the Judiciary, powers such as positive action, mentoring or some other additional support to those who are under-represented should be built in and amendment No. 84 should be seen in that context. It gives the commission power to invite persons to apply, which is a power that may, from time to time, be useful particularly if the commission is to have regard to the need for gender balance among the Judiciary.

Amendment No. 85 is the consequent amendment because it would delete the relevant provision in section 39(1). We are trying to provide a distinct power for the commission of direct invitation for potential applicants, including those applicants who are, for the time being, serving judges and relevant officeholders.

Senator Michael McDowell: To some extent, the amendments in the name of Senator Bacik and her colleagues and my amendments are, if not diametric opposites, quite different in some respects. The effect of section 39, as it stands, is that a person, including a person who is, for the time being, a serving judge or relevant officeholder, who wishes to be considered for appointment to judicial office is obliged to make an application to the commission in that behalf, specifying the judicial office concerned and that application shall be in writing or in such other format as may be specified in the selection procedures. Section 39(2) provides that an application under subsection (1) shall not be made otherwise than pursuant to an invitation made by the commission under section 38(b) that relates to the judicial office concerned. In the round, this section is effectively stating that nobody can apply to the commission other than in the context of an advertisement for consideration.

Section 38(b) states the commission shall, as the occasion requires, invite through means of advertisement the making of applications for persons to be considered for selection, that is, for their selection to be the subject of a recommendation for appointment to judicial office. The net effect of the provision in section 38(b), combined with section 39(2), will be that the

only way somebody can bring themselves to the attention of the commission is in response to an advertisement. Section 39(1) states a person who is, for the time being, a serving judge or a relevant officeholder who wishes to be considered shall make an application in that behalf. That application effectively changes the current practice, which is that a judge of the superior courts who wants to be considered for a position simply notifies the Secretary to the Government of his or her willingness to be appointed and his or her desire to be considered by the Government in that respect.

It seems we are dealing with a provision that is meant to obliterate any channel of communication between members of the Judiciary and the Government, other than a response to the commission's advertisement. This is a provision the gist of which is that the only communication a judge can make to the Government of his or her willingness to be considered for appointment as a judge in the High Court, Court of Appeal or Supreme Court is by means of the section 38 advertisement procedure. As I have said before, I have a very strong objection to that, based on the fact that every single member of the High Court is eligible to serve, at the request of the President of the Court of Appeal or the Chief Justice, as a member of the Court of Appeal or the Supreme Court, respectively, and such people are already deemed worthy to be able to serve in those courts when requested. When appointing somebody to the High Court, a decision is also made that the person in question is not merely a person who will function on a day-to-day basis as a member of the High Court but may, from time to time, be asked to serve on the Court of Appeal and the Supreme Court. Therefore, the question of their suitability for membership of the Court of Appeal or the Supreme Court is something which has to be considered at the time of their appointment to the High Court. If they are appointed to the High Court, it is implicit in that appointment that the person is somebody who can, from time to time, serve on the Court of Appeal and the Supreme Court when requested to do so.

In that context, requiring members of the High Court, the Court of Appeal or the Supreme Court to apply to the commission for consideration for any other appointment within those courts is deeply obnoxious. It puts them in the position of having to effectively re-prove their suitability for the Court of Appeal or the Supreme Court to the satisfaction of the judicial appointments commission. It is not preferential treatment for existing superior court judges to say that they should not have to apply to the judicial appointments commission. They have already proved, by definition, their suitability to act on either of the courts above the High Court by the mere fact that they have been appointed to the High Court in the first place.

Asking them to go back to square one and prove again their suitability for another job in the same set of courts is deeply obnoxious. Let us remember it is not unprecedented for an ordinary member of the Supreme Court to be appointed as President of the High Court. It has happened.

3 o'clock Mr. Justice Kearns, the last holder of that job, was serving as an ordinary member of the Supreme Court prior to his appointment as President of the High Court.

Without personalising it, I make the point one can be an ordinary member of the Supreme Court and ask to be made President of the Court of Appeal or President of the High Court. There is nothing unusual about it. What might appear to some people to be a downward step is not a downward step because the President of the High Court is an *ex officio* member of the Supreme Court and so is the President of the Court of Appeal. It is a movement sideways to carry out a different function within the Judiciary. The Bill is based on a number of misapprehensions which mean people who attain membership of the High Court would have to prove again to the satisfaction of the judicial appointments commission that they should go further upwards or even sideways or downwards. They would have to prove to the satisfaction of the

commission that they should do so. I am very much against such a proposal.

The purpose of amendment No. 85a, which is in my name, is to amend section 39 to make it clear that section 39(1) does not apply to existing members of the High Court, the Court of Appeal or the Supreme Court and to excuse them from the necessity of applying via the judicial appointments commission for appointment to any other position in those courts.

Section 39, as it stands, in conjunction with section 44, as it stands, effectively states that somehow the judicial appointments commission is in a better position to form judgments on who should be, for instance, the President of the High Court than the Government itself is. The Minister, as we discussed on the last occasion, has already made it clear he wants to have a special procedure for the three presidencies - the Chief Justice, the President of the Court of Appeal and the President of the High Court. I made the point on the last occasion that it is not quite clear and no rationale has been offered as to why the Government would not be capable of making that decision unaided by the judicial appointments commission and why the recommendation of the judicial appointments commission is *sine qua non* in respect of every other judicial appointment but the Minister has decided to table an amendment on Report Stage to make its intervention unnecessary in the case of those three presidencies. It raises the question as to why it would be competent to decide on the ordinary memberships of those courts but not competent or suitable to be the advisory body in respect of the presidencies of those courts. We did not hear on the last occasion from the Minister because we were dealing with amendment No. 83a but we are now dealing with this issue. We did not hear a rationale for why, if its advice as to who should be an ordinary member of the Supreme Court is *sine qua non* for appointment to that position, its advice is not merely not required but not permitted in the case of the presidencies of any of those courts. I ask the Minister to indicate to me and the House what it is about the three presidencies that makes the commission's participation in the decision unsuitable and why it is he finds section 44 unacceptable in its present form but nonetheless thinks the commission should be involved in ordinary appointments to the Supreme Court. I cannot follow that logic and I would like to hear some explanation for why it is competent and suitable for one purpose but is to be excluded for another purpose.

Senator Ivana Bacik: Before the Minister responds, I will add three further brief points. The first concerns the relationship to which Senator McDowell referred between section 38 and section 44. It is an important point. Section 44 refers to the most senior judicial appointments. Section 44(1) and (9) give the commission power to seek expressions of interest from eligible persons who wish to be considered for appointment to such office. It is interesting it is provided for in section 44 in respect of those three positions, although only at the request of the Minister. There is not a similar power with regard to other appointments. That is the power we are seeking to insert through amendment No. 84.

I will make two further points on amendments Nos. 84 and 85. The issue of the internal inconsistency of the Bill is something we have spoken about before. There is one issue in terms of section 38 that may already enable the commission to seek expressions of interest if one reads it in a particular way. Section 38(c) gives the commission power to do such other things as it considers necessary to enable it to perform its function in selecting persons to be the subject of a recommendation for appointment to judicial office. Arguably, it could empower the commission to directly invite a particular person to make an application but-----

Senator Michael McDowell: Except the application under section 39(2) must be pursuant to-----

Senator Ivana Bacik: That is the point. If one reads section 38(c) in one way it seems to give the commission this wide power but it is subsequently contradicted by section 39. There is a difficulty with that. It is why we seek through amendments Nos. 84 and 85 to give the commission an explicit power to invite persons and that clears up any internal inconsistency or contradiction.

My final point is on the relationship between section 38 and section 36 which refers to the conditions to be satisfied where the commission is recommending the names of a person to the Minister. It refers to the names of a barrister, solicitor or legal academic and sets out the conditions including character, temperament, health and so on but it does not refer to serving judges. It is something we discussed in the context of section 36. I draw it to the Minister's attention because it points to some inconsistency. It appears the practising barristers, solicitors or legal academics who are the subject of appointment are subject to separate and different conditions from serving judges where there does not seem to be a justification for it. Perhaps the Minister can point me to somewhere else in the Bill where similar conditions are applied for serving judges. It seems odd that section 36 does not relate in any way to those who are serving judges or officeholders. Where they are being recommended for appointment there is no such conditionality on their appointment. The commission does not need to assure the Minister the person has displayed the various characteristics required. It may be that reading section 36(1), one might say that some parts of it do apply to serving judges, notably sections 36(1)(b) and (c). One could argue the character, temperament and health grounds and the undertaking in writing to take courses, and so on, refers to all persons recommended to the Minister, whereas it is only section 36(1)(a) that refers to barristers, solicitors or legal academics. There is a lack of clarity there as to whether this section applies to serving judges who are being recommended for appointment by the commission. It is by way of justification of our amendments Nos. 85 and 85 that we are seeking to resolve an internal contradiction or inconsistency within the legislation.

There are others too between sections 38 and 36; 38 and 44; and 38 and 39. On Report Stage we may look to put in further amendments to resolve these serious issues because our amendments only go some of the way to resolving some of these quite serious issues between the different sections of the Bill.

Deputy Charles Flanagan: I thank the Senators for their amendments and contributions to the debate thereon. Amendments Nos. 84 and 85 are straightforward.

Essentially, Senator Bacik and colleagues propose to enable the commission to make approaches by way of a direct invitation to a particular person, including a serving member of the Judiciary, to make an application to be considered for selection. I am not inclined to accept the amendments, notwithstanding what has been said. The new arrangements for the selection and recommendation of candidates are about incorporating the process for persons to be appointed either for the first time as judges, or serving judges that might be elevated under the new open process, which will be operated by the commission. The statute relevant to the qualification is amended to some extent by the Bill which sets out in essence what are basic requirements of the systems of selection and recommendation, merit criteria - on which we had some debate, the application process, and the conditions that need to be satisfied, all of which are open, transparent, open to scrutiny and clear to everybody. This is an important component of the Bill that runs right through it by way of theme. The accountability process to the Oireachtas and to the Minister will be vital parts of a more open approach to an important area of the appointments to State offices. Part 8 of the Bill is an important set of measures. It will modernise the process and open up the procedures for selection and deal with the skills and attributes required to fulfil

the function of a member of the Judiciary.

All of this is open and transparent. There will a published statement on the matter, reports to the Minister and reviews. Having listened carefully to what the Senators have said, what is sought is in effect a derogation from the norm that the Bill sets up.

I restate that the commission has an important job to do. I do not see any difficulty with the basic requirement that an application be made and that there be a process where people who need to be considered can be considered, and that consideration would be open.

I do not accept - as we discussed on the last occasion - that to make an application for public office should be regarded as an embarrassment or described as such or beneath people which is the implication. I do not see it like that. Neither do I see why any other mode of access to the process might be necessary. It is something of an unreasonable expectation to create a situation where the commission might be charged with responsibility, or might have the power or authority to invite people, or make direct contact by way of invitation with particular persons. I do not see it working. The most important point to make by way of reply to Senators is that I do not see it as being consistent with the basic tenet of openness and transparency which the Bill espouses. I cannot, therefore, accept these amendments.

Amendment No. 85 seeks to amend section 39. That amendment would have the effect of deleting from that section 39 (1), which is the reference to a person who is for the time being a serving judge or a relevant officeholder. It is tied very closely to amendment No. 84 and the points I have made on this amendment, which would provide for direct approaches by the commission or its members to judges. That really goes against the basic grain of the new legislation and I do not intend to accept it.

I have listened very carefully to Senator McDowell who has repeated points made on the last occasion on section 44, and on section 36, which we have already debated at some length. We are now dealing with section 38 and the point raised about section 44 at that time. I am on record as having said - I will be brief, a Chathaoirligh - that the three top positions - if we can describe them as such - are positions that involve more than just officiating as a member of the Judiciary or as a judge. They involve quite a significant amount of management and administration, skills that could not be considered to be the same as those required to officiate or perform one's duties as a member of the Judiciary. That is one of the reasons I am proposing that we depart from the proposed process, but only in respect of the three positions of Chief Justice, President of the Court of Appeal and President of the High Court. I invite Senator McDowell to agree that there are good and sound reasons that we should depart in the circumstances. We will come back, however, to it during the debate on section 44.

Senator Michael McDowell: In response to that invitation, I agree with the Minister in one sense that there are good and sound reasons the presidencies of those three courts should have nothing to do with the commission. I agree with him on that very bare proposition. I go one stage further and say I can see no reason the commission should have anything to do with the selection of somebody to be an ordinary judge of the Supreme Court. I do not believe the commission is any position to judge whether a High Court judge, after ten or 15 years of service should or should not serve as an ordinary member of the Supreme Court. Perhaps the judicial members of the commission or the lawyer members may have a view on that matter but, as an institution, this commission does not have any function in advising the Government as to who the ordinary members of the Supreme Court should be.

It comes back to this: the criteria laid down for the judicial appointments commission to make recommendations are emphatically not the criteria which the Government applies in deciding who should and should not be appointed as ordinary members of the Supreme Court. From my experience the Government decides what kind of Supreme Court it wants; what kind of outlook it wants seen in the Supreme Court; and what kind of likely approach to particular decisions at a high level of principle a particular person is likely to take by reason of the general judicial and philosophical outlook he or she has shown over the years. Those are the kinds of decisions that are made at Government level. It is not appropriate simply to appoint a person who has done ten years and is polite to litigants and professionals. Nor is it appropriate to appoint an extra two men or two women simply to establish some gender balance in the Supreme Court. It may well take gender into account. Given the background in the Irish system of judicial appointments, every Government should remind itself that women solicitors and barristers have in the past been passed over just out of ingrained habit of mind when perhaps they should have been considered earlier. I accept that proposition.

However, when it is making appointments to the Supreme Court it is not making the same kind of decision as the judicial appointments commission is bound by this statute to make. It will not apply the same criteria. It will not appoint one person rather than another person to the Supreme Court on the basis of diversity or the social background it wants.

Whereas I agree with the Minister and I respond to his invitation with great alacrity to say that the judicial appointments commission should have nothing to do with the presidencies of any of the superior courts, I say it equally applies to appointments within those courts. The judicial appointments commission is simply not in a position to make up its mind on those issues.

For instance, on the idea that a High Court judge might be promoted to either a position of ordinary member of the Supreme Court or ordinary member of the Court of Appeal, the reason a Government might have for selecting one candidate rather than another could be quite different from the criteria this statute proposes the commission to adopt. I will give an example. It might decide we need people who are more conversant with the European Union's laws in one of those courts than another. While that is perfectly reasonable, it is none of the business of the judicial appointments commission. It is not obliged to take that into account and it is not authorised to start asking how candidates square up from that point of view. Nor is it in a position to decide it actually wants a pro-European or an anti-European tilt, if I may use that phrase, in the composition of the Court of Appeal or the Supreme Court. It is simply not competent, authorised or enabled to make decisions of that kind.

Therefore, shortlisting eight people down to three, which is its function, and presuming that these three people are the best when the Government will apply different criteria and may have very different search criteria in its own mind when filling those positions is wholly inappropriate. That is my point. That is why I wanted to keep the appointments to positions in the Court of Appeal and Supreme Court out of the hands of the commission because those are fundamentally decisions to be made by the Government.

In response to Senator Bacik's point, the Minister says he can see no reason that a direct approach should be made to anybody to consider applying. From experience, I can tell the Minister that is very frequently the case. While I do not know what the present Attorney General does, in the past the Attorney General has indicated to a particular practitioner, solicitor or barrister, that an application from him or her would be welcome and asked the practitioner to put their name into the JAAB. That is what happens.

Deputy Charles Flanagan: Informally.

Senator Michael McDowell: Formally or informally, it does not make much difference; if someone gets the tap on the shoulder it is the same thing. If the Attorney General asks someone to put their name forward for consideration, implicit in that is confidence that they are not wasting their time in doing so.

I go one stage further. When that happened in cases of which I had experience, I was always very careful before I tapped anybody on the shoulder, in whatever capacity, to make it very clear that I was not going to raise an expectation and then disappoint it by not following through. I thought it would be particularly cruel and unfair to an applicant, to say, "You should apply for a particular position" giving them a clear message that they would be considered and then have to go back to the person and say, "Sorry, nobody agreed with the idea; it was just my own personal idea." One would not do something of that kind.

There is nothing wrong with approaching people and asking them to make applications. There is nothing wrong with having a system whereby that can be done. The Minister makes the point that it is an informal arrangement. I accept it is somewhat informal. However, I understand this Bill to be designed to bring that informal arrangement to an end such that everybody who turns up before the judicial appointments commission will turn up on the same basis. They will not have felt any kind of tap on their shoulder and will not have been given any encouragement to do so from anybody in a position to make the appointment. From that point of view I radically disagree with the Minister's view on the matter.

I believe amendment No. 85a in my name should proceed. I also support Senator Bacik's amendments, even though they are somewhat at variance with what I am suggesting but nonetheless are going in the same overall direction. In the circumstances, I cannot add much more to the matter.

Senator Ivana Bacik: I have listened to the Minister's response and Senator McDowell's comments. It is very helpful to hear from Senator McDowell of the practice whereby the Attorney General has given the tap on the shoulder to potential applicants. In other words, direct approaches are being made, albeit in this rather informal and unstructured way.

The Minister spoke about seeking to create a new, more transparent and open process, which is important. Our amendments seek to do that. They seek to create a more formal and structured way of enabling the commission to invite applications rather than simply an informal tap-on-the-shoulder approach. It is better to have that structured approach. As I said earlier, those who are under-represented will typically be more reluctant to apply for positions. That goes for any career, any office, running for politics and so on. It is well established that in areas such as politics, women are under-represented. Women, in particular, need encouragement as they are often less likely to put themselves forward for promotion or for candidacy in politics than are men. There is merit, therefore, in having a formal system whereby the commission can directly invite applications, particularly if these amendments are read in the context of our amendments Nos. 86, 87, 92 and 93, which seek to ensure gender balance in the Judiciary will always be a factor for consideration.

We are not trying to preserve any sort of system that could be accused of cronyism or anything, but rather to formalise a system whereby the commission can invite particular persons to apply and thereby give encouragement to persons who might not otherwise think of applying or

might not think they would be eligible candidates. It is something that one could anticipate that the commission might stretch its own powers, under section 38, to do if that were provided. I think we need to provide for that much more explicitly.

Deputy Charles Flanagan: In response to Senator Bacik, I reiterate that I have already indicated that I will be, on Report Stage, addressing the issue of the most senior appointments. As to her point about Part 6, I will also be reviewing how the requirements under Part 6 relate to all serving judges across the board, which is the point that was made.

Senator Ivana Bacik: Section 36.

Deputy Charles Flanagan: It is an important issue that Senator Bacik has raised.

She asks why expressions of interest are sought, under section 44, but not allowed otherwise. Again, I intend addressing section 44 on Report Stage. Having regard to the fact that section 38, which we are discussing now, and section 39, which, hopefully, we will be discussing shortly, envisage that the commission will do the selection work, which of course is not the case under section 44, I will have to make some changes in respect of section 44. I take the related points, which have been raised by Senator Bacik, in respect of the other sections. I note what she said in that regard.

In conclusion and in short, I do not wish to open up the process any further as is envisaged under amendments Nos. 84, 85 and 85a because I believe extending the Bill to incorporate the sentiment in the amendments actually goes against the spirit of the legislation. Having listened carefully to the Senators, I am not prepared to accept what would be a fundamental departure from the Bill.

Senator Ivana Bacik: I thank the Minister for his comments on the other points that I raised in respect of sections 36 and 44. As he has said previously, he will address some of those issues on Report Stage, for which I am grateful.

I am sorry that the Minister is unwilling to accept my amendments Nos. 84 and 85. They would formalise what we know to be happening but they would do so in a way that could be of great benefit in terms of ensuring there is balance and diversity when it comes to judicial appointments. I will press my amendments to a vote and await to hear what Senator McDowell will say about his amendment.

Senator Michael McDowell: I think I am right in saying the Minister said any amendment of the Bill which had the effect of stating that in the case of ordinary appointments to the Court of Appeal from the High Court or to the Supreme Court from the High Court or the Court of Appeal, to exempt those appointments from the purview of the commission, would be against the spirit of the Bill. I am glad that he has said that because that makes it clear this Bill is at heart unconstitutional.

At various Stages it was thrown before this House that the Judiciary had recommended shortlisting and the like. I have never seen the Judiciary ever say, collectively or individually, that it favours what the Minister is proposing now, and that is that individual judges who want to be considered for appointment to the High Court, the Court of Appeal or the Supreme Court should have to make an application to the commission. I have never heard that said in public and I do not believe it is their position. In fact, I believe the contrary to be the case, that that is not its position.

Judges do not want to be in a position that they have to apply to the commission or, of their number, those who want to be considered, have to make an application to the commission as the ordinary way of being considered for appointment to those offices. The reason is twofold. The Minister has referred to the phrase that I have used, which is “embarrassing”. It is embarrassing for a serving judge to constantly put his or her name forward for every promotional position that comes up and constantly be told, or infer from the silence that follows, that he or she was not shortlisted without explanation. It is embarrassing. It will have the effect that the ambitious people, who may not be the best people in those courts, are the people who feel most disposed towards making repeated applications to the judicial appointments commission for consideration for promotion. Whereas the more intellectually humble but far harder working and, perhaps, far more suitable people will say, “I am not going through this process. I have done it once and as I was not even told whether I was shortlisted the last time, why should I continually keep going back again and keep submitting to interviews by a whole load of people who are going to ask about my suitability on grounds of temperament or whatever else to have such a position?” The provision is going to have a deadening effect.

I do make the point to the Minister that this legislation is not going to improve the quality of our Judiciary at all and will disimprove it. The legislation will inhibit people. The legislation will inhibit the Government from making appointments that it considers correct and it will inhibit applicants for judicial office from going through this convoluted rigamarole, which will appear under Part 8, for being considered to be shortlisted.

The Minister has said best practice would be applied to the manner in which these appointments would be made. He never made the following clear to me. Will people who were not shortlisted be informed of that fact? Will people who were shortlisted be informed of that fact? Will they just submit their applications, attend whatever interviews that take place but end up in a total fog where they do not know what happen only to read it in newspapers or *Iris Oifigiúil* that somebody else got the job and that is it? Those aspects are crucial.

If one is a High Court judge, and I do not have too florid an imagination to see myself in this position even though I am past it now, if one were a male or female High Court judge and one submitted three applications yet nothing happens, does one just keep banging one’s head off the stone wall and hope something will come up sometime? This system seems to imply that one just keeps putting one’s name forward, attending interviews, submitting forms setting out all of one’s wonderful characteristics but one keeps being told “No”. Does the Minister expect sitting High Court judges to spend their time doing this? In the nature of things, with the current size of the Judiciary, the expansion of the Court of Appeal that the Minister has now publicly undertaken to bring about, the fact that there are between 50 and 60 superior court judges now, and given that they are all people in their 50s or 60s, though another issue is when they should retire, we are going to be in a position that there is going to be a fairly constant stream of appointments? People who want to be appointed to those positions are going to submit applications once or twice but if they do not know what happened to their applications or even whether they were shortlisted, they will lose interest. When they apply for the post of Secretary General of the Department of Justice and Equality, civil servants know whether they were shortlisted. They are not left in the dark. Judicial applicants will be left in the dark.

I think I have said enough on the amendments. The Minister has stated very clearly that it would be against the spirit of the legislation not to require current superior court judges to apply to the Court of Appeal as the primary means of being appointed. That raises a question that is left hanging in intellectual space by the terms of section 40(3), that nothing in subsection (2)

shall be construed as limiting the advice the Government may give to the President with regard to the appointment by the President under Article 35 of the Constitution of a person to be a judge. It is all very well to say that and to claim this is a little constitutional safety valve which lets us off the hook completely. What the Minister has said here is that judges will not be allowed to approach members of the Government or indicate their willingness to the Secretary to the Government. He informed Senator Bacik that nobody will go and tap them on the shoulder and he has told us that the Attorney General would commit a criminal offence if he or she told the Government of the people who applied but were not short-listed. Putting all that together, the Government is being placed in a position of total isolation from knowledge of what its real choices are. The Government is practically stuck with the short-list because there are no means of knowing what the alternative to the short-list actually is. For the Government to take a look at the short-list and say these three are not much good and for it to ask the Attorney General to go and find somebody who is good seems to be the only circumstance in which section 40(3) could have any application at all. I do not think that is a satisfactory means of deciding who should be on the Supreme Court.

Deputy Charles Flanagan: I remind Senator McDowell once again, when he talks about the contact between the commission and applicants, of a later section to which we will be addressing our attention at some stage, namely, section 53(5)(g) and (h), which appears to cover the points of concern and query for the Senator in respect of communication.

Senator Michael McDowell: Does the Minister think that actually means that they will be told whether they were shortlisted?

Deputy Charles Flanagan: I do.

Senator Michael McDowell: The Minister thinks they will be told whether they were shortlisted.

Deputy Charles Flanagan: I do.

Senator Michael McDowell: Will he make that clear in a Report Stage amendment? Implicit in that is a whole load of problems. The short-list will fairly easily become generally known and the people who are on it and are overlooked will be easily identified if all the applicants are informed as to whether they were short-listed and all the successfully short-listed people are informed of the position also.

Amendment put.

The Committee divided by electronic means.

Senator Michael McDowell: Under Standing Order 73(3)(b), I propose that the vote be taken again other than by electronic means.

Amendment again put:

The Committee divided: Tá, 10; Níl, 20.	
Tá	Níl
Bacik, Ivana.	Burke, Colm.
Boyhan, Victor.	Butler, Ray.
Clifford-Lee, Lorraine.	Buttimer, Jerry.

19 December 2018

Craughwell, Gerard P.	Byrne, Maria.
Gallagher, Robbie.	Coghlan, Paul.
Humphreys, Kevin.	Conway-Walsh, Rose.
McDowell, Michael.	Devine, Máire.
Nash, Gerald.	Feighan, Frank.
O'Sullivan, Ned.	Gavan, Paul.
Wilson, Diarmuid.	Lawlor, Anthony.
	Lombard, Tim.
	McFadden, Gabrielle.
	Mulherin, Michelle.
	Noone, Catherine.
	O'Donnell, Kieran.
	O'Mahony, John.
	O'Reilly, Joe.
	Reilly, James.
	Richmond, Neale.
	Warfield, Fintan.

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

Amendment declared lost.

Question put: "That section 38 stand part of the Bill."

The Committee divided: Tá, 23; Níl, 11.	
Tá	Níl
Burke, Colm.	Bacik, Ivana.
Burke, Paddy.	Boyhan, Victor.
Butler, Ray.	Clifford-Lee, Lorraine.
Buttimer, Jerry.	Craughwell, Gerard P.
Byrne, Maria.	Gallagher, Robbie.
Coghlan, Paul.	Humphreys, Kevin.
Conway-Walsh, Rose.	McDowell, Michael.
Devine, Máire.	Murnane O'Connor, Jennifer.
Feighan, Frank.	Nash, Gerald.
Gavan, Paul.	O'Sullivan, Ned.
Lawlor, Anthony.	Wilson, Diarmuid.
Lombard, Tim.	
Mac Lochlainn, Pádraig.	

McFadden, Gabrielle.	
Mulherin, Michelle.	
Noone, Catherine.	
O'Donnell, Kieran.	
O'Mahony, John.	
O'Reilly, Joe.	
Ó Donnghaile, Niall.	
Reilly, James.	
Richmond, Neale.	
Warfield, Fintan.	

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

Question declared carried.

SECTION 39

Senator Ivana Bacik: I move amendment No. 85:

In page 27, lines 28 and 29, to delete “, including a person who is for the time being a serving judge or a relevant office holder,”.

Amendment put:

The Committee divided: Tá, 11; Níl, 23.	
Tá	Níl
Bacik, Ivana.	Burke, Colm.
Boyhan, Victor.	Burke, Paddy.
Clifford-Lee, Lorraine.	Butler, Ray.
Craughwell, Gerard P.	Buttimer, Jerry.
Gallagher, Robbie.	Byrne, Maria.
Humphreys, Kevin.	Coghlan, Paul.
McDowell, Michael.	Conway-Walsh, Rose.
Murnane O'Connor, Jennifer.	Devine, Máire.
Nash, Gerald.	Feighan, Frank.
O'Sullivan, Ned.	Gavan, Paul.
Wilson, Diarmuid.	Lawlor, Anthony.
	Lombard, Tim.
	Mac Lochlainn, Pádraig.
	McFadden, Gabrielle.

	Mulherin, Michelle.
	Noone, Catherine.
	O'Donnell, Kieran.
	O'Mahony, John.
	O'Reilly, Joe.
	Ó Donnghaile, Niall.
	Reilly, James.
	Richmond, Neale.
	Warfield, Fintan.

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

Amendment declared lost.

Senator Michael McDowell: I move amendment No. 85a:

In page 27, line 28, to delete “, including a person” and substitute the following:

“(other than a person who holds judicial office as a member of the High Court, the Court of Appeal or the Supreme Court) but including any other person”.

Amendment put:

The Committee divided: Tá, 11; Níl, 22.	
Tá	Níl
Bacik, Ivana.	Burke, Colm.
Boyhan, Victor.	Burke, Paddy.
Clifford-Lee, Lorraine.	Butler, Ray.
Craughwell, Gerard P.	Buttimer, Jerry.
Gallagher, Robbie.	Byrne, Maria.
Humphreys, Kevin.	Conway-Walsh, Rose.
McDowell, Michael.	Devine, Máire.
Murnane O'Connor, Jennifer.	Feighan, Frank.
Nash, Gerald.	Gavan, Paul.
O'Sullivan, Ned.	Lawlor, Anthony.
Wilson, Diarmuid.	Lombard, Tim.
	Mac Lochlainn, Pádraig.
	McFadden, Gabrielle.
	Mulherin, Michelle.
	Noone, Catherine.

	O'Donnell, Kieran.
	O'Mahony, John.
	O'Reilly, Joe.
	Ó Donnghaile, Niall.
	Reilly, James.
	Richmond, Neale.
	Warfield, Fintan.

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

Amendment declared lost.

Senator Michael McDowell: I move amendment No. 85b:

In page 28, between lines 7 and 8, to insert the following:

“(5) Nothing in this Act shall require any member of the Supreme Court, the Court of Appeal, or the High Court to apply to the Commission for consideration for appointment to any other judicial office in any of those courts (including the offices of the Chief Justice, President of the Court of Appeal, or President of the High Court).

(6) A member of the Supreme Court, the Court of Appeal or the High Court may notify the Secretary to the Government in writing of his or her willingness and availability to be appointed to any vacancy for any judicial office mentioned in *subsection (5)*.

(7) Where a judicial office mentioned in *subsection (5)* stands vacant or where the Minister reasonably apprehends that it will stand vacant, the Minister shall request the Commission to seek expressions of interest on the part of any other eligible persons for appointment to such office.”.

The purpose of this additional amendment which was circulated on 18 December is to add three subsections - subsections (5), (6) and (7) - to section 39. The proposed subsection (5) will read “Nothing in this Act shall require any member of the Supreme Court, the Court of Appeal, or the High Court to apply to the Commission for consideration for appointment to any other judicial office in any of those courts (including the offices of the Chief Justice, President of the Court of Appeal, or President of the High Court)”. The proposed subsection (6) states “A member of the Supreme Court, the Court of Appeal or the High Court may notify the Secretary to the Government in writing of his or her willingness and availability to be appointed to any vacancy for any judicial office mentioned in *subsection (5)*”. The proposed subsection (7) states “Where a judicial office mentioned in *subsection (5)* stands vacant or where the Minister reasonably apprehends that it will stand vacant, the Minister shall request the Commission to seek expressions of interest on the part of any other eligible persons for appointment to such office”.

The amendment is in line with the previous amendments that have been tabled by Senators

Boyhan, Craughwell, Norris and me. The effect of this would be that no member of the Supreme Court, the Court of Appeal or the High Court would be required to make an application to the commission for appointment to any other judicial office in any of those courts including the three presidencies the Minister has mentioned and which he has in mind for an amendment to section 44. Subsection (6) preserves the present situation that serving judges are entitled, under present convention, to write to the Secretary to the Government and say they are willing and available to be appointed to a vacancy that has arisen or which is about to arise in any of those courts. Subsection (7) makes it clear that where one of those offices is vacant, the judicial appointments commission would nonetheless retain its function of seeking expressions of interest on the part of any other eligible person for appointment to such office. I cannot see what is wrong with the present situation where if, for instance, the position of Chief Justice or that of an ordinary judge on the Supreme Court becomes vacant or is about to become vacant by reason of the present incumbent approaching retirement age, a member of one of those courts, for instance an ordinary member of the Supreme Court, who is interested in becoming Chief Justice simply writes a letter to the Secretary to the Government informing it in very simple terms that he or she is willing and available to be appointed to the vacancy. The advantage of such an arrangement is that it provides a channel of communication between sitting members of the Judiciary and the Government through a formalised procedure that goes through the Secretary of the Government, and it entitles them to apprise the Government of the real situation with regard to who is or is not available and who is or is not interested. The Government can then see there are eight, 12 or 15 people interested in being made an ordinary member of the Supreme Court and it can take a look at them. Unless this provision is put in place the Government, when considering the shortlist, will be completely in the dark in respect of who is willing to be appointed but is not named in the shortlist. In my view, when confronted with a shortlist the constitutional function of the Government is to ask if that is the best there is. There cannot be a presumption that this shortlist is the best that is available and that the Government should be blind and kept ignorant of the fact that other members of the Judiciary wish to be appointed. What possible excuse is there for saying to the Government if it is going to fill a position in one of these courts that it cannot be informed of the availability of an eligible person? If one of those people is an existing member of those courts who, by virtue of his or her appointment, is entitled to sit in any of those courts at the invitation of the relevant President or the Chief Justice, the Government could not judge whether the shortlist is good or bad. One would be putting the Government at a deliberate disadvantage by putting it in a state of deliberate ignorance as to the true state of affairs. If there are no means whereby the Government can be informed that although that may be the shortlist there were five other members of the superior courts' Judiciary who were interested in the relevant vacancy then one is telling the Government that it must make a decision to either accept the confines of the shortlist in front of it or make a wild stab and guess that some other person not on the shortlist might, if he or she was approached informally outside of the whole process, be a person who was a disappointed applicant or be a person who did not apply but was at all times willing to be appointed.

We again come to a fundamental constitutional objection to what this Bill is all about and to what the Minister referred to as the spirit of this Bill. It is the function of the Executive under our Constitution to recommend to the President persons for appointment to the High Court, the Court of Appeal and the Supreme Court. That is a constitutional arrangement. It is the function of the Executive to meet and act as a collective authority, as the Constitution requires it to do. It is not merely its function; it is also its duty to consider all the available options open to the Executive and to decide the appropriate step to take. These are constitutional functions, duties and prerogatives of the Executive of the State under the Constitution. It is not permissible to

deliberately put the Government into a state of ignorance through clumsy and ill-considered legislation, and when confronted with a shortlist to be deliberately kept in the dark as to other alternatives that it might consider when making a decision, if the Government was aware that those alternatives were really open to it. That is the constitutional issue.

The Constitution gives certain rights to the Legislature to make laws. The Constitution gives certain functions to the Government as elected in accordance with the Constitution and under separation of powers to carry out certain Executive functions. The Constitution delineates between legislative, executive and judicial functions. Under the Constitution it is the executive function of the Government, as I see it, to make recommendations to the President in respect of eligible people to be appointed by the President as judges.

Absolutely handcuffed to the idea of the function of the Government being to make such recommendations is the correlative entitlement of the Government to know the options that are open to it in respect of any decision it makes. In my view, it is unconstitutional for the Legislature to attempt to break the constitutional separation of powers by creating a judicial appointments commission in an Act of the Oireachtas in circumstances where it is not merely a matter of getting advice from the commission that these three people, for example, are the best people in the judgment of the commission, when the Government has the clear option of disregarding that advice and of choosing an alternative option, which the Government might in its own collective wisdom consider preferable. I do not believe it is open to these Houses to create an obstacle course, by means of the set of provisions the Minister has put in place here, in order that the Government is deliberately kept ignorant of the fact that eligible people are ready and willing to serve.

If the previous section stands the Minister has created situation where no judge can intimate his or her availability and willingness to accept office other than by an application to the commission. As I understand it, the commission will have a standard approach in order that there is no differentiation between persons who are not judges and persons who are judges. No preference will be given and no shortcut or fast-track will be given to judges in the whole process. There will certainly be no fast-track given in the selection process to serving judges over people who are not judges at all. I believe the selection process is to be the same for every applicant, the commission's interviewing will be the same for every applicant, and the criteria applied by the commission will be the same for every applicant, as the Minister said to Senator Bacik some time ago.

We have an attempt to shoehorn the perfectly reasonable requirement and entitlement of the Executive when making an appointment to know what its options are and who is willing to serve in order that it can decide which, of all the options open to it, is the best appointment to make. The attempt is being made to shoehorn this into an entirely different and ill-fitting shoe where Government is to somehow be guided away from looking at the broad question, which is its prerogative, and guided to where it is being asked to look at a particular shortlist set out in order of preference. I am against that for many reasons, many of which have already been made clear. There is no earthly reason why the Government of the day should not be made aware of the fact that a woman or a man who is a serving superior court judge is available and is willing to be appointed by the President on the recommendation of the Government. The Minister has made it clear that it is the purpose of this Bill because he has agreed that one consequence of making the Attorney General a member of the commission, which is to bind the Attorney General - on pain of committing a criminal offence - to not disclose to the Government those persons who applied and were not shortlisted for consideration by the Government, is an intended

consequence of the passage of this legislation.

It is not simply that we have a different set of goals in mind or that we have a parallel procedure that will involve a shortlist ranked in the order of the commission's preference. It is combined with statutory provisions that are intended to prevent any signal by any eligible person to the Government of his or her availability, other than through the shortlist set out in the order of the commission's preference.

In common sense, why should a Government not know about the options that are open to it, that there are eight people and not three people and who those eight people are? Why should it not be told that? The implication, which is that of the Minister, Deputy Ross, is coming through clearly. It is that it will act in a cronyish way, and will somehow select the five who are not on the shortlist or will look to them for improper or unsatisfactory reasons instead of selecting the three people on the shortlist. That is the implication. If that is not the implication, why not let the Government know, which it does at the moment under the Judicial Appointments Advisory Board's system, of all of the options that are open to it? What is wrong with members of the Government that they cannot be given this information when they look at the shortlist? Would it damage the process that they should know from whom the shortlist was compiled and who was excluded from it?

When one looks at the confidentiality arrangement in this legislation in particular, as well as the criminal offence that has been created, the Minister is trying to create a situation in which it would be against the criminal law for someone to tell the Government that the three people whose names it has received are by no means the best, that there are four other people who are not considered. It would be against the criminal law for someone to tell the Taoiseach about these four other people who the Taoiseach, in his or her capacity as Taoiseach, might have thought were more suited to fill the vacancy under consideration.

There is nothing wrong with such a principle. What is very wrong with the legislative procedure that is before Members for adoption is that it is tainted with the notion that somehow the Government would be making a suboptimal decision, were it to depart from the shortlist that was in front of it. What is suboptimal about not agreeing with the judicial appointments commission? What is suboptimal about saying a particular judge - man or woman - has served with distinction on the Bench for five, ten or 15 years and is available and willing to be appointed to some office in the superior courts? No purpose is served by keeping the Government in the dark about such an arrangement. That is where the constitutional infirmity with what is being proposed emerges.

The Judicial Appointments Advisory Board arose out of the controversy that attended the collapse of the Reynolds Government in 1994. It went as far as could be done in establishing a system that looked at applications to be made judges, examining them, making recommendations, telling the Government who all the applicants were and then coming up with a shorter list. The only thing there has been controversy about is the length of the shortlist that goes to the Government. It is thought that the Judicial Appointments Advisory Board was sending too many names to the Government in some sense - I do not know what "too many" means - and somehow, the Government was put in a position of making suboptimal appointments because it had an embarrassment of choices put before it.

We have now achieved clarity from the Minister and I ask that one matter be made absolutely clear. Is the Government in no way bound by the shortlist? If that is the case, why should

it not be aware of the non-shortlisted applicants? I have never got a satisfactory explanation for that, except distrust of the Government to the effect that if one tells it that it has other options, it will not be so quick to accept the shortlist recommended to it by the proposed commission. It may be tempted to exercise its own judgment in a manner which does not agree with the judicial appointments commission if it knows it has other options.

The basic point is that it is the constitutional function of the Government to recommend the appointment of eligible persons by the President as members of the superior courts. It is the constitutional function of the Government to make its choice with a clear view of the options available to it. It is unconstitutional to keep from the Government, by the provisions of the sections we are now dealing with, knowledge of those who were not merely eligible but ready and willing to be appointed, were the Government to consider them to be the appropriate persons to be appointed. That last thing is clearly unconstitutional and impermissible. One cannot deliberately keep the Government in the dark about the real choices as to who was available and who was willing to act, all of them being eligible.

In particular, asking the serving members of the Judiciary to surrender what is their constitutional right to impart to the Government an indication of their willingness to be appointed to a particular vacancy and to say instead that all one can do is make an application to a body which may or may not inform the Government of one's interest in the matter by means of including or excluding one from a shortlist, is an unconstitutional intrusion on the rights of the Judiciary collectively and judges individually, the Government collectively and members of the Government individually, to discharge the functions the Constitution places in them and in them alone.

I cannot put the matter much more strongly than this. I believe this issue goes to the heart of the Bill. Let us suppose the purpose of the Bill is as I assume it to be, which is to ensure we have somehow a better Judiciary, a better method of selecting judges or ensuring better people would, on average, be selected by this means rather than the present means. If that is the purpose of this legislation, it is a fine aim. However, what we cannot do and what the
5 o'clock Legislature is prohibited from doing is erect screens around the Government to keep it in a state of ignorance about the real choices it has. We cannot make it a criminal offence to inform the Government of people who applied but were unsuccessful in being short-listed. To me, that is unconstitutional and we cannot do that. We live in a democracy. People in government are entitled to know that Ms Justice so-and-so or Mr. Justice so-and-so was ready and willing to serve in this position. This commission may have come up with three other people, but it is unconstitutional to say to the Government that if people inform the Government of the fact that they indicated their willingness, then those persons commit a criminal offence. It is simply unconstitutional to do it. The Minister has no right to do it. The Minister has no right to keep it from the next Government. The Minister may choose it for this Government if this Bill ever comes into effect. From what the Minister has said, it will be delayed for a year or two anyway, which does not really affect the likely lifetime of this Government. To say to those in the next Government that they will be committing a criminal offence if they seek to find out what the other choices were among those who were willing to serve is clearly unconstitutional. What is worse is to say that anyone who gives the Government that information will be committing a criminal offence. Such people would include the Attorney General who knows the true situation. That is completely unconstitutional and there is no excuse for it. It does not serve any purpose. The only purpose it serves is to create a false impression that somehow the Government input to the appointment of judges will be reduced to the constitutional minimum and the Government's discretion will be reduced to the constitutional minimum.

That is not unfair language because the programme for Government states – this is the agreement made with the Minister for Transport, Tourism and Sport, Deputy Ross - that the shortlist would be reduced to the smallest number that the authors of the programme for Government considered would be consistent with the Constitution. That is the aim. It is to reduce discretion and circumscribe discretion to the maximum extent. That is written into the programme for Government. Doubtless, if the Bill ever goes before the Supreme Court, the Judiciary will look at that too. That was the purpose of this legislation. It was to reduce the discretion of the Executive in these matters to an absolute minimum and to do so by legislation as much as possible. It was to cut back the shortlist to fetter the discretion of the Government and to keep the members of the Government in the dark. That is what this legislation is attempting to do. What flows from all of that is that the Bill, if enacted in anything like its present shape, is designed to create a serious barrier to the exercise by the Executive of its constitutional prerogatives.

I want to say one other thing. Somehow someone thinks that we can do all of this and escape the constitutional consequences by adding in section 40(3) and section 41(4). These provide that nothing in the recommending role of the commission shall be construed as limiting the advice the Government may give to the President with respect to the appointment by the President under Article 35 of the Constitution of a person to be a judge. On one view, that is a trite piece of legislative redundancy. It is not possible to do that. We cannot limit the advice that the Government can give in respect of an eligible person to be a judge.

Deputy Charles Flanagan: I wish to make a point of order. Will the Acting Chairman remind the House that we are debating, and have been for the past 40 minutes, amendment No. 85, which covers a different issue from that to which the Senator is referring?

Acting Chairman (Senator Catherine Noone): We are discussing amendment No. 85b.

Deputy Charles Flanagan: I have no wish to intervene unduly but we have heard all the points that Senator McDowell has mentioned and is mentioning. I am not saying they are not important. They are, but there is now a form of repetition that, to my mind, is deliberately inhibiting progress on an important Bill. Senator McDowell is right when he says that we are dealing with the fundamentals of the Bill, but we have been on the same point for a period of in excess of 60 hours.

Senator Michael McDowell: I worry, perhaps more than the Minister but maybe as much as the Minister, about the consequences for the quality of the Judiciary of passing this legislation. I also happen to be someone who, like all citizens of the State, has to be loyal to the State and uphold the Constitution. I also happen to be a person who has been a member of the Executive and who has been Attorney General.

Deputy Charles Flanagan: I accept all of that.

Senator Michael McDowell: I have never heard the Minister or anyone else describe in clear terms why it is needed to keep the Government in ignorance of those members of the Judiciary who are not shortlisted. No coherent answer has ever been given to us as to why that should happen. In all the 60 hours we have been here, the Minister has never justified keeping the Government in ignorance and in the dark about which members of the Judiciary were available or signalled their availability to be appointed to the Supreme Court.

I would take the point the Minister is making if he thought I was simply repeating it for the purposes of wasting time. What I am saying is that the Minister has never come to this House

and explained precisely what advantage is given to the people or the Government or what honour is paid to the terms of the Constitution by putting into law a provision that the Government must make a decision in the dark in respect of its real choices. If the Minister wants to take some more time now to explain to me the exact advantage of saying that the members of the Executive should make a choice without knowing who was available, that is fine. The Minister may want to set that out here and now even in the absence of a quorum, which I am reluctant to ask for. Happily, all these proceedings are made available to the public over the Internet. If the Minister wants to explain to me precisely what advantage is served by that, I will wait and listen carefully.

Acting Chairman (Senator Catherine Noone): Does the Minister wish to make a further statement?

Deputy Charles Flanagan: I will comment on amendment No. 85b. This is the territory around which we have been debating all afternoon the amendments of Senators Bacik and McDowell. To be fair to Senator McDowell, he has indicated on all occasions and at every remove in the course of this legislation both in here and outside, his implacable opposition to the concept of any serving member of the Judiciary, in particular serving members of the superior courts, having to put their names forward for consideration before the independent commission. I reiterate the constitutional position in the matter of the recommendation of names to the President. The nomination of names for consideration by the President for service on the Judiciary is in no way being adversely interfered with by any aspect of this Bill no more than it was by the setting up of the Judicial Appointments Advisory Board, JAAB, some 20 years ago. That is clear. I do not agree with the constitutional issues to which Senator McDowell repeatedly refers, having regard to the fact that the Government's discretion on the appointment of judges is still very much in evidence, and that is written right through the legislation. We have been treated yet again to the rather fanciful and dramatic spectre of the Attorney General committing criminal offences and being led in handcuffs from the Cabinet.

Senator Michael McDowell: He or she would commit a criminal offence if he or she told the Cabinet. Those are the Minister's words not mine.

Deputy Charles Flanagan: That is what has been painted yet again by Senator McDowell, but that is not going to happen. It makes for a good debate, and it makes for good drama and effect. While Senator McDowell makes no secret of the fact that he wishes to have a widespread derogation from this legislation and from the commission for members of the superior courts, it is unacceptable to broaden out a commission process in such a way as is envisaged in the amendment. If I go back to my Second Stage speech, for example, either in this House or in the Lower House, I referred to the key policy issues and the developments of this new statutory framework. I want to ensure in the context of the final product that we have the elevation of serving judges, the reduction to three recommendations only, the movement to a lay majority, and the procedural remit of the commission. Those are the fundamentals of the reform.

This is not something that we are doing within this jurisdiction that is not a common feature of other common law jurisdictions. I refer again to the similarities between what we are doing here to the situation that pertains in Scotland, or in England and Wales, or both. Senator McDowell mentioned the situation 20 years ago. In the run up to the enactment of the JAAB legislation, when the Bill was being debated and when the architecture was being set, a decision was made that the system then, which was an entirely new step, should only extend to the appointment of first-time judges. The onward appointment of a serving judge, be it elevation

or promotion was not comprehended at that time. We have now seen developments over two decades since then. We have seen important developments in international practice.

We have seen the genesis of the legislation in the form of a review that was introduced by one of my predecessors, the former Minister, Mr. Shatter. He reviewed the entire system and entered into what was a pretty widespread consultation process. I have not heard anything about that process from Senator McDowell, other than an expression here that this is something that has been foisted on the Oireachtas in a programme for Government commitment in order to satisfy one or a small minority of members of the Cabinet. It is fair to say that even before anything was agreed in the programme for Government that this ship had set sail and did not at any remove seem to attract the type of opposition that we are now seeing, as evidenced by the previous 60 hours debate here. A number of factors were fully examined in the context of that consultation, including the performance to date of the JAAB process, judicial independence and the matter of eligibility and otherwise. It was precisely because of that that a convincing argument was made that there did not appear to be a reasonable or strong case for any longer excluding a second appointment of a judge from an application process or selection process leading to a number of recommendations or a recommendation being made to the Government. That is all it is, as Senator McDowell knows well.

Senator Michael McDowell: Who made that judgment?

Deputy Charles Flanagan: The judgment was made by the Government, having considered all aspects of the issues to which I referred. The heart of the matter is that as far as section 39 is concerned, anyone who wishes to be considered for appointment to judicial office shall make the application to the commission. That specifically includes a person who may be a serving member of the Judiciary. This issue has dominated our debate here this afternoon in the same way as it has on numerous occasions, going right back to the summer. We have already discussed how the purpose of section 37, which has been mentioned by Senator McDowell, is to disapply from the process of a recommendation, to paraphrase him, the three top judicial positions. I will do that in respect of section 44 and I will do so for reasons that I referred to earlier this afternoon, namely, because they have a somewhat separate position in terms of the role, function, obligations and day-to-day work in which they engage being somewhat different from what might be described as an ordinary member of the court. I intend coming back to that. I ask Senator McDowell for his support. I feel he has indicated that he would be minded to support that, albeit in a way that does not necessarily accord with the range of appointments that he would wish to be included under such a section.

Earlier this afternoon, Senator McDowell referred to the fact that he did not at any stage see any reference to any statement, message or any disposition on the part of any member of the Judiciary or any group as to their position on the new process. I remind the House that the judicial appointments review committee, which was formed by senior members of the Judiciary to make submissions on the new process and whose membership included no less an officeholder than the Chief Justice, stated:

Where it is proposed to fill a judicial position by promotion, including the positions of Chief Justice and Presidents of the other Courts, the candidates should also be subject to the advisory process of the Judicial Appointments Advisory Board. Applications from serving judges to advance between different courts should be processed through application to the Judicial Appointments Advisory Board.

The Judicial Appointments Advisory Board, JAAB, is the body now giving way to the new, reformed and modern procedure. I accept, of course, that we are no longer talking about the JAAB but we are modernising, further developing and enhancing the independent process. It seems quite clear that the most senior judges themselves have recommended in principle that judges seeking appointment, right up to the highest positions, be on the same playing field as a first-time applicant. The Bar Council of Ireland has recommended that the Judicial Appointments Advisory Board process be followed for all judicial appointments, including elevation from lower to higher courts. Others were of the same view.

I have listened very carefully to the points raised by Senator McDowell. I certainly do not doubt in any way his sincerity on this issue, considering his first-hand knowledge as a former Minister for Justice, Equality and Law Reform, a receiving party from the JAAB, and given his former position as Attorney General, who is very much in the engine room of that board. I am not prepared at this Stage, however, to delete what is a key reform intended to cater for the selection processes for judges across the jurisdictions, with the exception of the President of the High Court, the President of the Court of Appeal and the Chief Justice. Therefore, I am not accepting the amendment.

Senator Michael McDowell: I asked the Minister to answer a simple question. I asked him to explain the advantage and interest served by saying to the members of the Government that they should not know who among the present Judiciary in the superior courts is willing and able to serve. I have not had an answer from him on that. He has avoided that question in all his responses.

Deputy Charles Flanagan: It is a policy issue.

Senator Michael McDowell: The Minister is saying it is a policy issue but I am asking what advantage is served by keeping the Government in the dark about who is able and willing to serve among the present Judiciary.

The corollary is the question as to the advantage of and permissible policy on keeping the Government ignorant of the choices available to it. I do not remember in any of the submissions of the Bar Council of Ireland or the Judiciary a suggestion it would be impossible for the Attorney General to inform the Government of those who had been turned down for a short-listing. I never came across that suggestion but that is what the Minister is coming up with now. He said I came up with a fanciful idea of the Attorney General being taken away in handcuffs from a Cabinet meeting because he had breached the confidentiality duty. If the holder of the Attorney General's office is duty bound to uphold the law, there is no question of anybody being arrested or dragged away in handcuffs; it is simply a matter of upholding the laws of the State. That is what the Attorney General is bound to do. If it becomes a criminal offence for the Attorney General to say a certain judge is an excellent candidate and has been turned down on four occasions by the commission, even if said in the secrecy of the Cabinet room, the Attorney General will not make the statement in the first instance and, by means of the threat of a criminal sanction, the Government will be deliberately kept in the dark as to the extent of its options and the true situation pertaining to the transactions related to the commission.

It is well and good for the Minister to say it is a matter of policy that the Government should be kept in the dark on these issues. It is not a matter of policy. I asked for an explanation as to what good would be served by keeping the Government ignorant of those who are ready and willing to serve among the Judiciary but who are not shortlisted. I have not heard any good

reason advanced even though the Minister spent some time replying to me when I posed the question to him. The reason I suggest he did not answer my question is that there is no answer. There is no coherent answer whereby he could stand up in public and say it is desirable that the Government should not know the names of any other persons among the present Judiciary who are ready and willing to serve, and that this is consistent with the duty of the Government to make the best decisions it can, in its own judgment, when filling the positions.

The Government has a prerogative in this matter that cannot be circumscribed by legislation. It is entitled to know what choices are lawfully available to it. The Minister has included two subsections indicating the Government is entitled to make a completely separate decision but he has also included a series of provisions to make it almost impossible for the Government to do that because it would not know at a Cabinet meeting whether a particular judge was available. I am proposing a very simple amendment that would enable sitting members of the Judiciary to signal their availability without prejudice to the activities of the commission or the shortlist of the commission in order that the Government could assess the quality of the shortlist it is receiving. If one receives a shortlist of candidates, marked one, two and three, one cannot really know whether they are the best available unless one knows who they were chosen from. It is like announcing the winner of a Eurovision Song Contest without having heard any of the songs. One song would be announced to be the winner - it would not be a contest at all.

Deputy Charles Flanagan: There would be a voting process.

Senator Michael McDowell: The Minister talks about other common law jurisdictions. We have a written constitution. It vests in the Executive the function of advising the President. That is superior to any Bill we can wave at each other in these Houses. It cannot be curtailed. As long as one is eligible, that is one thing. If a Bill had been introduced that went so far as to state determination by the commission was a criterion for eligibility, it would clearly have breached the Constitution but the Minister is sailing as close as he can to that wind while attempting not to cross the line.

The Minister has had the floor for a good while this afternoon. I have given him the opportunity to explain to the Irish people why a Government, when appointing an individual - to the Supreme Court, for instance - should be kept in the dark as to the identity of those who are willing, able and eligible among the present Judiciary to accept appointment.

Progress reported; Committee to sit again.

Conflict in Yemen: Motion

Senator Alice-Mary Higgins: I move:

That Seanad Éireann:

notes that:

- over three years of conflict in Yemen has had a devastating impact on the population of Yemen; resulting in 3.1 million people forced to flee their homes since March 2015 and as many as 21 million people in need of humanitarian assistance;
- 14.1 million people in Yemen have insufficient access to food and are at risk of

famine;

- the de facto blockade of Hodeidah port and the economic crisis in the country has contributed to the risk of famine;

- the national healthcare system has been decimated resulting in an escalation of preventable diseases and leaving over 50% of the population without access to basic healthcare;

expresses deep sorrow at:

- the loss of civilian life as a result of the conflict;

- the damage to and destruction of civilian infrastructure due to airstrikes due to shelling by the Saudi Arabia-UAE led military coalition;

- the damage to and destruction of civilian infrastructure, due to shelling by the KSA–UAE led military coalition and by the Houthi forces;

welcomes:

- the resumption of peace talks in Sweden under the auspices of the United Nations and calls on all parties to engage in good faith and work towards peace and stability in Yemen;

and calls on the Government to:

- draw on Ireland's powerful international reputation as a broker of peace to support and promote the UN-sponsored peace talks between all parties to the conflict;

- call for an immediate cessation of hostilities by all parties to the conflict, including an end to military airstrikes by the Saudi Arabian and UAE led military coalition, and an end to rocket attacks and shelling by the Houthi forces;

- advocate strongly for the upholding of international humanitarian law by all parties to the conflict;

- draw on Ireland's reputation in the area of international disarmament to advocate for a cessation of those aspects of the arms trade which contribute to the conflict, in particular to call on all EU Member States to abide by their obligations under the EU common position on exports of military technology and equipment, including denying an export licence if there is a clear risk the equipment might be used in the commission of serious violations of international humanitarian law or be used aggressively against another country;

- significantly increase humanitarian aid to Yemen and closely monitor the ability for humanitarian aid to reach the vulnerable populations in most need, including an end to the blockages and blockades which prevent such access.

Senator Ivana Bacik: I second the motion.

Senator Alice-Mary Higgins: I very much thank the representatives present and the Members of all parties and none in the House who signed the motion to ensure it is a message that

comes from the Upper House as a whole. I thank the Minister of State for being present and the Government for giving time for this important debate and for giving us the opportunity to send an important signal and message on the importance of peace and humanitarian solutions to the ongoing conflict in Yemen. The conflict has been ongoing for more than three years and had a devastating impact on civilians of all ages. Millions of Yemenis, the majority of the population, are on the brink of starvation. The UN has identified that more than 400,000 children are at risk of severe malnutrition. The impact on their lives has been severe.

Just this week, since the motion was originally drafted, we have had a moment of hope in a very welcome ceasefire. It is important to commend the UN special envoy for Yemen, Martin Griffiths, for his role in helping to secure that ceasefire in the port of Hodeidah. Since June, the port and its population have suffered devastating fighting, and the block on aid due to the important channel cut off in the port has deeply intensified the danger of famine for many in the country. It is hoped the ceasefire will allow for improved access for aid and humanitarian support.

I ask that the Government play an active role not only in supporting the UN talks, the UN special envoy and another UN envoy, Patrick Cammaert from the Netherlands, who will go to the port of Hodeidah today to represent the UN there, but in drawing on our humanitarian reputation and expertise in this area to ensure aid reaches all of those who need it most and that we have a scaling up of the humanitarian effort. We must press for a scaling up of the ceasefire beyond the port and an end to military activities throughout Yemen.

Ireland has an opportunity to support those fleeing the conflict, I note the International Protection (Family Reunification) (Amendment) Bill 2017 put forward by my group which has passed Second Stage in the Dáil is one way for Ireland to support a humanitarian response for those fleeing the devastation of this recognised conflict zone.

I thank everyone in the House. We are sending an important signal. I commend the NGOs who are standing outside in vigil and the peace activists who have kept the issue on the agenda at times when it was not being spoken about enough. I hope we will continue this into the new year and continue our vigilance.

Senator Joe O'Reilly: I support and welcome the motion. I congratulate Senator Higgins on bringing it forward. It is no harm to record as quickly as I can the scale of the crisis in figures from the UN and various agencies working with it. A total of 22.2 million people, which is 75% of the population, have a level of need. There are 2 million displaced persons, 89% of whom have been displaced for more than a year. There are a total of 280,000 refugees and asylum seekers. Up to 14 million people are at risk of severe food insecurity. A total of 400,000 children are suffering from severe and acute malnutrition. Between 1.8 million and 2.8 million children could suffer from severe food insecurity, while 2,500 people have been infected with cholera. These are some of the headline figures that show the scale of the humanitarian crisis in Yemen. The Minister of State outlined in the Dáil recently that the Irish response to the crisis in financial terms was generous, with €4 million provided this year and €22 million over several years. We ought to support the EU initiatives in that regard. I exhort the Minister of State to continue that level of funding and, if anything, increase it. The Irish people would support such an initiative.

I am strongly in favour of the peace process in Yemen which the Government is actively supporting. There were encouraging developments in Sweden several weeks ago regarding

the scaling down of military activity and a move towards peace. The ceasefire in the port of Al-Hudaydah is a welcome part of that process. It is a complex question with many factions involved. There are also factions both within the government and the Houthi forces. Various studies suggest there are war profiteers in both groupings, further complicating the situation.

We support the peace efforts. We cannot escape the fact that it is imperative for the US to keep pressure on in the context of these peace efforts. However, that pressure needs to be stepped up. Saudi Arabia and the United Arab Emirates must de-escalate their involvement, cease bombing the civilian population and scale down their military activity in Yemen. The Government needs to be in active pursuit of that, directly with the US and within the EU. We must say to our neighbours in the UK that the sale of arms to the coalition is not appropriate because there are alleged war crimes taking place. It has been stated by several leading individuals in the British Government that if they were to establish clear evidence of war crimes, it would cease to sell arms. That needs to happen.

What is needed is a negotiated settlement. Despite the factionalisation of the conflict and the various subgroups involved, to get the main people involved in the conflict to agree to a ceasefire and a settlement is important. Fine Gael strongly supports Senator Higgins's motion. We also call for the stepping up of humanitarian assistance and of diplomatic pressure with the UK, the US and within the EU.

Senator Ned O'Sullivan: I welcome the Minister of State. I also welcome the motion which Fianna Fáil was happy to sign. I compliment Senator Higgins on taking the initiative to table the motion. It has given the Seanad an opportunity to raise its voice in respect of this significant humanitarian tragedy. Perhaps we might be able to lead by example and encourage others to be of practical assistance in that troubled land.

It is welcome that the joint motion is not a political document. I do not know much about the history of Yemen but I read as much as I could in recent days. It is a country that has been bedevilled by factions and warfare over centuries. It would be impossible to establish exactly who is right and who is wrong at any particular point, including now. I am glad that we are concentrating on the humanitarian aspect of the crisis.

It is without doubt that Yemen has experienced the worst humanitarian crisis in the world in recent years. The UN reported that 17.8 million people are suffering from food insecurity, including 8.4 million who are categorised as "severely food insecure". The unfortunate people of Yemen are experiencing the worst cholera crisis in modern history. All of this could be avoided. The famine in Yemen is not a natural occurrence, it is man-made. That is the biggest tragedy of all. It is the result of the behaviour of human beings who are behaving irrationally and who are not thinking about the consequences of their actions.

I welcome what we in Ireland are doing to help alleviate the suffering in Yemen. We have provided €16.5 million in humanitarian assistance since 2015. In 2018, €4 million was contributed to the UN's Yemen fund. It is obviously a drop in the ocean but, for a small nation, it is a reasonable response. I also welcome the fact that the EU as a whole contributed €438 million to alleviating the crisis.

Fianna Fáil supports the efforts of the UN special envoy Mr. Martin Griffiths. He has succeeded in bringing all sides of the conflict to the negotiating table in Sweden. At least there has been a moment of calm in recent days, even though there was an outbreak of violence almost

immediately after the agreement was signed. Hopefully, this calm will continue especially at such a holy and peaceful time.

I agree with Senator O'Reilly about the sale of arms. At a time like this, it is absolutely criminal. All international problems are further worsened by interests from outside. Unfortunately, the large global warfare industry spreads its tentacles everywhere. We in Ireland know all about famine. We were fortunate we got some outside help in the black days of 1848. We did not get a whole lot but whatever we got was greatly appreciated. We need to reciprocate.

As well as the ceasefire, there needs to be economic reform in Yemen in order to address, among other matters, the cost of food and the payments of salaries to tens of thousands of public servants. In addition, every effort must be made to ensure the unhindered flow of humanitarian aid. Fianna Fáil calls on the Government, the EU and the international community to do all they can to assist the people of Yemen. They must ensure that ending the conflict in Yemen remains a high priority until such time as it is satisfactorily resolved.

I commend Senator Higgins on tabling the motion. This is a good day for the Seanad.

Senator Michael McDowell: I support the motion. I acknowledge it is put in very neutral and understated terms. What is happening in Yemen is wholly unacceptable. The fact the war there is being prosecuted largely by Saudi Arabia and the United Arab Emirates, using arms supplied by the British and the American Governments in order to militarise those states, is itself a matter of huge horror to me. The United States Senate recently expressed its views about the royal family in Saudi Arabia, which was a good shot across their bows. I commend Senator Higgins for bringing forward this motion. If I had been drafting the motion, it would have been in slightly more colourful terms.

For Members of this House who are interested in Middle Eastern affairs, there are three very good books, one being *The Ottoman Twilight*, and the other two written by James Barr, one of which deals with what happened in the northern Arab lands between Syria, Lebanon, Israel, Palestine, Jordan and Iraq, and the other, published recently, is *Lords of the Desert*, which describes the Anglo-American involvement in the Arabian peninsula. To put it mildly, *Lords of the Desert* does not make pretty reading. It is a long description of exploitation, selfishness, intrigue and viciousness. While the Americans and British are our allies, when President Trump says he is more concerned about €120 billion in arms sales than he is about the fate of Jamal Khashoggi, and, to use a phrase, one trumps the other completely in his eyes, that says more about President Trump and America than anything else. It is great that the United States Senate has rebuffed him on both counts, first, that it is hauling him back under the War Powers Act from involvement in this vicious war and, second, that it is sticking it to President Trump in regard to his moral absolution, if that man could confer it on anybody, in respect of the Khashoggi killing.

On reading Barr's book, *Lords of the Desert*, one sees the situation as described is far more complicated than any of us can guess. It is not a conflict between the Saudis and the Iranians but a struggle that has gone on for centuries. The disputes between the different factions and tribes in Yemen, north and south, and the former British colony of Aden, are not of Iran's making and should not be considered as such.

Ireland is, by its Constitution, committed to the peaceful settlement of international disputes. This is a very important point; not every country has that written into its constitution but we do. We should be slightly more vocal about the values for which we stand, especially

arising out of Khashoggi incident and what was going on in Yemen until recently, where cluster bombs were being used on civilians. Cluster bombs which are now outlawed but which had been manufactured in the United Kingdom and America were still being used from aeroplanes manufactured by those countries and flown by pilots trained by those countries on civilians in Yemen. That really is terrible. We should not be behind the door on this, even if we are not perfect and we are not paragons ourselves. The geopolitical interests of the United States, as now expressed and promulgated by Donald Trump, are amoral, indefensible and wrong, and support for the Saudi-UAE coalition in waging a war in Yemen is wrong. Ireland, as a state, should call it out for what it is. The slaughter of so many civilians and the use of the war crime of mass starvation on the remaining civilians are completely indefensible. I welcome and support the motion tabled by Senator Higgins and her colleagues.

Senator Paul Gavan: I welcome the Minister of State. I commend Senator Higgins for her work on this issue. It is a significant achievement to get all-party consensus and I know the passing of this motion means a lot to her. Sinn Féin has signed up to the motion. We support the general message it sends, although it does not go far enough in its condemnation of the Saudi Arabian regime, in our opinion. We understand the motion is a compromise of many positions and it was on that basis that we signed up. I just wanted to clarify that in case anyone thought this motion fully reflects Sinn Féin policy.

We have all been utterly shocked at the images of the humanitarian crisis and suffering in Yemen. Thousands of people have died in the conflict and 14 million need food assistance and are at risk of famine. The UN World Food Programme warned that the country faces a full-blown famine in six months unless things rapidly change. I want to be clear on the next point. The humanitarian crisis falls completely at the feet of the Saudi regime. We have seen how it has used its military might to bomb civilian infrastructure, homes and even school buses. Médecins Sans Frontières reported its hospitals have been hit five times by Saudi-UAE airstrikes. They have also blockaded Hodeidah port, stopping vital supplies. They have carried out these war crimes with impunity. Data collected by al-Jazeera and the Yemen Data Project show more than 18,000 air raids have been carried out in Yemen since 2015 by the Saudi and UAE-led military coalition, and almost one third of all bombing missions struck non-military sites.

Although we know this, I need to point out that the US provides logistical and weapons support for the Saudis. US contracted military planes leaving Shannon regularly travel to states belonging to that coalition. Hundreds of permits for military munitions of war were approved by the Irish Government last year, with many of these planes heading to these same destinations. Let me clear: the Government's hands are not clean when it comes to this horrific war. Britain and the US alone have sold more than \$12 billion worth of weapons to Saudi Arabia since it entered the war in 2015.

Sinn Féin has repeatedly called on the Government to join the calls to impose an arms embargo on Saudi Arabia due to the war crimes committed by its forces and its brutal murder of Jamal Khashoggi in its consulate in Istanbul. Regrettably, the Government continues to fail to do this. If we are serious - I have heard very positive comments across the Chamber about the need for Britain and the US to stop supplying arms - surely we need to make the call to impose the arms embargo.

I welcome the news of a breakthrough in the peace talks on Yemen in Sweden, which has led to some localised ceasefires. However, there are very real worries and concerns about how the agreed measures will be implemented. I hope this breakthrough in the talks will lead to a

wider and sustainable ceasefire, and, ultimately, the end of this devastating war caused by Saudi Arabia. However, we cannot take that for granted.

The motion also calls on the Government to significantly increase humanitarian aid to Yemen and closely monitor the ability of humanitarian aid to reach the vulnerable populations in most need, including an end to the blockages and blockades which prevent such access. I hope the Government takes this call seriously and Sinn Féin will support any measure the Government takes in this regard, but if it does not, we will also hold it to account.

I want to finish on the point in regard to Shannon Airport. How can we find it acceptable that we are aiding this war through our civilian airport in Shannon Airport? How is it that nobody seems to want to talk about this point? If we are serious about being peace brokers - I acknowledge the good work done by the Government - surely to God we have to stop supporting this war through the US use of Shannon Airport.

Senator Ivana Bacik: I support the motion on behalf of the Labour Party Senators. I commend Senator Higgins on her leadership in initiating this important cross-party motion about what has been referred to many times as a forgotten conflict. The appalling conflict in Yemen has been going on for more than three and a half years. All colleagues would wish to express in stronger terms our condemnation of the Saudi and United Arab Emirates, UAE, regimes which are backing the military coalition that has carried out flagrant breaches of international law and appalling attacks upon civilians. Having authored cross-party motions on Syria in this House, I know how difficult it is to get cross-party support. In the past, I have had opposition to strongly worded condemnations of the Syrian regime, which was committing barbaric acts against its own citizens. I commend Senator Higgins because I am conscious of the difficulty of achieving consensus. It is very important that we have cross-party consensus on a motion like this. We must seek to make an impact on Government policy.

I wish to condemn the Saudi-UAE-led military coalition, which is named in the text of the motion. I also condemn the continued sale of arms to the Saudi regime by the US and Britain and, like Senator McDowell, I commend the US Senate, which has taken a stance and put it up to the US President in respect of the continued sale of arms. I also agree with Senator McDowell's comments about the appalling murder of Jamal Khashoggi in Istanbul at the behest of the Saudi Government. We have to be cognisant of that and certainly may build on this motion in the future with further motions concerning any support our Government may be seen to be giving to that regime, even tacitly. We have a strong reputation for upholding international humanitarian law and in the area of international disarmament, as the motion points out. As a neutral country, we can play an important role as a peace broker, which should be emphasised.

Like others, I was pleased to read the Médecins sans Frontières, MSF, briefing document on Yemen. I commend the very important work of that NGO, which has sent such brave doctors and medical personnel into many conflict zones, particularly into Yemen. The Oireachtas Joint Committee on Foreign Affairs and Trade, and Defence has been privileged to hear from MSF doctors and staff on various occasions about their work in Yemen, Syria and other countries. It is always humbling to hear of their work and the incredible need they are meeting. Others have spoken about the great number of children at risk of malnutrition in this man-made famine. It is shameful to see a man-made famine occurring in 2018 in a country that was, in fact, well developed. I recall meeting a wonderful politician, a woman, from Yemen many years ago, long before the conflict. She spoke to me of the great progress that was being made in her country

at the time towards greater equality for women and a more democratic system. It is heartbreaking to see this huge step backwards and the dreadful suffering of so many civilians as a result.

It is my hope, that of the Labour Party Senators and of all of us that the ceasefire brokered since this motion was drafted will hold, that we will see some peace for the people of Yemen, and that we will see stronger action taken against Saudi Arabia in particular. I urge the Minister of State to do all he can within the EU and on our own behalf to express strong condemnation of Saudi Arabia and its support for the regime in Yemen. I ask him to express the wishes of this House to see this conflict end.

Minister of State at the Department of Foreign Affairs and Trade (Deputy Ciarán Cannon): I thank all Senators for their contributions. In particular, I thank Senator Higgins for her initiative in tabling this all-party motion. The Government welcomes the opportunity to state our position on the conflict in Yemen. As has been mentioned by many, the cross-party support for the motion reflects the importance that Ireland attaches to Yemen and the widely felt concern of the Irish people about the risk of famine that hangs over millions of Yemenis.

Let us not underestimate the very significant task that lies ahead. Yemen is still reeling from a conflict that is multifaceted, as Senator McDowell pointed out, and incredibly complex, with roots that extend far deeper than the current dispute between the Houthi rebels and the internationally recognised government. Yemen is in the grip of a humanitarian disaster that is man-made and is taking its toll on the most vulnerable. Yemen has long suffered from underdevelopment and the conflict has exacerbated that situation, all but destroying the economy and severely impacting on the delivery of basic public services. It has long been clear that there can be no military resolution to the conflict. We are relieved by the positive developments in recent weeks as the UN special envoy, Mr. Martin Griffiths, brought representatives from the internationally recognised Government of Yemen and the Houthi de facto government to Stockholm for negotiations. Agreements were reached on a ceasefire in Hodeidah and on prisoner exchange. We are anxiously waiting to see how the implementation of these agreements proceeds. Most importantly, there was agreement to meet again in the new year. We all hope the talks will make substantial and rapid progress when that happens.

Senators have mentioned the very significant humanitarian crisis that is now presenting in Yemen and Ireland's response to it. Our humanitarian aid programme in that region will continue to be of the utmost importance. Since 2015, Ireland has provided almost €17.5 million in humanitarian assistance to Yemen, including contributions of €5 million to the UN Yemen humanitarian fund this year. This fund provides assistance in the areas of education, logistics, food security, nutrition and health. Ireland also supports Yemen through annual contributions made to the EU and, since the beginning of the conflict in 2015, the EU has allocated €438 million in humanitarian aid to the Yemen crisis, which includes humanitarian development, stabilisation and resilience support. Ireland also contributes to the UN central emergency response fund, the World Food Programme, UNICEF and the international committee of the Red Cross, all of which are active in Yemen. However, it is clear to all of us that much more will be needed and Ireland remains committed to helping to alleviate the suffering of the Yemeni people in any way we can. Ireland will continue to prioritise humanitarian aid contributions to Yemen next year in view of the appalling level of need.

Many Senators referred to the role that arms supply plays in continuing this crisis. The motion recognises how foreign weapons, both legally traded and illicitly smuggled, are prolonging the war in Yemen and thus the humanitarian crisis. There have been calls from some quarters

19 December 2018

for an arms embargo. I must state, first, that Ireland does not produce or sell military weapons, thankfully. A number of countries within the EU have taken the decision to suspend their sale of weapons to the Saudi and UAE-led coalition. However, a full EU arms embargo would require an EU consensus and I regret that this is currently not possible. Therefore, Irish efforts have instead concentrated on ensuring the effective implementation of agreements to which EU member states have signed up, namely, the export control regimes and the implementation of the 2014 arms trade treaty. It is often more effective to press for the implementation of commitments made than to seek agreement on new measures. These obligations require all EU states to assess the potential that arms exports could be used to commit or facilitate serious violations of international humanitarian or human rights law and to consider measures to mitigate the risk of these violations.

I assure the House that Ireland will continue to take every opportunity to press for a negotiated settlement to the conflict in Yemen, as well as for respect for human rights and international humanitarian law and improved humanitarian access. The UN process is the only game in town right now. I will take this opportunity to state again Ireland's full support of the UN special envoy and his team as he continues to engage with all parties to the conflict and to work towards a sustainable solution for the people of Yemen. The negotiations at Stockholm were but the beginning of what will likely be a long and complicated process. Nevertheless I hope 2019 will mark the beginning of an improvement for the Yemeni people building on the fact that the parties are now at the negotiating table. Through our humanitarian aid, Ireland will continue to provide support to the Yemeni people in ensuring as best we can that their most basic needs are met.

I thank Senator Higgins and all speakers for the unity they have shown on the motion and allowing me the opportunity to restate the commitments of the Government and Irish people. I also reiterate the Government's support for the motion.

Senator Jerry Buttimer: On behalf of the House, I commend the Minister for making himself available at short notice and changing his schedule to be here this evening at 5.30 p.m.

Question put and agreed to.

Local Government Bill 2018: Committee and Remaining Stages

Acting Chairman (Senator Joe O'Reilly): I welcome the Minister of State at the Department of Housing, Planning and Local Government, Deputy Phelan.

Sections 1 to 13, inclusive, agreed to.

SECTION 14

Question proposed: "That section 14 stand part of the Bill."

Senator Tim Lombard: I welcome the opportunity to comment on section 14 which involves the transfer of the assets and liabilities of one local authority to another. Perhaps the Minister of State might clarify the situation in respect of the value and the process that will be used to value these properties. Some major properties have loans while others do not. How does the Minister of State propose that an equal or genuine value will be put on these properties so the transfer can happen? It is an issue about a balance sheet and ensuring that no local

authority could be stuck with a liability for a property that is not in its name. Will the Minister of State clarify how that will work? If a property has been paid off fully, will that be taken into consideration? The value of the property will be transferred. What we do not want is a liability on a local authority for an asset it cannot use.

Minister of State at the Department of Housing, Planning and Local Government (Deputy John Paul Phelan): The brief answer is if the asset is being transferred and there is an outstanding debt on it, that debt will also be transferred. For example, if Cork County Council has invested in a public project in the transfer area or the area that is under consideration by the Bill, there cannot be a question that it would still have the liability of paying for the debt. In one sense, it is a paper transaction in that the valuation placed on it is not necessarily the most important thing. It is that the liability does not remain on the county council. I tabled an amendment on Committee Stage in the Dáil that sought to keep some of the liabilities on the county council - that it would have to pay the loans even though the assets were being transferred to the city council. The brief answer is that any place where the county council has invested in a public project that is being transferred in the transfer area to the city, the outstanding debt on that transfer - the loan - will also transfer to the city council. It is a matter for agreement between the local authorities. By and large, there seems to be more agreement between the local authorities in Cork than might have existed previously. I am sure Senator Lombard will point out an example of where there is no agreement. The implementation group which is mandated in this legislation to come up with an implementation plan, with which both local authorities must stick, will be the final arbiter in ensuring the plan is implemented. We are putting the group in this legislation so that no situation can arise where either local authority feels short changed by situations that might arise in the transfer of assets between the county and the city.

Senator Tim Lombard: I thank the Minister of State for his response. I think the issue has more to do with value. Take the example of a major project in Douglas in which the county council invested significant sums of money in the past decade not knowing that this process was going to happen. While the county council could have invested this money in Clonakilty or some other part of the local authority area, that value must be recouped at some level. The issue of value is very important. The question of who will be the independent valuer of these assets is a real issue. To say the implementation group will have the final say is questionable. I am asking who that independent valuer will be. Has the Minister of State thought about it? Will it be an executive function of his? Where does he believe this will come into the forum?

Deputy John Paul Phelan: The purpose of any local authority is to provide public infrastructure and services. What has become apparent in the Cork review is that somewhere between 600 and 700 different services are provided by the local authority, a number that also shocked me. It concerns the idea that a local authority would invest public money - in this case, money it has received either from a Department such as the Department of Housing, Planning and Local Government or the people who make the contributions in their local authority area, namely, ratepayers and local property taxpayers in recent years - to provide a facility for the community there albeit, as the Senator noted, not in anticipation that there would be a boundary change but that somehow it would get a cheque at the end because it was being transferred with the population of the area. The valuation is to the community that it serves. Outsiders would consider Douglas, Glanmire and Togher to be parts of Cork city but they are not in the city because the current boundary does not reflect the boundary of the city. That is not the fault of the county council. By and large, the services provided in the area for which the county council is responsible are pretty good. However, there can be no question of a cheque being signed by the

city for the county on the basis of the county having done its statutory job, which is to provide services in those areas. If there are outstanding debts on such properties, it would be logical for the city council to pick up the tab in the future. However, local authorities are not businesses, although many people would argue that they should be run on a more business-like footing. I am at least partly in that camp. The provision of public services from public funds cannot result in the recouping of the capital outlay by the county council in this case. The council was performing its function and if it still has debts, those debts should and will transfer. That is as clear as I can be.

The implementation group is the arbiter in respect of matters on which there is no agreement between the city and the county. As I stated, there has been more agreement recently than there had been previously. The Cork issue has moved on. Last night, Senator Craughwell said the Cork issue had been fully agreed but no agreement had been reached in Galway. I outlined to him that many of my party colleagues in Cork were not especially happy. I should say, I did not have Senator Buttimer in mind at the time.

Senator Jerry Buttimer: I accept that.

Deputy John Paul Phelan: What I am trying to make clear is that there will be a full transfer of both liabilities and assets. Assets provided decades ago were provided on the basis of meeting local need. If the local population moves, the asset moves. That is the position.

Senator Jerry Buttimer: I acknowledge the Minister of State's remarks. While this issue may seem to be partly abstract, that is not the case. The Minister of State said local government should be about the delivery of public infrastructure and the provision of services for communities. He referred to the transfer of land to areas adjacent to the city. We need to continue and progress work in that regard. The point the Minister of State made is important in the context of the implementation group and the need to get this process right from day one. Arbitration can and perhaps will be contentious. This is an important issue because it is about the future of Cork and the local government structure delivering for the people of Cork. It is not about the book values of assets being transferred. It is not a power game or a case of pandering to whom-ever. That must not be forgotten. The importance of the Bill, particularly the transfer of assets, must be recognised. I commend both councils on their co-operation on this matter.

I will continue to make the point that we cannot afford to get this wrong. Previous Governments botched decentralisation and many other measures. This is about the country's second city going out into the world market and being a counterweight to Dublin.

Senator Victor Boyhan: Senator Buttimer referred to council and local government assets, an issue that is central to different parts of this Bill. We know from the reports of the Local Government Audit Service, which are published online, that virtually none of the 31 local authorities has a definitive, clear asset management system in place. That is one of the great anomalies in local government, which holds loads of public land. The issue is part of Rebuilding Ireland. I am involved in the Oireachtas Joint Committee on Housing, Planning and Local Government and we know there is no definitive base. I read a number of the Local Government Audit Service reports for 2017, all of which, with the exception of one or two, were published and circulated in recent weeks. I have taken the trouble to go through them and to contact the councils audited to suggest questions to be raised with their chief executives.

We talked about accountability and transparency at great length last night but we also have a

responsibility to protect the asset base of citizens. That ties in with good corporate governance and the administration of the local authorities. The Minister of State should have his officials advise him as to the status of the asset bases of Cork city and county and Galway city and county. We cannot proceed if we do not even know what assets are involved. Major difficulties arose when we sought to get some handle on the properties available to deliver Rebuilding Ireland. That is a key issue. If I were doing due diligence on a company, I would want to know about its liabilities, assets and future sources of funding. There are problems in that regard. It is up to the Minister of State's senior advisers to advise him as to the status of the assets of these local authorities.

Senator Gerard P. Craughwell: I do not intend to take much of the Minister of State's time. Like my colleagues, Senators Buttimer, Colm Burke and Lombard, I fully support everything he is trying to do in Cork. The negotiations in Cork were difficult and there are probably still difficulties. Over time, I hope those difficulties will iron themselves out as they have in Limerick and Waterford. For the most part, I am supportive of everything the Minister of State is trying to do in this Bill. I have a difficulty with Galway which we will come to in due course. I do not want to do anything that would impede the passage of this Bill from the Cork perspective. In particular, I fully support what Senator Buttimer said last night about the development of Cork as the second city. The political system in Cork will come together and find the best way forward once this Bill passes, without its provisions on Galway.

Senator Jennifer Murnane O'Connor: Fianna Fáil fully supports what is being done in the legislation in respect of Cork because it is important. As I said to the Minister of State last night, we have all seen major changes in local government. We lost nearly half of county councillors in recent years and we also lost our town councils, which was detrimental to nearly all councils. The Leader spoke about changes. I am just saying that we have all seen big changes since the time the then Minister, Mr. Phil Hogan, decided to abolish the town councils. This Bill is about Cork and Fianna Fáil fully supports the Bill in respect of Cork and wants it passed as quickly as possible because it is very important. As both the Minister of State and Leader said, this is about the people of Cork. They are our number one priority.

Senator Colm Burke: On the issue of assets and the transfer of local authority houses, I understand that when the Bill is passed and the changes are made to the Cork city boundary, the new city area will have more than 10,000 local authority houses. That poses a major challenge in respect of maintenance and making sure adequate support services are provided for all those living in local authority houses. We need to address that issue. I am not criticising local authorities but expressing my overall view on how we manage local authority areas. I will cite one example of apartments in Blackpool that were built and managed by Cork City Council. The state of the apartments became so bad that the city council ended up having them all vacated. The building was refurbished and the voluntary housing agency, Respond, now manages it. At one stage, the flats at Blackpool were not a safe place to live but they are now the safest place to live in Cork city. The building has a gated entrance and is well managed and the residents are very well protected. When one is talking about managing a housing stock of more than 10,000 units it is important there are proper structures in place to make sure there is proper maintenance. Proper management is also needed to ensure the small number of tenants who cause problems are dealt with fast and efficiently at little cost to the city council and little disturbance to adjoining households and families. Adequate local authority housing and adequate management of the housing are important in expanding the city.

Deputy John Paul Phelan: There is not much disagreement among Senators or from me.

The Leader of the House probably put it best in his contribution which echoed what he said last night. These sections essentially provide for the biggest boundary change in the history of the State. As well as the transfer of assets and liabilities, there is the much more important transfer of 80,000 to 85,000 people who, crucially, will still be Cork people whether it is Cork city or county. This is a fantastic opportunity for a single local authority to imagine how Cork city should be for the next 50 years and have sufficient space for necessary expansion.

Senator Grace O'Sullivan spoke correctly about the need to ensure office space being constructed in the city centre is matched with housing space. While there are similar examples around the country, alongside the massive expansion in office space in Cork city, the docklands area, which is smack bang in the middle of the city, offers a unique opportunity to provide masses of new housing of all sorts, private and public. A mechanism is required. I will veer from the specific case of Cork because there are particular issues with all of the docklands and older industrial areas, including the Galway docks and the Waterford docks, which I live 100 m from. These areas all have unique and individual problems. It is often the case, certainly in Cork, that there are issues of contamination in parts of the site that can make wholesale redevelopment for housing purposes uneconomical. The Government has to devise some sort of scheme that will allow these important strategic sites to be developed in an economically viable manner for developers, albeit one that does not allow them to walk away with massive profits. This requires a different day's work but the imagination that the Leader spoke about for Cork is absolutely correct. In fairness most of the management and the councillors in Cork are excited at the prospect of being in charge of the full city rather than the two thirds for which they were previously responsible.

Senator Boyhan made a good point. The problem that my officials and I have is that there is a clash unique to our Department compared with other Departments. Senator Murnane O'Connor and others constantly ask me to give more powers to local government. We want local decision making but the representative organisations for councillors have been unable to specify the additional powers councillors should have. That is why we have Ms Sara Moorhead, SC, working on this issue. The desire to give more responsibility to councils and councillors means the control exercised by the Custom House is already looser than the control exercised by other Departments and agencies. Local government autonomy means local authorities are corporate entities, but we regularly circulate and give national direction.

With regard to the Land Development Agency, representatives of which will come to the House in early January, there will be the itinerary of land assets. Senator Boyhan is correct that many local authorities do not have a full handle on all the assets under their control. I find that it is often questions by councillors that can lead to investigations into sites over which the relevant council may have a claim but may not have full and proper title. Councillors in local communities tend to know where such sites are and may suggest, for example, locating a new library on one of them. These things can happen on an *ad hoc* basis. I will speak to the Minister about the need for a full asset management project in local government. In recent years, local government has moved in a positive direction on issues of vacancies, particularly on issues of dereliction. To the best of my knowledge, all councils now have thorough derelict site registers. Some are very active in pursuing sites, while others are less active because they are worried about the costs. I hope the Land Development Agency will be able to play a role in that respect. While it is not a direct matter for this Local Government Bill, legislation related to local government is introduced regularly. While we need to protect the right of councils to determine their own business, it would be proper business management to have a detailed analysis of asset

management carried out.

I acknowledge Senator Craughwell's support for the provisions on Cork and I am happy to have it. I hope the Senator realises that variations of many of the changes proposed for Galway also applied in the case of Cork. All of the issues we are discussing with regard to Galway applied in Limerick and Waterford. I understand there are questions of timing and so on, but Galway is not a unique case.

On Senator Murnane O'Connor's comment, we have significantly increased the numbers of county councillors but there were reductions in numbers in many rural councils.

Senator Jennifer Murnane O'Connor: Yes.

Deputy John Paul Phelan: I have come to know Leitrim in recent years and will spend Friday and most of the next two weeks in the county. While it is geographically large and takes one hour to drive from one end to the other, it is extremely small in population terms. However, I believe 18 councillors is too few for such a large geographical area. Wexford is also a huge county and when I was standing for election in Kilkenny, there were 26 councillors in the county and only 21 in County Wexford. That is 21 councillors to cover 150,000 people. One would have to get a half of a Dáil quota to win a council seat in Wexford under the old system. The county was very under-represented but now has 34 councillors. While an effort was made to find a better balance in population terms, geography was not given sufficient weight in the calculations.

We never agree on town councils. I believe the future of town governance lies in strengthening municipal districts, as we are doing. People living in Bennekerry, an expanding village near Carlow town, did not have a vote in elections to the town council but had a vote for the Carlow town county council area. Getting rid of the two ballot papers and the two chambers that were doing the same work was the right thing to do. Should we have more responsibility at municipal government level to take the decisions that the town councils used to do? Should they get the block grant from the Department of Transport, Tourism and Sport to maintain roads, footpaths and lighting? Discussions have been ongoing for a long time with the Department of Transport, Tourism and Sport to give back the devolved grant to the municipal districts. We really want to do that but it is not our call.

Senator Colm Burke spoke about housing stock. With the change in numbers of housing stock from the county to the city, the funding will follow. All the stuff about funding in the Bill emphasises the need for funding to follow the population. That is crucial in the area of social housing. There is a perception that politicians, including in my own party, are opposed to social housing but some of the most desirable places to live in Kilkenny city are social houses. The cut stone houses opposite the Garda station are now very expensive but they were originally built by what was Kilkenny Corporation. Senator Colm Burke mentioned Blackpool but the only thing I can guarantee is that the funding will go with the housing stock that is being transferred to the city council in order to keep it in good order. It is a matter for the city council as to how it administers the funding and it is for the council to ensure the antisocial stuff is rooted out and people can live in peace, whether they live in social or private housing.

Senator Victor Boyhan: I heard what the Minister said about the asset register but there are problems which are documented on the website. The local government auditing services do an exceptionally good job across many local authorities. I suggest we *festina lente* - or hasten

slowly - but I am happy to support the Cork-related aspects of this. I am not a fool. We have a confidence and supply agreement between Fine Gael and Fianna Fáil and most of the stuff has been done so I do not want to waste anybody's energy on this in the run-up to Christmas. I am happy about these aspects because the Fianna Fáil leader, Deputy Micheál Martin, is from that part of the world and the previous Minister lives there. The Minister is ably represented by Senator Buttimer and other Senators from Cork and there is general broad consensus about it among Cork politicians, whether they are in the Seanad, the Dáil or the council. I have not heard anybody object to it, unlike Galway, where there is a different situation and a different level of support. I listen to sitting Deputies, Senators and councillors and I hear that they broadly welcome the proposals so I do not think the Minister of State will have much difficulty with them.

The Minister knows, in his heart of hearts, that he has got this section of the Bill over the line. I ask him to give one commitment to the House, and that is to revisit the Cork city and county asset register in very early January. I will commit to bringing information which has come to me at that time. I have made representations to the Minister and the Department about these registers and I have not been altogether happy with their responses.

Deputy John Paul Phelan: I am familiar with the Senator's correspondence, on a daily basis, on matters relating to local government and no Oireachtas Member is responsible for more.

An Leas-Chathaoirleach: We are learning all the time.

Deputy John Paul Phelan: I will give a commitment in that regard, not just for Cork. The Department will circulate letters to all local authorities advising them to get a handle on asset management issues in general. Senator Boyhan is wrong if he believes we have got this over the line. We have got to the position where the Cork issue does not excite as much difficulty as Galway but the Senator will have had a gentle taste of some difficulty tonight from Senator Lombard, which shows there are still issues. Before the Second Stage contributions in the Dáil a month or so before Committee Stage, numerous Fianna Fáil Deputies raised concerns and spoke to me privately about how they wished to vote against the proposals. A lid has been kept on it but this does not mean there is universal political acceptance. There is a realisation now, however, that assets and other issues are secondary to the idea that the people of Cork should have the best possible local authority service. I maintain that the way to do that in Galway is to have a joint management structure between both local authorities but we will get to that later.

Question put and agreed to.

SECTION 15

Senator Fintan Warfield: I move amendment No. 1:

In page 14, line 13, after "transfer day." to insert the following:

"The Minister shall also have regard to other matters, including, but not limited to, the area and size of land within the relevant area, as well as any other matters that he or she will consider relevant."

This short amendment deals with staff transfers during the amalgamation. Did the Minister say the number was 85,000?

Deputy John Paul Phelan: It is between 80,000 and 85,000.

Senator Fintan Warfield: The Bill states the Minister shall have due regard to population. We are trying to ensure the Minister shall have regard to a geographic area also in terms of staff transfer, particularly in the area of service provision. This amendment is about safeguards for rural provision.

Senator Jerry Buttimer: This is a very important part of the debate. The Minister did not understate the political pressures. However, there is a recognition that, as I said last night, we need a strong city and a strong county. The transfer of staff is a mammoth task and a lot of work has been done on it. The scale of this boundary extension is unprecedented. I hope that, as part of the process, there will be real engagement between the city and county in the transferring of staff. It is important that the transfer of personnel is done in a smooth and seamless way. We need to ensure there is buy-in to the shared process.

I commend the city and council staff, the executives, the directors of services and the managers on the professional way they went about their business after the political decision. Members of the city council were happy but members of the county council were deeply unhappy. It is important that there is engagement in the process of the transfer of staff.

Senator Tim Lombard: Senator Boyhan said all political forces in Cork were fully in favour of this proposal but, to be clear, I was never in favour of what is being proposed today. My view has always been that this is just a stepping stone to where we need to be. It will take two steps rather than one and, in a decade, we might go where we should have gone, which is to one local authority. I will support the proposal because I believe it will take us there in due course.

The transfer of staff is a huge issue and today is the closing date in County Hall for people to express an interest. Members and staff in county hall have been asked to decide where they want to go. My information is that the uptake has been quite poor. I have a very important question for the Minister of State. If the members of staff do not want to move to the city council, how will that be enforced? The figures are quite startling. The city council is looking for 350 members of staff to relocate from County Hall to City Hall. Cork County Council is stating it should be approximately 190. There is a real dilemma in the two local authorities. My major problem with this proposal has been the efficiency issue. When all this is said and done, we will have two county managers who are exceptionally well paid, two directors of service, planning and housing - two of everything. I have always been an advocate for one local authority with one manager, one director of housing, one entity. I appreciate that will not happen today. My question relates to the efficiency issue.

At the moment the city council has one member of staff for approximately 1,000 people. The county council has one member of staff for 2,000 people; that is efficiency. How does the Minister of State propose the transfer of staff will be done on an efficient basis in order that we can have what local government should be and what Cork needs, namely, an efficient local government service? At the moment we have a double-staffing issue, which is very controversial locally. Today is an important day for those members of staff who are being asked to choose. What will the process be if the quota is not filled? Who will define the quota? Who will fund it? What is the knock-on effect for the compensation package of 350 members of staff moving to City Hall? Who will pay for the vast pensions and wages and for the land and compensation package, to which we will get in due course, whether that be over three years or ten years? Who will pay for that if such a large number of staff have to be paid for? These are major issues for the people of Cork. This involves local housing and planning services. Without the money we will not have the services. Will it all go on staffing levels? These are key issues for local

government in Cork.

I support the Bill on the basis that it will be a stepping stone to having one authority because having a single local authority in Cork covering 500,000 people and one eighth of the geographical area of Ireland would be a regional power that could drive regional balanced development which is what we want from the Project Ireland 2040 plan. However, this will not happen here for whatever reason. We need to move to that in time, but for now we need clarity for those workers. We need clarity on the process and funding.

Deputy John Paul Phelan: I will start with Senator Lombard's legitimate points. The day the transfer will happen is being called transfer day. Today is deadline day. It feels like we should be across the water talking about sports arrangements in the new year but this is very serious and we are discussing people's careers. While it is more prevalent in Cork than in other local authority areas, there has always been significant movement of staff between the city and county councils, particularly with promotions. That may change from year to year. As is the case in Galway, in Cork the headquarters for both the county and city councils are in the city. I acknowledge that many local authority staff members are not necessarily based in County Hall or City Hall.

On the day of the deadline, I do not want to pre-empt in the House how many people have applied. The basis of the transfer is primarily voluntary. The Senator also asked who would determine it. The oversight group will have responsibility for looking in detail at who is moving and what numbers need to change. The primary piece that covers that is the section to which Senator Warfield's amendment relates. It refers to population but does not exclude everything else. The last resort, which is a fairly standard provision in terms of public service operations, is a last in, first out for staff. I hope it does not come to that. Ultimately the implementation group will decide on numbers.

In response to Senator Warfield's question, the legislation is quite specific and on line 13 of page 14 states "The Minister shall, in the giving of a direction under *subsection (4)*, have regard to the size of the population of the relevant area and the proportion that it bore to the population of the administrative area of the county council immediately before the transfer day". We mentioned population but did not exclude anything else because the transfer of more than 80,000 from the county to the city represents 19% of the current population of County Cork, but only 2% of the area of County Cork. I have relations living in Goleen, which is closer to where the Leas-Chathaoirleach lives than to where any of the Cork-based Senators to my left live.

An Leas-Chathaoirleach: It is a wonderful part of the world.

Deputy John Paul Phelan: Because Cork is such a big county, as I said previously on Second Stage, it should have been set up with about four or five local authorities, never mind two, when the local government system was being established. Be that as it may, we specifically spelled out population because - I got into trouble in the other House for saying this - local authorities should serve primarily people wherever they live. In this case we are talking about fairly densely populated urban and suburban communities with little bits of the immediate rural hinterland. Therefore, to spell out in the legislation that population would be the major driver was an honest statement. While it is a tiny geographic area of the overall county, we did not exclude geography from the provisions of this section, but population has to be central. That is why I am not in a position to accept amendment No. 1.

Senator Fintan Warfield: If certain units are relocated to centralise the structure, with staff moving from Skibbereen or Mallow to Carrigaline or Cork city, that is a substantial change in travel and possibly delivery. If things cannot be resolved by arbitration, the Minister of State should have regard for large geographical areas that may be sparsely populated.

Deputy John Paul Phelan: The Senator has raised a valid point. Ultimately we are seeking volunteers. I believe we will fill most of these positions with volunteers who wish to transfer. Normal industrial relations processes will apply and I have no intention of trying to strong-arm people who live in Skibbereen. Those areas will still be in County Cork. They have their own municipal district structure, which we want to strengthen and give more funding to. I am not in a position to give absolutes other than to say the provisions of the Bill are aimed at ensuring staffing numbers match population into the future. We, as in whoever is in my position in future, would cause industrial relations havoc if there was a proposal to move people from the furthest extremes of County Cork to jobs based in the city. We have no intention of doing so, nor would we be allowed to.

On the day when people have just made the decision to submit their request for a transfer to be considered, I cannot go into specifics about the numbers because I do not know them. It will be a matter for the implementation group statutorily under the Bill to determine the numbers of positions to move, based primarily but not exclusively on population.

After that, the normal industrial procedures will kick in and it will be neither acceptable nor appropriate for anyone in my position to request people make a journey. I remember my former colleague in the other House, Paddy Sheehan, who was a Deputy for 30 years. When I was a new Senator he used to tell me that when he left Goleen to come to Dublin, that by the time he got to Mitchelstown in County Cork he was more than half way to Dublin and he was still in County Cork. The point made by the Senator is right and valid. We have, however, no proposals to force rural dwellers into the city for jobs.

Senator Jerry Buttimer: On that point and the Minister of State's comments, the industrial relations process is one we must always embrace. In saying that, the other important element is the implementation group and the role it can play. I hope it will use discretion and, if I may be direct, a good deal of cop on. This cannot be a situation where we turn people sour at the beginning. That cannot be allowed to happen. Senator Lombard referred to the issue of the transfer deadline day. I was not going to mention it but that has exercised people. In saying that, it is voluntary. As the Minister of State said, it is critical that staffing matches population.

One of the successes of the last five years has been the creation of the municipal districts. That has brought about accountability in terms of the elected members and the officials at the local level. Elected members, and also members of the public, can attend and make presentations to meetings of their local municipal district area. My fundamental point is that the implementation group is critical, notwithstanding the roles of both authorities. I hope a good deal of cop on is used. We have moved beyond the argument on the number of authorities we need. We recognise it is two and we are not going to repeat that argument in the future. It is not helpful to say we need one authority. We have made a decision and it is two. It is critical now that we look at the entity of Cork, city and county, and how it can prosper and develop from day one of this new proposal.

An Leas-Chathaoirleach: Does Senator Warfield wish to press the amendment?

19 December 2018

Senator Fintan Warfield: I do not think we are going to get agreement on this issue, given the geographical size of Cork and the travel distances between the larger urban centres where there are council offices. It follows that restructuring may centralise provisions towards Cork city. This amendment is aimed at ensuring rural provision-----

An Leas-Chathaoirleach: Is the Senator pressing the amendment?

Senator Fintan Warfield: I am.

Amendment put:

The Committee divided: Tá, 10; Níl, 27.	
Tá	Níl
Black, Frances.	Boyhan, Victor.
Conway-Walsh, Rose.	Burke, Colm.
Devine, Máire.	Burke, Paddy.
Dolan, John.	Butler, Ray.
Gavan, Paul.	Buttimer, Jerry.
Higgins, Alice-Mary.	Byrne, Maria.
Mac Lochlainn, Pádraig.	Conway, Martin.
O'Sullivan, Grace.	Craughwell, Gerard P.
Ó Donnghaile, Niall.	Daly, Mark.
Warfield, Fintan.	Feighan, Frank.
	Gallagher, Robbie.
	Lawless, Billy.
	Lawlor, Anthony.
	Leyden, Terry.
	Lombard, Tim.
	Marshall, Ian.
	McFadden, Gabrielle.
	Mulherin, Michelle.
	Murnane O'Connor, Jennifer.
	Noone, Catherine.
	O'Donnell, Kieran.
	O'Mahony, John.
	O'Reilly, Joe.
	O'Sullivan, Ned.
	Ó Domhnaill, Brian.
	Reilly, James.
	Wilson, Diarmuid.

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

Amendment declared lost.

Question proposed: "That section 15 stand part of the Bill."

Senator Grace O'Sullivan: As I indicated last night, I support the Bill generally. For those of us who grew up in Tramore, Cork was always the real capital of Ireland. It is good to see this alteration happening and true recognition being given to Cork, particularly as balance to the development in Dublin. It is important this takes place but it needs to happen properly.

I have been engaging with my Green Party colleagues in Cork. They are concerned that without a plan for future reviews of the new boundary, we might find ourselves treading over this ground again, facing the same problems this boundary change seeks to resolve with distorted development outside of the city area and conflict between the city and county because of it.

The amendment is quite straightforward. It is moderate and common sense. It respects both the-----

An Leas-Chathaoirleach: Amendment No. 1 was lost. We are finished with the amendment. We are on section 15.

Senator Grace O'Sullivan: I am speaking to section 19.

An Leas-Chathaoirleach: No, we are on section 15. The Senator will have her chance in due course.

Senator Jerry Buttimer: Section 15 relates to the issue of staff transfer. Although it concerns the Department of Justice and Equality and is not contained in the Bill, the roles of the city and county sheriffs and the coroner are important. As Senators will be aware, the city and county sheriffs provide service in a wide variety of ways at local level. The city sheriff's operational boundary matches the preset city boundary. What is the process for amending the Department of Justice and Equality legislation governing the boundary in Cork?

An Leas-Chathaoirleach: The Minister of State has responsibility for local government.

Senator Victor Boyhan: On a point of order, we have had a vote and moved on.

An Leas-Chathaoirleach: We are on section 15, not the amendment.

Senator Victor Boyhan: That is grand. I was just clarifying the matter.

(Interruptions).

An Leas-Chathaoirleach: Senators should take their time and be patient. Senator Buttimer has the floor.

Senator Jerry Buttimer: I said I was referring to section 15. If the Senator would listen-----

An Leas-Chathaoirleach: Senator Buttimer said that.

(Interruptions).

An Leas-Chathaoirleach: Hold on, I will deal with any Senator who is out of order.

Senator Anthony Lawlor: The Leader has a new role.

An Leas-Chathaoirleach: I ask Senator Buttimer not to react to it.

Senator Jerry Buttimer: I will say again for the benefit of the Senator-----

An Leas-Chathaoirleach: No, hold on. The Senator must speak through the Chair.

Senator Jerry Buttimer: -----that this is not contained in the Bill. It is a Department of Justice and Equality issue.

An Leas-Chathaoirleach: Yes.

Senator Jerry Buttimer: It is important that the issue of the city and county sheriff be addressed.

Senator Colm Burke: I seek clarification also. For instance, the city and county sheriffs are involved in organising polling stations and making sure they are adequately supervised etc. How will such tasks be dealt with during the transition period? The city sheriff is responsible for the polling stations in a city. How will such tasks work out for local elections?

An Leas-Chathaoirleach: The Minister of State might like to comment on the matter.

Deputy John Paul Phelan: I will comment as best as I can because I cannot bind or really say anything too concrete about the Department of Justice and Equality's responsibility-----

Senator Jerry Buttimer: I appreciate that.

Deputy John Paul Phelan: -----other than to say the Senators have raised issues that were raised in the Dáil and outside of it. We have flagged the issue with the Department. The officials are aware of it and have indicated that they will act but it is a matter for them as to when.

In terms of the role that is played at elections, local authorities are responsible for the holding of the election for the local authority area. These changes will not have an effect in that regard but we have flagged the issue. Local government boundaries are not just political boundaries for the local authorities. They are often boundaries for education, sometimes health, the policing boards that Senator McDowell introduced during his time in office, coroners and sheriffs. We have indicated to the Department that it needs to consider the matter and make sure that the county boundary matches the boundaries for sheriffs and coroners. The Department has indicated that it will do so but I do not have a definitive time period for when that will happen.

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

Senator Jerry Buttimer: I wish to comment.

(Interruptions).

An Leas-Chathaoirleach: Order, please. The Leader is entitled to speak.

Senator Jerry Buttimer: I will talk as long as I want to on this Bill.

An Leas-Chathaoirleach: Yes.

Deputy John Paul Phelan: The Leader is entitled to do so.

An Leas-Chathaoirleach: The Leader is entitled to speak but I do not want to hear repetition either. The Leader does not have to lecture anybody.

Senator Jerry Buttimer: I am pretty good at giving back and forth.

Senator Robbie Gallagher: I can vouch for that.

An Leas-Chathaoirleach: Yes. The entire House understands that.

(Interruptions).

An Leas-Chathaoirleach: Order, please.

Senator Jerry Buttimer: I can tell the Leas-Chathaoirleach-----

Senator Robbie Gallagher: 'Tis the season.

An Leas-Chathaoirleach: Senator Buttimer to continue, without interruption please.

Senator Jerry Buttimer: To paraphrase, it is the season of good will.

Senator Robbie Gallagher: Say it anyway.

Senator Gerard P. Craughwell: The Leader is a little sensitive.

Senator Jerry Buttimer: I am not actually, no.

An Leas-Chathaoirleach: Senator Craughwell will have his opportunity.

Senator Jerry Buttimer: Anything but. What I will not do is recoil-----

An Leas-Chathaoirleach: Through the Chair.

Senator Jerry Buttimer: -----and renege on my duties.

An Leas-Chathaoirleach: I urge the Leader not to address Senators across the floor, with respect. We have got to move on.

Senator Jerry Buttimer: What I will do as a Member of this House and as a Member of the Oireachtas charged with looking at legislation, is to promulgate and highlight issues that need to be addressed properly from day one. Other Members will talk about Galway, which is their prerogative, and I will not intervene. I certainly will not heckle them, barrack them or make smart remarks.

Senator Gerard P. Craughwell: I would not do it to the Leader.

An Leas-Chathaoirleach: Please, Senator Buttimer.

Senator Jerry Buttimer: This Bill is very important.

An Leas-Chathaoirleach: Nobody is saying it is not.

Senator Jerry Buttimer: Therefore, I am entitled to speak to it.

An Leas-Chathaoirleach: Of course.

Senator Jerry Buttimer: I accept that the section is not part of the Bill but there is a duty, in terms of the transfer in the jurisdiction boundaries, between the city and the county regarding the city and county sheriff, and the coroner. The point that I made last night, and I make again tonight, and I shall keep doing so, is that it is about the provision of services for the people. The Minister said that 19% of the population will be involved in the transfer of services to the city. It is incumbent on us and it behoves us to put in place the provision of proper services. That is the point I am making.

I hope that between the Department of Justice and Equality and the Department of Housing, Planning and Local Government there is a tie-up. Also, as the Minister of State has said, there is the Department of Health in terms of the HSE, the education and training boards, ETBs, and the Department of Education and Skills. This is not just about local government. This is about the ETB, health, transport and a whole plethora of other services and agencies that we must get right. I am sorry if the House thinks I have laboured the point but it is important. Members, whether they represent Donegal, Monaghan, Carlow or wherever, would be equally passionate and committed to their own area as I am to my city and county.

Question put and agreed to.

Section 16 agreed to.

SECTION 17

Question proposed, "That section 17 stand part of the Bill."

Senator Tim Lombard: I was going to raise the mapping of boundaries in section 17 or 28. Who, in God's name, was involved in mapping the boundaries? The usual protocol for mapping was to consider the electoral divisions, EDs, but if they were not good enough one would use townlands. None of those protocols was used. A townland in Moneygourney, County Cork has been divided between two local authorities - a city authority and a county authority. Two residents of the townland will now be members of the county authority but the rest of the inhabitants will be members of the city authority. The same applies to the entire county of Cork regarding the city boundary itself. The usual protocols were not adhered to. As the Minister of State is a political nerd like myself, he knows how these elections are run and that the usual protocol is to use electoral districts. I realise that the electoral divisions date back to 1841. There was probably a better way of doing this work but it is not dividing townlands. Is dividing townlands in two the new way of doing things? We have a register that must be sorted by 15 February. As many as 2,000 people in the hinterland of Moneygourney do not know whether they are residents of the city or the county because the usual protocols were not used. To me, such a situation is a mistake and is inappropriate. I can list townlands located in the north, south, east and west that have been divided by this boundary.

The Minister of State knows local government as he has been a councillor. He knows how these elections are run and the dividing areas. It is an unusual if not a bizarre and unique event that now we are tearing up townlands regarding the city and county divide. I am not going to talk about large areas because that would be inappropriate now. However, protocols should have been used that ensured the franchise was easier for people to understand.

Senator Gerard P. Craughwell: Yes.

Senator Tim Lombard: We need to be proactive in this space as we have made a mistake. The Minister of State must provide a helpline, extend a deadline or whatever in order that people have enough time to find out where they stand. More importantly, such measures would allow local government staff to determine who lives on what road and where. There are nine houses on one particular road in Moneygourney but seven have been deemed to be within the city boundary and the remaining two have been deemed to be within the county boundary. The residents have contacted me because they cannot understand why their townland was divided in two. A plan must be put in place so people's franchise can be protected. A person's vote is sacred. We need to know where these people can vote and allow enough time for the electoral register to be put together.

Senator Jerry Buttimer: My comment relates to the point made by Senator Lombard. It is not about the city-county but the establishment of local electoral areas. A coach and four has been driven through estates and left people feeling completely confused. I wish to return to the fundamental point that I made about the drawing up of boundaries. I wonder whether the people who map boundaries understand the work. I agree with Senator Lombard that we must ensure the integrity of a townland is preserved whether it is in a city, county or an estate. A graphic illustration is Douglas and Togher in terms of the way both places were city and county but now, thankfully, they will be back as one local authority.

In terms of the electoral districts, mistakes have been created in some parts, particularly in Cork, that can only be remedied in five years' time.

Senator Colm Burke: I agree with Senator Lombard. My home parish of Inishcarra is divided in two, with which I have no difficulty. I have a difficulty with the division of townlands. There is one stretch along the dividing line, approximately 500 yd. wide, that runs from Moyle between a road and a river. That road is the dividing line. The way it is done does not make sense. If there was a straight line along that 500 yd. stretch to the river, there would be a clear boundary. I do not understand why houses in some townlands were left in the county while others were brought into the city. I know we cannot go back over it because the map has been drawn up. If the entire townland had been left out, the number of properties affected and the number of additional voters brought in would have been extremely small. They would have been brought in to one area and left out of another area. Logic does not appear to have been used when the line was drawn. There are now parishes and areas in which very united communities have been divided. For example, Inishcarra has over 50 acres of sports facilities for GAA, camogie, rugby, soccer, pitch and putt and the community centre and now the organisers will have to deal with two local authorities when they want funding. We need to look more carefully at how we decide on boundaries. There are clear divisions in place yet now we are creating artificial divisions. That is what has occurred in this instance. There must be a better way of doing it.

Deputy John Paul Phelan: With regard to Senator Lombard's question, I am a self-confessed nerd when it comes to boundaries. The reason for this is that I grew up in a community that is partly in New Ross, County Wexford, and partly in County Kilkenny. I live in the community on the Kilkenny side of the boundary. I am acutely aware of the issue. A heightened awareness comes when one is standing for election as councillor because some houses are in one's electoral area but those right beside them are located in the County Wexford electoral division. That is what I discovered when contesting the local elections 20 years ago.

The short answer - I do not mean to be snappy - is that there are no protocols. The Senator

outlined correctly that there have been reviews of the district electoral divisions, most notably in Dublin when Dublin County Council was disbanded and the four existing authorities were put in place. One of the projects I want to begin - which my officials, who are sitting behind me, know about very well - is a complete review of district electoral divisions, with particular emphasis on suburban areas and areas in provincial towns that were very rural in 1841 but which are now, in many cases, home to large numbers of estates. There is an example in the recently conducted boundary review of local authority areas of a portion of a district electoral division which was in rural Dublin but which is now an entire electoral area electing five people on its own. It is not even the full district electoral division. I know from my own parish of Rosbercon there has never been a situation where boundaries have changed and townlands have been entirely moved.

I will give the Senator the example of a little town called Annefield, which lent its name to a very famous sport stadium and which is why I support the team there. It is in my community. As a result of the line on the map that was drawn between Wexford and Kilkenny in the late 1950s or early 1960s, most of Annefield is now in Wexford. There are two houses in a cul-de-sac which have three voters in them - one of them did not exist when the boundary changed - and they remain in Kilkenny. Nobody ever canvasses them because the entrance to the road is in the town of New Ross. One has to go a mile up the road before one realises one is back in Kilkenny. I know that it is in Kilkenny because it is where I come from. I accept the point the Senator made and hope the district electoral division review will happen. It is about resources. I fully agree with the Leader on the issue of former politicians who do not have skin in the game having some oversight in the future, particularly in the context of local boundaries for election purposes. There is a bigger question in terms of Dáil constituencies and former politicians probably should not be included but that is a matter for another day. There have never been such protocols. They are not in place and they were not breached in this area. I have become quite an expert on the suburbs of Cork in the past 18 months but I had no hand, act or part in drawing the lines on the map. It was done on the basis of some agreement between the local authorities. Where there was no agreement, the people who were involved with the oversight group made the decision. I am sure the Senator can find other examples.

I agree with Senator Colm Burke. I have always favoured geographical boundaries such as rivers and mountain ranges and, in the modern context, dual carriageways, motorways and other physical infrastructure. We have a situation where there is a portion of ground inside the northern end of the M50 in Dublin that elects councillors to Fingal County Council even though it is directly adjacent to Santry. One might, if one was drawing a line now, use the M50 because it has become a barrier. I do not know why they used the road instead of the river but they did. I do not propose that we go into the detail of why some fields are in and some are out in the House. It is not unheard of for the divisions of local electoral areas in cities to go through housing estates. The group responsible for electoral boundaries was instructed to try to respect the integrity of communities including estates but it is not always possible. If I am in this position in five years, with the benefit of hindsight, I think the ultimate solution for those types of questions will be to have more than one group in order that physical analyses of areas can be carried out before lines are drawn on the map.

Part of my little parish in Kilkenny is located in Wexford. The bit that is in Kilkenny is now in two electoral areas. It makes no sense but it was a decision arrived at by an independent group. With the benefit of hindsight, there need to be more of those groups in place in order that proper analyses can be carried out before decisions are made. However, that is not a matter

for this legislation.

Senator Tim Lombard: I appreciate that the Minister of State has exceptional knowledge of what happened in some locations in the 1950s and 1960s, which is before I was born. I refer to the Local Government (Planning and Development) Act 1992, which means that by 15 February we need to have a register in place. That register is important because it will mean that people can cast their votes in European, local and general elections. I do not know what will happen in due course. It is almost Christmas and local government will not meet again until early January; therefore, the timelines are tight. People in these townlands do now know which electoral division they are in. They do not know whether they are in the city or county. What efforts can be made now to assure such people they can exercise their right to vote and that they will be able to turn up and cast their votes? Will the Minister of State put resources in place? Will he extend the deadline? Will he have a helpline? How can we ensure members of the public will be able to vote, regardless of whether they are in the city or county? It is a very important part of the issue. I did not draw the line and neither did the Minister of State or his officials. It was drawn where it was drawn and we need to deal with it. I need to find a solution for the people of Cork. The Leader is right. It is about the people of Cork having services. It is about the people of Cork being able to exercise their votes on the day of elections. We need clarity and I want the Minister of State to provide it now.

Senator Jerry Buttimer: This is about identity and giving people ownership and embracing the change that is about to take place. As Senator Lombard stated, it is about the register of electors which must be completed by 15 February. It is important that resources be devoted to advertising and giving information to the citizens regarding their local election area or their ward in the city. One must also remember that the supplementary register will come at a later date. The voters in the transition area being transferred in to the city need to be informed about their local election area, the ward they will be in, the polling station and their change of vote. I hope that can be done. I appeal to the Minister of State that such a campaign be engaged in as part of this new local government structure for Cork.

Deputy John Paul Phelan: I missed that point and it is incredibly important, at least in the Cork city area, where on polling day in May, we will have five ballot papers. In itself, that is complicated enough without knowing where one is going to vote. What we have done and made provision for in this legislation is that if there is a delay in the process, the deadline of 25 February in Cork can be moved. It is called a “special difficulty notice”. There is provision for it under the Electoral Acts, although I cannot name the section off the top of my head. That mechanism is in place. It has rarely been used but it can be used in Cork if there is an issue.

The first thing we can do is that if we pass the legislation tonight, to be flippant, the people in Cork who are responsible for the registers will be able to go about their work more quickly.

On helplines and resources, the local government sector jealously guards its responsibility for the register, which is why in discussions we will have in the not-too-distant future about the establishment of electoral commissions, there will be a job to be done to marry the role of local government into whatever role a commission would have. Essentially, helplines and such matters are issues for the local authorities but I will give the Senator a commitment that if extra resources are needed, I will speak to the head of the franchise section to ensure the local authorities in Cork will be able to do what they must to make sure people are on the register of electors well in advance of polling day at the end of May.

19 December 2018

Senator Fintan Warfield: As much as I like listening to the Leader and the Minister of State, we all have other things to be doing than listening to them counting down the clock, solely because the bottom has fallen out of the agreement with Fianna Fáil. How long is it intended to keep us here?

Acting Chairman (Senator Michelle Mulherin): There is no time limit and there never is on this Stage. This is not a conversation. Senators should speak through the Chair, please.

Senator Fintan Warfield: We have debated one amendment and it would be wise if we moved to Senator Grace O'Sullivan's amendment and some other business.

Senator Ned O'Sullivan: The Senator has made a very good point.

Senator Jerry Buttimer: I accept that point and I am not talking down any clock. There is no clock and we did not set any-----

Senator Fintan Warfield: Will we be here until Christmas Eve?

Acting Chairman (Senator Michelle Mulherin): That is it, please.

Senator Jerry Buttimer: I assure Senator Ned O'Sullivan that I want this Bill to pass tonight and that I will be voting to pass it tonight.

Senator Ned O'Sullivan: That is not very convincing.

Senator Jerry Buttimer: I do not normally contribute to legislation, as Leader, but this is about my city and I make no apology for standing up for my city and for articulating views on behalf of the people of Cork. I apologise if I am labouring the point. I reflect on the views expressed by Senator Warfield and will not contribute on Galway at all in the debate. It would be remiss of me, as Leader of the House, a public representative elected since 2004 in Cork city and somebody who has been involved in civic and sporting life in Cork, if I did not contribute. I want to welcome the Minister of State's point. I acknowledge that the local authorities of Cork city and county have been working on the register of electors and that a public information campaign will be launched in January and February. The point that Senator Lombard is making, however, which I also am articulating, is that there is a need for extra resources to be given, which should not be taken from the budget of the councils from this or next year. Extra money should be given in order that we can give people ownership.

Deputy John Paul Phelan: I have answered that question.

Senator Jerry Buttimer: One would nearly be afraid to talk any more.

Acting Chairman (Senator Michelle Mulherin): We will proceed. This Chamber facilitates debate in accordance with business as ordered for the day and everybody is entitled to have his or her say in accordance with it.

Question put and agreed to.

SECTION 18

Question proposed: "That section 18 stand part of the Bill."

Senator Jerry Buttimer: I welcome the Minister of State's comments on the role of for-

mer politicians. I am curious and a little worried about the composition of the oversight committee provided for in section 18(2)(a) and section 18(2)(b), comprising a chairperson and two ordinary members. I hope that the ordinary committee could be extended to include people who have served as former councillors or public representatives, in addition to those who served as former director of services or managers in Cork.

Deputy John Paul Phelan: We effectively are putting on a statutory footing the composition of the oversight group. This is where we differ on the issue of former politicians. It is fine to have former politicians being involved in the basic political stuff of understanding natural boundaries for election purposes and why it make no sense sometimes to stick to the old district electoral divisions, DEDs, which were devised more than 200 years ago. Even if this group was expanded to six or seven people, to pick a former member or two, however, potentially would involve people with political connections in the process. This group is not intended to be in any way a permanent structure and is just there to ensure the implementation plan is implemented. I, therefore, disagree with the Senator on that point.

Senator Jerry Buttimer: I wish to make one further point. We should not be short-sighted in our short-termism regarding the need for the retention of the oversight committee. It will have a very valuable role to play for a considerable time. Short-termism should not be just a couple of weeks or months; the committee should be in place for longer than that.

Deputy John Paul Phelan: It will be.

Question put and agreed to.

SECTION 19

Senator Grace O’Sullivan: I move amendment No. 2:

In page 17, between lines 9 and 10, to insert the following:

“(c) the arrangements that should be made by the Cork local authorities for subsequent reviews of the Cork boundary alteration taking account of development and proposed development in the administrative area of the county council;”.

I said earlier to the Minister for State that this was a very important Bill, particularly for the people of Cork and Galway. I understand why the Leader of the House is speaking about his area in Cork. It is very important to the people of Cork. For that reason, and under the guidance of my own Green Party colleagues in Cork, I have brought forward this amendment to strengthen the Bill. It is a small thing and is quite simple, namely, to have a review in place in the legislation in order that we are not waiting another 60 years for a review. I said to the Minister of State last night that one concern of which I have been made aware by my colleagues in Cork is that there may be a doughnut effect whereby everything will move out to the boundary area. As we said last night, really interesting developments are happening in Cork down on the riverside, as well as foreign direct investment, etc. However, there is a problem with residential accommodation. What is going to happen now? The infrastructure and industry are growing in the centre and the residents are being forced out to the boundary. What will be the result of this, except congestion?

There will be lots of problems in managing the whole area. There is a problem and I am putting forward this review mechanism for that reason. It would put the review in the legislation.

I absolutely want this to happen and be effective. What is being proposed is really good and it is really progressing well. This is intended to strengthen the legislation to enable the people of Cork to have a review mechanism if necessary. It is so broad. It is only the word “review”. The Government can outline the terms. The last thing we want is for it to happen, because it is all going so beautifully. It is there in case of events. It is a caveat. Without it, the Minister of State may find himself in a situation in a few years where his hands are tied. He can put in a very simple mechanism that would enable a review to take place.

I have said to the Minister of State that I have not had the privilege of being a councillor. I have had the privilege of having been voted for by councillors. It is in my interest to support the councillors and people of Cork in that regard. As the Minister of State said, the Government is giving the people of Cork the security of this great development. That is what we in Waterford desire. We want security for our own development around the North Quays. Such security exists in this instance. What the Minister of State is proposing with the alteration of the boundary is very positive. This amendment would provide that caveat to support a review in the event of it being necessary.

Senator Jerry Buttimer: The section with which we are dealing is fundamental to where we are going. Project Ireland 2040’s provision for both the city and county of Cork is about expanding the city. As the Senator said, it is also about ensuring that we do not create a doughnut effect. As mentioned last night, we will almost build a new city from Navigation House down to Páirc Uí Chaoimh, along Monahan Road and Centre Park Road and taking in the old Ford and Dunlop site. We have a fundamental difficulty in that remediation works will be costly and difficult at the Seveso sites. I never thought I would say this, but the need for the implementation oversight group is critical. If I understand Senator O’Sullivan’s amendment correctly it is about a review, but by my interpretation the review is not about monitoring the progress. We need the progress to be monitored.

The ambitious plans for Cork under Project Ireland 2040 are about shifting the balance away from Dublin. They are about creating an opportunity for the metropolitan region, with the county of Cork to flourish and develop. Given the importance and centrality of the education sectors and the pharmaceutical and technology sectors represented by Dell and Apple, the future for Cork can be very good. It will be, but it is based on monitoring the implementation plan rather than reviewing it.

Senator Brian Ó Domhnaill: I support the amendment. It is very relevant. Public policy should always be measurable and should always be reviewed. There should be specific time-frames attached to it. Without that, the public cannot be protected and the interests of both councils cannot be protected either. This section provides for arrangements to ensure the delivery of services to members of the public residing in both jurisdictions. It deals with arrangements concerning the impact of the boundary alteration on members of the public living in both areas and arrangements relating to financial matters - a very broad brush - and the financial autonomy of both councils. Whether this is working will be a big question in the future. The Department very often makes recommendations around the structure of local government without consulting with the public living in the area. Carrying out plebiscites before any structural reconfigurations take place works very effectively in other jurisdictions such as Finland. We are not sure if this will work or not. If we can learn anything from the 2014 Act’s reconfiguration of local government, I can tell Members that throughout the country it is not working.

I wholeheartedly believe most of the towns around this country that are struggling are in that

position because they do not have local authority autonomy. I refer to towns like Letterkenny and Castlebar where hotels are closing. Those regional towns do not have the structure of local government to draw down State support to provide for their needs. While that continues, the counterbalance required in places like Cork cannot be delivered. It is very important to have a timely review that is measurable, has clear objectives and into which everyone has an input. That must include public consultation and an input from the elected members of both councils.

I know that the Members from Cork are speaking from the heart and I support everything they say. They are raising very valid concerns and this is the place to do it. However, a review would serve the people of Cork well. There is no question about that. This is not a political attack on the Minister of State or his officials. Departments, not just the Department of Communications, Climate Action and Environment, have very lofty objectives. Lofty objectives may suit the political narrative but they do not suit public policy. They are not measurable. One cannot measure lofty objectives. I am not saying that this is a lofty objective, but the objective should have specifics that are measurable.

I commend the Minister of State on this Bill. I disagree fundamentally with latching Galway onto it. That does a disservice to Galway and to Cork. They should be separate. However, the Minister of State is endeavouring to improve Irish local government. We may disagree on certain aspects of it but this is the right thing to do. Cork needs to be strengthened. It needs city status. It needs to be beefed up if the objectives of the national planning framework are to be realised. We must measure progress if we are to do that. One of the recommendations from this House, an amendment which I put forward, was for this national planning framework to be debated and voted upon in both Houses of the Oireachtas. Unfortunately the Dáil did not support that amendment and therefore the Dáil and the Seanad did not have an input. However, a measurable review mechanism should be built into this Bill. It would serve local government well. In fact if it worked here, it could be replicated elsewhere.

Senator Tim Lombard: The issue of whether this works is very important. How we actually gauge and measure that is something we have to look at from the point of view of issues pertaining to both the city and the county. That is very important. Funding is going to be a key issue here. It will be a key issue to ensuring we have a viable county and a prosperous city. The old system had its faults. We had two golden miles around the city in which we collected the rates. Then we could put roads and infrastructure in places like Goleen in order that the Minister's relations could have roads. That will not be the new system. We will now have a compensation package paid over a period of years. The amount will be determined and it will probably dry up after ten years.

We then need to see how a county of that size and nature would survive, as the Minister of State explained quite eloquently when he talked about Paddy Sheehan leaving Goleen and going to Mitchelstown, without having a significant industrial base around it as we had around Cork city, which helped the county to survive. A review process or process of that nature is something that the Minister of State might consider. If there was a situation where the financial impact of this was so severe that, after a few years, the county did not have enough money to survive, we would need to look at that. Where will local government and the Minister of State's Department fit? That will be a significant issue.

The Leader has said it is about services and it is. It is about services in the city to ensure it will grow. Cork needs a strong, vibrant, passionate city that can increase the wealth and prosperity of the entire county. We need to have assurances in the county that it can survive without

having the base that is currently there. Those are real, significant issues and we are trying to get clarity. This review might be a mechanism to ensure we can address it. There is genuine concern. If one was to go to the other end of my constituency, from Youghal to Castletownbere, a significant part of the world three hours away, one could have gone to Dublin and back from where the Minister of State lives. That is the significance of the geographic impediment. We need to work on the lack of that review and how we will fund it.

While it does not relate to local government, in Cork, we are not allowed to get IDA Ireland money because it believes we do not have economic need. This presents us with a different dilemma within the county because the wealthy areas in the city are included in the county. Should we be looking for a fund for the county in order that we can develop, press forward, achieve our goals and become a real driver of the biggest rural local authority in the country? Cork County Council will become the biggest rural local authority and we need a different emphasis on the county. There is a different challenge for management and councillors to ensure it has the influence to protect local towns and drive local industries but national government needs to play its part. Local government needs to support it and that is why a review might be helpful. We need to ensure Cork gets the attention it requires from such entities as IDA Ireland, because if it does not, the city will thrive but the county might not and that would be a major issue.

Acting Chairman (Senator Catherine Noone): I call Senator Boyhan to speak to the amendment.

Senator Victor Boyhan: On the amendment and nothing other than it, Senator Lombard has made a strong case for the review and spoke strongly in favour of Senator Grace O'Sullivan's amendment. I was always going to support Senator Grace O'Sullivan who has done a lot of work on this and made it clear what her objectives are. Senator Ó Domhnaill asks how we measure this. That is really important. I will not repeat what they said. They made three good, strong contributions and I will support this amendment.

Acting Chairman (Senator Catherine Noone): I thank the Senator for being to the point.

Senator John Dolan: With the expansion of the city and the necessary infrastructure about which the Leader and others have spoken, while I know that this will not be contested by the Minister of State, I emphasise for officials and the rest of the House that it is important to ensure that when putting in the infrastructure, whether residential housing, roads or for business, the needs of people with mobility impairments and disabilities are kept in mind. They should be stitched in. If the city is made more coherent and practical in how it expands, there is an opportunity to do something similar with the county, which has a dispersed population. There are significant towns and villages. It can become a more wholesome entity with a dispersed population. Different challenges arise for elderly people, children and people with disabilities.

Deputy John Paul Phelan: I fully agree with the sentiment of the amendment. Before I get into the detail of it, I would like to say I will not support it because it is proposed in the section dealing with the implementation plan, which is specifically about the issue that we have gone through relating to the map, the area that has been transferred, and the assets and liabilities of the staff. It is what we voted on earlier. It would make no sense legally or politically to put the amendment in the subsection where it is listed. I spoke at length to a version of this on Committee Stage in the Dáil. I think it was an amendment from Deputy Ó Laoghaire of Sinn Féin. He lives in an area that was in Togher in the county but is now, logically, being moved into the city because it is attached to it. I made a point to him about ensuring the doughnutting

does not happen. There are two issues. Cork is not unique in that it has large ex-industrial sites in the middle of the city that have huge potential. They are also in other places. Cork is unique in that it is moving.

We need to ensure housing matches the creation of office, retail and other space, which is why we prepared a metropolitan governance paper which will come to Cabinet in the first few weeks of January. The emphasis of the paper is ensuring the development of cities across local authority boundaries. The biggest example is Limerick city. Proportionately, geographically, there is more of Limerick city on the Clare side of the River Shannon than there is of any other cross-boundary city. There is also a significant part of old north Tipperary around Newport and Birdhill, which is in the physical, geographic and economic catchment area of Limerick city. Under the national planning framework, as Senator Ó Domhnaill mentioned, this metropolitan government issue relates to what Senators Nash and Buttimer said last night about city drivers for a wider geographic region. There needs to be involvement from local authorities and the public in those areas that are on the wrong side of the boundary or out of the local government area, which might currently be Limerick City and County Council. The only thing of a concrete nature that I can say is that we will be going to the Cabinet with that report in the new year. It is designed to underpin the proposals in the national planning framework.

I cannot accept the amendment as is. I know that the Acting Chairman is anxious to move me on but I want to refer to the points made by Senators. I think I have dealt with Senator Buttimer's issues. Senator Boyhan supports it. In response to Senator Dolan, the design mechanisms for whatever infrastructure is built will be a job for the new city council in Cork in this instance when planning. A big reason for the expansion in Cork is that we had two local authorities preparing different and sometimes contradictory development plans for the city. Now we will have one. Implementing the standards required for people with mobility difficulties or other issues will be much easier with one authority in charge than with two as at present. I acknowledge Senator Ó Domhnaill's comments. The municipal districts system across the country is haphazard. It works effectively in some councils. In some, such as Galway, part of the issue is the lack of funding and it has not been able to strengthen the municipal districts. In many local authority areas, many services are now provided in municipal district offices. We need to move towards that system.

My opposition to the town councils was on the basis that they were designed more than 100 years ago and allow some people to vote twice in local elections while the rest of us get one vote. I am not saying that what happened in 2014 was perfect. It was not, but if one talks to councillors regularly, it is clear that none of the representative groups of councillors wants town councils to be reintroduced. Individual councillors might want to see their reintroduction, but it is not their stated position.

On Galway, every local government Bill includes many aspects. This Bill contains provisions for plebiscites and actions in respect of Galway and the Official Languages Act. It was also designed to include a section on the urban area committees, which is new legislation to be introduced next year. There is no question of Galway being included with Cork. There will be a Galway merger Bill in the middle of next year. We are talking about what happened in Limerick, Waterford and Tipperary. The precursor of any legislative provision was the appointment of someone to head the management structure. Senator Craughwell said last night that some people act up into positions with the local authorities in Galway. He was wrong to say that we are proposing an acting manager for both city and county councils. We are proposing a permanent appointee. One of the issues in the local authorities in Galway is that there are not

enough people filling positions on a permanent basis, which is why we want to take this step. We are talking about the merger of the councils in Galway, but we have not begun to get into the detail of that merger.

The review of the finances has been pencilled in for ten years' time. It will require the city council to write to the Minister of the day to make the case as to why arrangements should stay the same, be reviewed or be dropped. It will be up to the Minister to judge based on the funding issues in the two local authorities. The amendment here is not in the right place. I understand the point it raises, but we are talking about the implementation plan, which we have to ensure is delivered in the immediate future. The issue of continual reviews of county boundaries would have been politically difficult.

I spoke to councillors from Cork earlier this summer about the boundary extension issue. I was in a part of Cork city I had not visited in 15 years - I believe it was Oliver Plunkett Street - but it used to be shook, so to speak. It was one of those balmy summer evenings, of which there were many this summer, and there were students on the green area beside the river near Washington Street. It was like the south of France. I do not know if that is a high compliment or an insult to the people of Cork. The regeneration of Cork city is under way in a manner that it has not been elsewhere. The review of the finances has been adjusted slightly through the process in the Dáil. It will happen after ten years.

Serious issues were raised by national and local politicians about the potential loss of income to the county from Little Island and Ringaskiddy possibly transferring to the city council. They are huge industrial areas which produce a large amount of commercial rates. The review group drew up the map, and those areas are not being transferred. The case made about IDA Ireland funding is a case that will have to be made once the new boundary is in force and I have no problem supporting Senator Lombard in making that argument. We will be in a new position once the new boundary has been adopted.

Senator Grace O'Sullivan: I would like some clarification from the Minister of State. I understand he agrees in principle with the review but that, to his mind, this is not the correct place for it. I also understand that there will be a point of discussion around the funding ten years from now. Will the Minister of State consider stitching this review into the legislation in the place he believes is appropriate? That would give Senators Ó Domhnaill, Boyhan and me, as well as others who have spoken to the amendment, reassurance that that review will take place.

Deputy John Paul Phelan: Senator Buttimer has pointed out a couple of things. I will read what he has referenced. He has not been here for many years for no reason.

Section 21(5) reads:

On or before the 7th day of each month during the period from the commencement of this section until 31 December 2020, each chief executive shall—

- (a) prepare and submit to the oversight committee a report in relation to the measures adopted to ensure full and effective compliance with this Act, and
- (b) provide a copy of that report to each member of the local authority of which he or she is the chief executive.

In one sense it is a little different from what the Senator proposed, but it does ensure local authority members, until 31 December 2020, receive a review on the seventh day of each month.

My colleague, the Minister of State at the Department of Housing, Planning and Local Government, Deputy English, has another planning and development Bill in the pipeline for the new year. There have been several such Bills. They appear more frequently than local government Bills now. Many of the issues raised by the Senator are planning and development issues. They become boundary issues when wrong planning and development happens on one side of a boundary. We need to ensure that the Government has approved, amended or kicked out, as it were, the metropolitan governance report that has been prepared by the Department. The Cork area strategic plan, CASP, produced the land use transportation strategy, LUTS, document. Kilkenny and Waterford produced the planning land use and transport strategy, PLUTS, about 20 years ago. It is still a brilliant plan, although I am not sure if the LUTS plan is completely relevant. CASP is the modern equivalent of it. The idea is that the metropolitan governance structure, which would be established with councillors from both authorities, will be in charge of implementing the relevant plan in Cork and for every other city in the country. I hope that answers the Senator's question. Her amendment is partially covered in the short term by section 21, which deals with compliance.

Ultimately, I intend to ensure the metropolitan governance structure which will comprise elected politicians from adjoining areas will have oversight of planning matters. I am not talking about the minutiae of making decisions on applications but designating areas in the city regions we are talking about that will be suitable for housing, industrial development, offices, retail and green space. It will also cover the transportation strategy. It would make no sense not to have some sort of overarching structure in the Cork catchment area, not just in the city and the expanded city which will look at the needs of the people the Senator spoke about who might be living in Middleton, Macroom or Mallow. We have to facilitate those people to continue to do that, but we must also consider that we will have more people living in our city centres in the future. Cork is a great example of how that can happen.

Acting Chairman (Senator Catherine Noone): I remind Senators that there are still 11 amendments to go through on this Bill. I do not want to stop any debate, but I ask Members to be to the point and to try to get through this.

Senator Catherine Noone: Hear, hear.

Acting Chairman (Senator Catherine Noone): All Senators should endeavour to be as direct and relevant as possible on every point.

Senator Jerry Buttimer: I am glad that Senators are co-operating.

Acting Chairman (Senator Catherine Noone): I am trying to move the debate on.

Senator Jerry Buttimer: The Mackinnon report which I am sure Members read prior to the debate included a metropolitan area plan to be on a statutory basis that would provide a structure for local government in Cork. Its preparation and implementation would be overseen by a board of ten members drawn from the city and county. The report linked to the planning and development Bill from the Minister of State, Deputy English, which would be for five years. The political figure would champion the sustainable growth of the wider metropolitan area. Rather than divide the House, there is a mechanism to progress what the Senator seeks in terms

of monitoring and reviewing and I hope the Senator will support the Minister in that regard.

Senator Grace O’Sullivan: I will not press the amendment as I will take the Minister of State on good faith. He, and the Leader, have much more experience than me in this area. There are mechanisms in place. I would have liked just one review process but based on what the Minister of State has said and his guarantees regarding the legislation being put forward by the Minister of State, Deputy English, I am satisfied there will be sufficient cover to support the intent of a review.

Amendment, by leave, withdrawn.

Section 19 agreed to.

SECTION 20

Question proposed: “That section 20 stand part of the Bill.”

Senator Tim Lombard: I seek clarity on section 85 agreements between local authorities, mainly relating to shared services. D Day is 25 May. The local elections will be over and we must ask how it will work in areas such as planning permission applications in the new districts. This is an important matter for everyday living in order that people receive the services they seek, whether it is planning, housing or another of the plethora of services that will move within hours of this happening. We discussed staff earlier. There is great concern about which staff will move and when and whether it will be done on time. These are all important issues.

Is the Minister of State aware of how many section 85 agreements will be involved between the two local authorities? What services will be subject to the agreements? How will he progress the scenario where the 85,000 people who are moved into the city can receive the services they require? It is a significant issue which will change overnight and clarity is needed on the number now in place and that will come about.

Deputy John Paul Phelan: I do not know how many section 85 agreements are at issue. However, I want to make it clear that this is not a no-deal Brexit situation in the delivery of services for people in the area which will transfer from the county to the city in Cork.

On the specific issue of planning permission, planning applications that are made prior to transfer day will be completed by the authority to which they are made. Planning enforcement matters which start before transfer day will be completed by the authority that starts them. There will not be a situation where files are transferred which could lead to documents being lost and issues not being resolved. Equally, on shared services, despite the fact that the transfer day will lead to the line on the map specifically changing, there is no question of the immediate withdrawal of section 85 agreements. They will remain in place to provide existing services. It is a matter, first, between the local authorities to reach agreement on how they plan that the service would continue and what type of interim arrangements will be needed, or if they can be transferred immediately, and, second, between the implementation group that will be the last arbiter in ensuring the implementation plan is drawn up and implemented by the authorities, with no fall-off or cliff edge in the delivery of local authority services in the transfer area.

Question put and agreed to.

Section 21 agreed to.

SECTION 22

Acting Chairman (Senator Catherine Noone): Amendments Nos. 3, 6 and 7 are related and will be discussed together.

Senator Fintan Warfield: I move amendment No. 3:

In page 20, line 35, to delete “(6) Where” and substitute the following:

(6) “The financial settlement payment falling due from one Cork local authority to the other should be on an advanced, monthly scheduled basis. Where”.

This provides for a framework between councils on an advanced monthly basis. It can be assumed that there will be a regular timeframe for payments but this was not prescribed in the legislation. The amendment would ensure legislation and all further financial planning was done to allow for a smoother amalgamation. I do not want to be overly prescriptive but it makes sense that a framework be put in place for how authorities interact on amendments.

Amendment No. 7 relates to payments made under the general development contributions scheme as prescribed under section 49 of the Planning and Development Act 2000 where planning authorities, when granting planning permission, require a developer to pay moneys for the purpose of local infrastructure. Cork County Council currently receives approximately eight times the planning applications of Cork city. As some of these applications will soon revert to the transfer area in the expanded city boundary, the county would lose a portion of these contributions and may not be able to provide for local infrastructure projects in the areas where they were intended. The amendment intends to keep local contributions for local purposes in the area for which the planning was granted. It also allows that moneys contributed to the point of the transfer date should be awarded as they were intended. This would be decided independently by the oversight group.

Senator Colm Burke: When planning contributions are made, they are not ring-fenced for work to be done. In some cases, they might be but that would be unusual. Planning contributions go to the local authority and are used in the overall budget for the development of services. One cannot say that if a local authority receives funding because planning permission was granted for 100 houses in an area it would be directly used in that specific area.

The financial management which is being done is a co-ordinated effort to ensure both local authorities can develop the services that are required as areas grow and new developments occur.

Senator Victor Boyhan: I understand sections 48 and 49 planning contribution levies are not specific to site development but for the greater good of infrastructure throughout the county and we should be mindful of this. It is not related directly to the development of a kilometre around it, for instance, but feeds into the central infrastructure. However, I will not say too much now as we will discuss all of this under section 31.

Senator Tim Lombard: I was going to raise this issue in section 31 about planning permission levies and contribution levies. I am open to correction by Members in the House with greater knowledge than me, but these sections refer to development contributions. There are also special development contributions pertaining to sites. Special development contributions pertaining to sites are for special infrastructure required for sites with a timeline accordingly

attached. If that infrastructure is not developed, the development charge is paid back.

I was going to raise that issue in section 31 but, since it has been raised now, the Minister of State might clarify. As much as other Senators might have the view that it is an all county or all local authority fund, there is one exception and I am seeking clarity on that exception.

Deputy John Paul Phelan: The clarity I can bring is that special development contributions are protected in this Bill. In other words, as Senator Lombard outlined there, if a development has been allowed on the basis that a developer will either provide an infrastructure or, failing that, will provide the funding to build it, those conditions relating to the site-specific special development contributions, which are effectively planning conditions, will continue under the terms of the Bill. The general point that Senators Colm Burke and Boyhan raised is correct. Development contributions, in the general sense, are funding that local authorities derive on the basis of planning permissions but, if they are not specifically earmarked, they are not protected, if one likes, by the legislation. They will remain with the local authority that granted the permission.

I emphasise, in respect of amendment No. 7 in the names of Senator Warfield and others, that we are insisting that those earmarked special development contributions will move with the transfer of land because they are for specific projects in those areas. The general fund, which is the bulk of development contributions, will not move. It is for the relevant local authority to distribute or allocate in their administrative area however it sees fit.

I will not be accepting amendment No. 3 either. I understand the Senators are referring to financial certainty of a sort, but it would be wrong to stitch into the legislation amounts of contributions to be made in advance. The amendment specifically states, "The financial settlement payment falling due from one Cork local authority to the other should be on an advanced, monthly scheduled basis". The issue is that the payment is on the basis of funding that the council may generate and to do it in advance assumes the level of funding that local authorities will get in a particular month from commercial rates, local property tax and the funding sources that it has. In many cases it might be possible to assume that, but I think it would be wrong to put an upfront requirement in the legislation when its calculation would be based on the income for the local authority. That cannot be absolutely and definitely predicted up front.

Amendment put and declared lost.

Section 22 agreed to.

Section 23 agreed to.

SECTION 24

Acting Chairman (Senator Catherine Noone): Amendment No. 4, in the name of Senator Ó Domhnaill, is out of order because it is in conflict with the Bill as read a Second Time.

Amendment No. 4 not moved.

Acting Chairman (Senator Catherine Noone): Amendment No. 5, also in the name of Senator Ó Domhnaill, is out of order because it includes a potential charge on the Exchequer.

Amendment No. 5 not moved.

Question proposed: “That section 24 stand part of the Bill.”

Senator Brian Ó Domhnaill: I accept that the amendments were ruled out of order and that is fine.

The issue goes back to the financial autonomy of both councils and I was endeavouring to increase the ten-year period to a 15-year period and to have the State intervene where there would be a shortfall of moneys. The structure is for both chief executives to discuss and agree annual contributions and, if they do not agree, it would then go to the oversight committee for a recommendation. I am just not sure where the role for the elected member fits in with that and whether the decision-making capacity is removed from the elected member. I seek clarification on that. It would be crucial, from a political oversight point of view, that the elected member would also have an input into the overall decision making.

The expert advisory group on the local government arrangements in Cork, in its 2017 report, estimated that there would be a net loss in the region of €40 million per year to the county council as a result of the proposed boundary change. Obviously, there will be a net loss in revenue income to the county. Rural parts of the country are generally under serious threat and pressure. The Cork Senators will be very aware that there is a danger for the county council, which covers the rural part of County Cork, that new income generating streams from resourceful areas will go into the city from those areas that are being lost to the county. If agreement cannot be reached, obviously the committee will have an arbitration role but the Minister will have a role where there is no additional agreement at the end of the day.

This is a novel proposal and, as the Minister mentioned, is the largest boundary change in the history of the State. The State should be supporting Cork and where there is a danger that Cork County Council could lose out, the State should intervene to supplement the difference and, where Cork City Council is not in a position to provide funds, Cork County Council should not suffer as a consequence. There is a danger in the way that the legislation is constructed that that could happen.

The Minister of State may have a different view and be able to offer assurances but that would be a concern of mine. That concern has been expressed to me by a number of Cork county councillors and the issue was raised by Deputy Michael Collins in the other House. It is of particular concern in west Cork, where the current mayor of Cork County Council, Councillor Patrick Gerard Murphy, resides. Those areas are under increasing pressure, no more than places like west Kerry, west Donegal and west Galway. The fear is that the city will gain traction and resources and that the county will lose. That is where the intervention of the State was being sought in one of the amendments which was ruled out of order because, naturally, it would have a cost to the Exchequer and Senators cannot table such amendments.

Acting Chairman (Senator Catherine Noone): I remind Senators that the amendments to this section are out of order. Senator Lombard would like to speak to the section.

Senator Tim Lombard: Cork went through an equalisation initiative five years ago. We equalised the town council rate base on the back of the local authority base, which was a significant body of work in which I was very much involved at the time. It meant we could move everyone to the same rate base. We have been stagnant, in many ways, regarding rate collections and that kind of issue. The business community is very concerned. Businesses are a key driver and they are the heart and soul when it comes to local authority funds. We are losing a

significant rate base around the city, as I said, and there is a worry that the existing rate base will be left to fill the hole. There is a genuine concern among the entire business community in the county that this could be a financial issue for it.

The very important issue of the funding stability we will have in the next decade has been raised. Cork has the largest road infrastructure of any county and we have significant infrastructural issues. Without the rate base around the city, we will put serious pressure on our existing rate base. These are key issues. The Minister of State might elaborate on how he believes the Department can work with the local authority to ensure it can provide services. As the Leader said very eloquently, this is about providing services to the people, whether home improvement grants for the elderly, roads or social housing maintenance. These are all local government streams of funding that we need to be able to survive as an entity. We need clarity because there is insecurity in this regard. Very little clarity is forthcoming because we do not have an implementation body and we are awaiting decisions on what will happen. That is why the Minister of State needs to clarify whether the general community, from Kinsale to Bantry, will have the level of services it requires to be able just to exist. This is a real issue for us. The Minister of State might be able to bring clarity. If not, he might draw up a roadmap as to where we might get clarity in order that we will not have a situation whereby the only way the county will survive is to punish the ratepayer and in turn have a major impact on society.

Senator Colm Burke: This is an important issue. I hope the structure that will be in place for payment by the city council to the county council will deal with many of these issues. It is also important that one of the areas that was not transferred into the city is Little Island, which has quite a good commercial rate income. In addition, regarding many of the larger ratepayers, when I did a survey of Cork County Council, I found that ten ratepayers were paying €25 million between them to the city council. Quite a number of those will not transfer to the city but will remain in the county. Many of the big pharmaceutical companies in the county are big ratepayers. The structure set up under this Bill will deal with this issue. If there are concerns, we need to deal with them very quickly, not 12 months or two years after the issues have arisen. The legislation provides for this but the matter needs to be very carefully monitored by both local authorities and the Department.

Senator Jerry Buttimer: This section and the comments we have heard tonight reinforce my point about the importance of the oversight committee being kept in place. Senator Lombard was on the money when he referred to the commercial rate base and said we cannot expect the few to pay for the many. There is acceptance that the vibrancy of Little Island and Ringaskiddy, to name but two places, in remaining in the county allows for this income source. As part of Ireland 2040, which is the fundamental strategic plan for the future of the population of Cork, we will see the county's population expand by 100,000 or almost one third in a short period. This will result in a significant increase in and added value for the county council's income sources, whether from local property tax, LPT, service charges, commercial rates and the new businesses that will be needed. We must be realistic in what we can expect the city and county to do. We cannot allow the city to pay the county in perpetuity but, equally, we must strike a balance and have a strong county. We cannot ignore or neglect the county and its needs in a new local government structure.

Acting Chairman (Senator Gerry Horkan): As no other Senator is offering to contribute, I ask the Minister of State to respond.

Deputy John Paul Phelan: There are a few aspects to the response on this issue, but I will

start with Senator Ó Domhnaill's comments.

Acting Chairman (Senator Gerry Horkan): I expect the Minister of State to be brief.

Deputy John Paul Phelan: I have found that the longer I go on in politics, the longer I go on. These are serious issues and we should-----

Senator Jerry Buttimer: I hope the Minister of State will do the same on the Judicial Appointments Commission Bill.

Senator Victor Boyhan: And the Seanad reform Bill.

Deputy John Paul Phelan: Much has been said over the years about the funding of local government. Senator Buttimer hit the nail on the head when he said we could not expect the few to pay for the many. We have had a local government system since the late 1970s that has done exactly that. It has been changed a little since and different charges and taxes have been introduced.

I am acutely aware of what Senator Ó Domhnaill said about rural towns and villages. There are many issues but there are two ways of looking at this. As Senator Ó Domhnaill said, councils are under significant pressure in many parts of the country. There is, however, an element in some of the discussion of head-in-the-sand stuff that aspires to an Ireland of the 1950s and 1960s that no longer exists. Senator Ned O'Sullivan was a purveyor of men's clothing - perhaps ladies' clothing as well, although I am not sure - for many years in a fine provincial town.

Senator Ned O'Sullivan: The Minister of State is grasping at straws now to drag this out.

Senator Robbie Gallagher: He could be accused of being slightly off the point.

Deputy John Paul Phelan: I will never forgive Senator O'Sullivan for not having got me the tie ten years ago.

Acting Chairman (Senator Gerry Horkan): I have a collection of them. They are lovely.

Senator Jennifer Murnane O'Connor: We all got brollies.

Senator Robbie Gallagher: Speaking as someone who got one of those ties-----

Acting Chairman (Senator Gerry Horkan): It would be a good idea for the Minister of State to address the Bill now.

Deputy John Paul Phelan: Perhaps Listowel is a bit big, but in the town out of which I operate, Thomastown, County Kilkenny, there used to be a number of drapery shops until quite recently. Now there is one left, and the sad reality is that they are not coming back because people my age and younger than me buy their clothes for the most part online. How can we develop a funding stream for local government on the basis of this, or how do we adjust what is there? No amount of pious words from me or wishful thinking will bring back old businesses. Three branches of my family ran rural post offices, one in south Wexford and two in south Kilkenny. They are gone now. At least one of them was in a big village. People no longer use the services in the numbers they did.

That brings me to Senator Lombard's question about rates. We had hoped before the end of the year to have a commercial rates consolidation Bill tabled. We did not get to it but we

will do it in the spring. This will give the municipal district councillors - not just the county councillors, as is currently the case - the power to strike a rate in each county, vary that rate and target it for perhaps a specific town or village or the main street in every village in the municipal district. Crucially, it will also give them the power to ask a multiple that has opened on the edge of the town or big village to pay a higher commercial rate. In effect, then, one would ensure some of the crucifying elements of commercial rates on older established businesses that have tiny turnover but keep a service provided in a smaller town can be mitigated. This can be offset against the big multiples that are making large profits out of these rural towns but have had a huge effect on the main streets of the towns. It is easier for people to use them because they usually have free parking on the edge of the town. This variation will be in the rates Bill. I am not sure whether that addresses Senator Lombard's concerns about municipal councillors. I emphasise to the Senator that section 24 was changed by me on Committee Stage in the Dáil following the Second Stage speeches of Cork representatives. The county council was anxious that a provision be inserted to allow a review of the financial settlement before the ten-year period elapsed. We took it out to provide a ten-year horizon of certainty. There is an assumption on the part of many that after ten years the compensation will automatically and necessarily disappear. It will be a matter for whoever is in my role in ten years, following a submission by the city council that the county council will be able to respond to. It will be able to argue that commercial rates have been lost, which could affect the likes of Ringaskiddy and Little Island, as mentioned by Senator Colm Burke.

I was hopeful about the review process and I was equally surprised at where some of the lines appeared. I was quite happy that Little Island was excluded, not just on the basis of commercial rates. Coming from Waterford's direction, it is the bit going into Cork that I know. I would still regard what goes up to the Dunkettle roundabout as part of the county. Others might disagree. There is a mechanism for the ten-year review and it is not cut and dried that the process will all be in one direction. It will require both councils to make the case as to why it should stay the same or become something different. It will be up to the Minister of the day to make the decision.

Question put and agreed to.

SECTION 25

Government amendment No. 6:

In page 24, line 19, to delete "Act of 2001" and substitute "Act of 2000".

Amendment agreed to.

Senator Fintan Warfield: I move amendment No. 7:

In page 25, between lines 8 and 9, to insert the following:

"(8) (a) As of and from the transfer date all development contributions paid for developments within the transfer area (irrespective of when the permission was granted) would be payable to Cork City Council.

(b) For the period of 1 January 2019 to the transfer date, any development contributions paid would be shared on a case by case basis between the two Local Authorities, following dialogue and arbitration by the Oversight Group."

Amendment put and declared lost.

Section 25, as amended, agreed to.

Sections 26 to 29, inclusive, agreed to.

SECTION 30

Question proposed: "That section 30 stand part of the Bill."

Senator Colm Burke: This is about the review of the area plans within the city and county. It is important the local authorities do it once the change occurs in 2019. In fairness, there will now be a different focus. It is important as plans that would have been dealt with by the county may not now fit into the overall plan for the city; likewise, plans for the area not brought into the city will see a different emphasis.

I referred to the land use and transportation study, LUTS, of the 1970s. There was also the Cork area strategic plan, CASP. There is a need for both local authorities, as well as the university, port facilities and all relevant institutions in Cork to work together on a long-term plan on how the city and county will grow. For example, Monard is not coming into the city and there is a proposal for it to be developed. It is staying in the county and it would be a totally new town in the same way as we created a new town in Ballincollig and Carrigaline. It is important that both local authorities work together on their plans and how the region develops. The LUTS plan put all the emphasis on places like Blarney, Glanmire, Ballincollig and Carrigaline developing. Now the county will look at new areas to develop and one of those is Monard. It is important that whatever development takes place will also see an input from the city as well as the county, although Monard is staying in the county. We must think similarly about the towns the county decides to now grow.

I travel to Mallow early in the morning at 5.30 a.m. or 5.45 a.m. and the volume of the traffic coming towards the city even at that time is huge. People live in Mallow but the jobs are not available. It is important that when we produce a long-term plan, we ensure that, as well as having residential areas in county towns, jobs are also available, therefore reducing the level of travelling people do. That is extremely important.

Senator Jerry Buttimer: Under the Planning and Development (Amendment) Act 2018, there is provision for the commencement of the process of city and county development plans. The points made by Senator Colm Burke are very important, especially when we speak about regional spatial and economic strategies, in this case for a new Cork. We must provide a bit of flexibility to the city and county here in order that as part of this new local government structure, they can have more time. A new city development plan is meant to begin in June next year. We must recognise the importance of LUTS in the 1970s and which CASP has brought in modern days. I support Senator Colm Burke's points. It takes approximately 12 months to advance a formal process and strategy. I hope we will give consideration to that issue.

Senator Tim Lombard: There have been some very valuable contributions regarding LUTS which worked very well in two iterations. CASP came afterwards and it worked exceptionally well. People have forgotten it now because they want to forget it in many ways. It opened a rail line from Cork to Midleton, the first rail line opened in over 100 years in Ireland. It was a significant development in a very unusual space in 2003 and 2004. It was part of the CASP. There is the idea of an overarching body, with members of the local authority having

an input into plans on both sides. This was very important as CASP failed with the building of Mahon Point. It created a nightmare scenario where it sucked the life from the city centre for a shopping centre development on a motorway. It may have made sense commercially but it killed the city centre in Cork. It failed in that respect but when a plan has a collective body, with local authority members, it can tie transport and other issues to look at the bigger picture.

We should acknowledge what was the CASP area. It stretched from Midleton almost to Macroom and from Fermoy almost to Kinsale. It took in 385,000 people. It considered the strategic planning of the area; it is where IDA Ireland sold Cork. It did not make
9 o'clock a plan based on the 100,000 people in the city but rather on those contained in the CASP. We need to tie something in where that kind of body with an overarching input can be looked at. It has worked and proved itself. Cork became a role model in many ways of how local government should work. That was until we decided it did not work and came up with something else. We must now look at tying it all together to ensure we can learn from CASP and develop a new plan for the region. It will have 400,000 people.

Deputy John Paul Phelan: Senator Colm Burke mentioned local area plans and local economic and community plans. Section 30(4) allows the city council to make a statutory amendment to an existing county council plan in the interim. In response to Senator Buttimer, section 37 of the Bill will allow the Minister to extend the period within which the city council has to make its new development plan. The Senator is right.

Making a development plan for a significantly enlarged city will be a new task and will require new resources to do it. Accordingly, that provision is contained in the Bill.

The Senators are making the point essentially made by Senator Grace O'Sullivan earlier about the Cork area strategic plan, CASP, and LUTS or, as we are going to call it, the metropolitan governance plan for mid-Cork, including the city and everything around it. The population of this area will ultimately in the not-too-distant future be in the region of 500,000 people. The Minister of State, Deputy English, will be responsible for that matter.

Monard is an old chestnut. While it is not built yet, it was granted permission prior to any definitive proposal on where a line of a boundary extension might happen. It was in the stage when one authority was spoken about for Cork. Decisions have been made up as far as An Bord Pleanála in which no Minister has a role. We will devise a metropolitan governance structure that will include councillors from the county and the city. They will be doing the forward planning piece for all of the hinterland of Cork city, as well as the city area into the future.

Question put and agreed to.

SECTION 31

Question proposed: "That section 31 stand part of the Bill."

Senator Victor Boyhan: On sections 48 and 49 levies, given that the Minister of State is carrying out research and there is this potential for this new synergy in Cork, which I broadly support in principle, will there be an assessment and audit of the significant amount of outstanding development levies? I will take any opportunity to hammer home this point. When we talk about good local governance, good accountability and good stewardship of local authorities, it is incumbent on local authority chief executives and management structures to go after levies which are due. For both councils in question, there are outstanding levies.

Will the Minister of State make contact with the two local authorities? I will prepare several parliamentary questions for some of my colleagues to raise in the Dáil and also raise it at the Oireachtas Joint Committee on Housing, Planning and Local Government. It is a serious issue for all local authorities.

Section 31(4) states:

Any development contribution scheme under section 48 of the Act of 2000 or supplementary development contribution scheme under section 49 of that Act made by the city council shall, from the transfer day, apply to the relevant area as it applies to the rest of the functional area of the city council.

Will the Minister of State explain what is meant by that? Will he ask hard questions about uncollected or outstanding levies specific to granted permissions?

Deputy John Paul Phelan: Section 31(4) four emphasises that if the city council seeks to apply a development contribution scheme under section 48 of the Act of 2000 or supplementary development contribution scheme under section 49 of that Act in the transfer area, it will apply as it would apply in the rest of its functional area. Special development contributions will follow the transfer area into the city. The general funding will remain with the county.

I must apologise but the tapping behind me is putting me off.

Acting Chairman (Senator Gerry Horkan): I apologise. I am not tapping deliberately. I did not think I was.

Deputy John Paul Phelan: I have acute hearing in this ear.

Senator Victor Boyhan: It served the Minister of State well.

Acting Chairman (Senator Gerry Horkan): The other ear not so much.

Deputy John Paul Phelan: We are at early stages yet with the drafting of the Galway merger Bill. There is an idea of where we are going as it is not reinventing the wheel in the sense there have been other mergers.

NOAC has been given the power, but perhaps not the resources, to audit local authorities. The former Senator and Deputy, Michael McCarthy, is the newly appointed chair of NOAC. He is keen about his new role. Uniquely, this commission comprises officials from the Department and several retired councillors from across the country. They will be aware of the questions to be asked about the books of local authorities. They should have additional staffing and extra powers. I have said to Michael McCarthy that I am more than willing to ensure the local government Bill next year includes some additional provisions.

Senator Victor Boyhan: NOAC does not have the powers or the functions to undertake detailed audits. The Minister of State knows that the local government auditing service in the Department constantly raises the issue. We see it all over the 31 local authorities' reports. There is always one line from the chief executives stating they note the concerns of the local government audit service and will endeavour to improve. That is not good enough anymore.

There is a need to have proper accountability of the governance and stewardship of local authorities by chief executives who are handsomely paid. Clearly, they are not held to account

by the Oireachtas for the funding they receive from it. It is a disgrace that local authorities have outstanding sections 48 and 49 levies, as well as many other funds which are not collected. It would not be tolerated in the private sector and it should not be tolerated in local government.

I would prefer if the Minister of State did not reinvent the wheel and create another layer of bureaucracy. He should, instead, empower local government auditors to pursue these levies. One local authority published its local government audit report for 2017 less than a month ago. At its council meeting, it allowed six to nine minutes to discuss the report which flagged major concerns by the local government auditing service. Nothing was done about it because it was put at the end of its agenda. I wrote to that local authority today and enclosed the full local government audit report. I told it that it should convene a special meeting to grill and cross-examine its chief executive. That is the sort of stewardship we need. I do not doubt the Minister of State's commitment to provide it. However, I will use any opportunity to keep raising this issue.

Senator Tim Lombard: The issue of governance and how we can empower local authority members in that regard is important. I was a member of local authority when these audit reports came before it. We need to be looking at how we can empower councillors to have the ability to work through a process.

It is unfair on local authority members, however, to expect them to scrutinise their chief executives. The Houses of the Oireachtas should have that power. The Committee of Public Accounts should have the power to bring local authority executives and management before it to question them on their ability and where funding has gone. That is a hole in the local authority governance structure.

Question put and agreed to.

Sections 32 to 34, inclusive, agreed to.

NEW SECTIONS

Acting Chairman (Senator Gerry Horkan): Amendments Nos. 8 and 9 are related and will be discussed together,

Senator Fintan Warfield: I move amendment No. 8:

In page 30, between lines 17 and 18, to insert the following:

“Amendment to Local Government Reform Act 2014

35. The Local Government Reform Act 2014 is amended in section 22A(1), by the substitution of the following paragraph for paragraph (a):

“(a) subject to subsection (4), every county and city and county set out in Part 1 and Part 3, respectively, of Schedule 5, and Cork City Council or Chomhairle Cathrach Chorcaí in Irish, in Part 2 of Schedule 5, shall have 2 or more districts (each consisting of one or more than one local electoral area) to be known as a municipal district and collectively as municipal districts, as the Minister shall determine by order made under section 23(1)(c),” ”.

Senator Brian Ó Domhnaill: I will speak to amendment No. 9. Ultimately, as the Minis-

ter of State outlined, a population of more than 86,000 people will move from the county to the city. This will represent an economic loss for the county. All of the county councillors have grave reservations in respect of the moving of very economically favourable lands and properties and the associated rates base into the city. For instance, the Mayor of Cork County, Councillor Patrick Gerard Murphy, has raised grave concerns about the Blarney area from which a population base in excess of 6,000 people is being moved to the city's jurisdiction. This is after Cork County Council spent millions of euro developing a development plan pertaining to Stonewall in Blarney. That plan included a proposal for 5,300 houses in Monard, which is south of the town. Obviously the development contribution levies in respect of this development will be lost to the council, as will the local property tax revenue.

There are grave financial consequences for the county, bearing in mind that the moneys available from the city to compensate the county are only payable for a ten-year window. The county is set to lose a significant source of revenue in terms of local property tax. There are other areas, but this amendment is tailored to the Blarney Tower area. Councillor Murphy outlined in a submission that the area had no significant transport or infrastructural connectivity with the city. Deputy Michael Collins raised this issue in the other House when the Bill was being debated in the Dáil. He outlined grave reservations.

I assure the Minister of State that the county councillors in Cork to whom I have spoken about this issue are not in favour of Blarney being moved under the city's jurisdiction. They support Blarney staying in the county given what the county and its councillors have done to bring forward that development plan. The county council has spent millions of euro in developing this plan. It would be wrong for all of that work to be lost to the county for the benefit of the city. That is from where the amendment comes. It is an amendment tailored to the Blarney area which allows the Minister of State to achieve his objectives, although it would reduce the population moving under the city's jurisdiction from approximately 86,000 or 87,000 to about 78,000. I am not sure what the Minister of State's thoughts on this are or whether he would have sympathy with the council's position in that regard. I am sure the Mayor of Cork County has raised this issue with the Minister of State. I know that he has raised it with Oireachtas Members in Cork. I am sure that the Senators to whom he spoke will articulate their own views, but that is my view which I have been asked to raise in the House.

Senator Colm Burke: For clarification, my understanding is Monard, about which we are talking, is not coming into the city but is, in fact, staying in the county. That was the issue I raised earlier. It is proposed to take in Blarney and Tower. I know that this was discussed between the city and county councils. I understand that, subsequent to an agreement being reached on the matter, there was a further meeting of the county council at which the proposal brought up by Senator Ó Domhnaill was brought forward. I have no fixed views one way or the other.

There is a mixed population in the Blarney Tower area. The area has grown to become quite substantial in recent years, especially Tower which is part of my own home parish of Inniscarra. The new line actually divides Inniscarra in two. The issue in respect of Blarney and Tower is that in the past few years many people have moved in but a large number of them have come from the north side of Cork city. The reason they have come from the north side of Cork city is that no land was available in that area for the development of private housing, or any kind of housing. From my knowledge and from having worked in the area I know that large number of people have moved into Blarney and Tower from rural areas and from towns right around the county, but also that large numbers have moved out from the city. It is, therefore, already

very much a mixed population, but it is an area that has grown quite substantially as an urban area. In fairness to the county council, it has done a huge amount of development in terms of making sure there is proper infrastructure, including sewerage schemes etc. The overall agreement was about pushing out the boundaries of the city in order that strategic planning could be undertaken. In doing that there was a specific requirement that Monard, which was one of the areas proposed, would stay in the county. I am not saying that it will ever develop but it was proposed by the county as a new town away from Blarney.

Deputy John Paul Phelan: In direct answer to Senator Ó Domhnaill’s question, I do have sympathy with the county council which expended considerable funding on the Blarney Tower part of the potentially expanded Cork city, because that money was spent at least partly in the belief that it would generate income from development contributions in the future. It is a limited sympathy in that one of the functions of local authorities is to draw up local area plans anyway, but I do understand the boundary extension was not high on the political agenda when that process was initiated many years ago. The issue I have with the amendment is that if we try to unpick the line on the map which the group has drawn, the whole line will be up for discussion again. I do not know enough about the intricacies of Senator Colm Burke’s home parish or Blarney to know where the line should be drawn, if not here. The oversight group settled on this for good reasons. Part of the logic behind it is that Monard is to remain in the county area. There was a lot of discussion, primarily about Ballincollig, but also about Blarney and Tower to an extent. The idea of this boundary change is to have a Cork city fit for the next 50 years or more. I do not think anyone could have envisaged the way Cork has developed. Effectively Ballincollig has been developed into the city. Equally, in recent years Blarney has seen a massive expansion, much of which has come from people from the north side of Cork city, which is just on Blarney’s doorstep. That is the logic behind the decision which was made. The line was drawn where it was. That is why I will not be in a position to accept amendment No. 9.

Amendment put and declared lost.

Senator Brian Ó Domhnaill: I move amendment No. 9:

In page 30, between lines 17 and 18, to insert the following:

“Blarney Tower and adjacent hinterlands

35. That the Blarney Tower and adjacent hinterlands should remain within the Cork County Council area and not be transferred to the city area. This would result in a population of 6,357 remaining within the county administrative area (based on the census 2016).”.

Amendment put:

The Committee divided: Tá, 5; Níl, 23.	
Tá	Níl
Black, Frances.	Burke, Colm.
Boyhan, Victor.	Burke, Paddy.
Craughwell, Gerard P.	Butler, Ray.
O’Sullivan, Grace.	Buttimer, Jerry.
Ó Domhnaill, Brian.	Conway-Walsh, Rose.
	Conway, Martin.

	Devine, Máire.
	Feighan, Frank.
	Gavan, Paul.
	Lawless, Billy.
	Lawlor, Anthony.
	Lombard, Tim.
	Mac Lochlainn, Pádraig.
	McFadden, Gabrielle.
	Mulherin, Michelle.
	Noone, Catherine.
	O'Donnell, Kieran.
	O'Mahony, John.
	O'Reilly, Joe.
	Ó Donnghaile, Niall.
	Reilly, James.
	Richmond, Neale.
	Warfield, Fintan.

Tellers: Tá, Senators Victor Boyhan and Brian Ó Domhnaill; Níl, Senators Gabrielle McFadden and John O'Mahony.

Amendment declared lost.

Sections 35 to 38, inclusive, agreed to.

SECTION 39

An Leas-Chathaoirleach: As amendments Nos. 10 to 13, inclusive, are related, and amendment No. 11 is consequential on amendment No. 10, they may be discussed together.

Senator Gerard P. Craughwell: I move amendment No. 10:

In page 32, lines 31 and 32, to delete all words from and including "Waterford," in line 31 down to and including line 32 and substitute "Waterford;".

I do not intend to delay the House.

Senator Robbie Gallagher: That ends the Senator's contribution.

Senator Gerard P. Craughwell: In recent days I have made my position and that of 54 of the 57 councillors in Galway very clear. Councillors in Galway are supportive of the Minister of State's intentions for the future of Galway and its councils, but they are not supportive of this Bill moving that forward. Our opposition is based on our belief that those who are local know what is best. I have listened to Senators on the Government side speaking in glowing terms

about what county councillors in Cork want and do not want. Perhaps it is time to look west and take note of what councillors in Galway city and County Galway want.

I have been contacted in my office and discussed those contacts with many people. I ask the Minister of State to remove all references to Galway from the Bill, including the references in section 39, on pages 32 and 33 of the Bill, and in section 43, on page 35 of the Bill. It would save us an awful lot of time if the Minister of State would agree tonight to withdraw these references to the city and county of Galway. If he does not do so, I will push these amendments to a vote.

Senator Victor Boyhan: I will be very brief. I studied and, more importantly, watched the Committee Stage debate on this legislation in the Dáil. I acknowledge the contributions of Deputies Grealish, Ó Cuív, Ó Broin, who is Sinn Féin's spokesperson on local government, and Connolly. They made a very strong case. Three of them are representatives of Galway. They are elected by Galway. They are tapped into the local councillors and the local government process. I will always refer back to and listen to the views of local Deputies. None of them is entirely against the proposals for local government in Galway that are set out in this legislation. I will not rehearse all the aspects of those proposals because we had a long night of discussions on these matters last night. I think the Deputies I have mentioned are wise and sensible politicians. They are diverse politicians who represent diverse parts of their constituency. I have worked closely with Deputy Ó Broin. It is clear from his contributions on local government at the Joint Committee on Housing, Planning and Local Government that he is very knowledgeable and experienced. Having studied the Deputies' contributions in the Dáil and having read their submissions, I believe it is right for us to delete any reference to Galway at this stage.

We should not rule out the possibility of future discussion and engagement on these matters. I thank the Minister of State for saying last night that he would welcome a debate in the Seanad on the whole area of mayors. I do not want to be premature about mergers. I have read what the Minister of State has said. I understand his intention. I think it is early and premature. When we talk about local government in Galway and in general, we need to put people first. I do not mean we should have a slogan on a bit of paper that talks about putting people first. We need greater accountability in local government. The chief executives who are paid large sums of money are unaccountable to the Oireachtas and the elected members of the councils. We need to discuss these matters with the City and County Management Association, which is a strong body. It is not always good that the association keeps defending chief executives, particularly given that it is partially funded by taxpayers' money. We need to engage with the Association of Irish Local Government, AILG.

We need to look again at synergies. I spoke last night about Carlow and Laois which are two distinct geographical areas with their own local authorities. They have synergies and shared services. We do not have to close down distinct branches of local government. We need to support them and have shared services. I do not object to greater citizens' engagement. I do not object to plebiscites because they empower people, citizens and communities to make decisions. I believe this Galway aspect was an add-on to a Bill that should never have been there in the first place. I would welcome a new Bill in the future. We need to address the issue of whom we are taking powers from and whom we are giving powers to. Are we taking powers from the chief executives and giving them to county councillors? Are we giving powers to elected mayors or non-elected mayors? Will the mayors be executive mayors or non-executive mayors? How does the Minister of State intend to take on the chief executives, who comprise a powerful group of people, when the time comes to transfer powers? He has a lot more work to do.

With regard to the local property tax, the Minister of State has not addressed the fundamental core issue of how the Government intends to fund the running of councils. We can have all the committees, all the subgroups and all the talk, but they need to be accompanied by proper funding and full independence for local authorities. More powers should be devolved to local councillors who are elected and represent communities. That has not happened. The Government has been in power for seven years and there has been much talk about devolved powers, but it has increasingly centralised power to itself and, more importantly, the Custom House. Therefore, we need a fundamental review of local government. I do not doubt that the Minister of State believes we need this, but it is not happening. We do not want piecemeal Bills. The Minister of State referred to another two or three Bills next year. How many Bills on local government are we to have? Let us have a proper review of how we will fund local government, who will have the powers and who will cede them. After that, let us progress. The legislation before us is premature. I have no difficulty with the Cork aspect of the Bill because it has the general support of the county councillors, Deputies and Senators who represent the area, but this aspect of the Bill does not. Having heard the contributions of the spokespersons on local government in the Dáil, I believe we need to listen to what they have said.

Senator John Dolan: There is no quango, considering that we are talking about 94% or 95% of the membership of two local authorities. However, I respect the views of the three councillors who took a different view. Regardless of whether one has examined the ins and outs of this, if almost 100% are going one way and from different party backgrounds, it is absolutely prudent to step back and deal with the matter in a new Bill. There is time to do so. We would all be anxious to facilitate any such development which would be viewed as a respectful approach, given the weight of opinion. I am happy to leave it at that.

Senator Jennifer Murnane O'Connor: My name is attached to the amendment also because, following detailed discussions with local representatives, it became clear that Galway should be dealt with in a separate, comprehensive Bill. That is what we are looking for. We have all spoken in favour of the Cork proposal and believe the Bill we are discussing will be good for Cork, but there are major concerns about the Galway proposal. Therefore, Galway should not be dealt with in this Bill.

We have spoken about services, housing and CEOs. The Minister of State has one of the most important roles because he is dealing with local authorities which have a major impact on people's lives, through planning, housing and dealing with the whole town environment. Plans like the one in question play such a role in people's lives that we must ensure we get them right. We must also make sure that, where Galway is concerned and concerns arise about various issues, we protect and do our best for those affected. We support the Cork proposal which is not a problem, but we need to ensure we also support Galway in what it wants. It is important that we recognise the issues that arise.

Senator Brian Ó Domhnaill: I support the amendments wholeheartedly. Autonomy and decision-making start at home. The Galway councillors have expressed their view which should be respected. A runaway train should not leave the station without consultation. Consultation is required. Plebiscites are provided for in the Bill. I do not see any reason a plebiscite cannot be held in Galway before any decision is taken. That is what happens in other jurisdictions when local government is restructured, particularly if two large councils are being amalgamated, as is proposed in the Bill. The amendment is very sensible, simple and effective and I fully support it. There is no need whatsoever to include Galway in the legislation. Time and space should be afforded to the people of and councillors in Galway to make their own informed decision first,

which we should then respect.

Senator Robbie Gallagher: I agree with my colleagues who have spoken to this common-sense amendment. Deputy Phelan is a common-sense Minister of State and I have no doubt that, and hope, he will take on board the views of all the councillors who have spoken on this issue. What we are talking about is consultation with the individuals involved. I trust and hope the Minister of State will take on board the thoughts of all those who have spoken about this issue.

Deputy John Paul Phelan: I have a 12-page response, but I will not read the full 12 pages. I said last night – half of my speech was not included in my script – that we had developed a notion of political discourse not only in Ireland but also in most of the western world that if there was political disagreement on a matter, there was automatic disrespect.

On Senator Gallagher's point, I have listened to many of the local representatives in Galway and do not agree with many of them. I agree with part of what many of them have to say. I absolutely agree with all of them that the core issue in Galway is funding. The reality is that the amendment is about restoring a common management structure in Galway that was in place for over 100 years, until 1985. The reality is that the divorce that took place in 1985 which we will be seeking to reverse next year in a different Bill was never really effective in the first place and the issue of the funding of Galway County Council was never resolved properly, but there have been numerous efforts to do so. Perhaps I am regarded as being the unlucky one in being required to address this issue now, but I do not believe I am unlucky at all because one has to deal with the issues that arise, be it the Cork or Galway boundaries or others with which I am very familiar, and make decisions. I am not at all surprised by what is occurring. I mentioned last night the late great Senator Jackie Daly who in 1984 famously commissioned a survey of county councillors on behalf of the then Taoiseach, with a view to seeking to postpone the local elections from 1984 to 1985. He received a 100% positive response; not surprisingly, councillors wanted the elections to be suspended for one year.

I absolutely respect the democratic mandate of councillors in Galway, but can anyone really be surprised that there is genuine fear among elected representatives that either their own role or the communities they represent may be changed by way of a change to the structure of local government? I would be shocked if it were any different. I do not doubt for one second Senator Craughwell's statistic - a proportion of 54 out of 57 - or the view expressed by him and Senator Boyhan that most local representatives in Galway know that this chestnut will have to be dealt with in the very near future, but I completely disagree with the notion that this legislation has been rushed. It might physically be rushed tonight, but, as long as I am home before Friday morning, I do not care how long it takes. However, it has not been rushed.

I disagree with Senator Craughwell's comment last night. It is probably not known who comprised the review group. It was formally established early in 2015, almost five years ago. Its members were Professor Eoin O'Sullivan, a Trinity College Dublin sociologist from Galway, who is internationally renowned for the study of communities and human activity, in Galway or anywhere else; Ms Hannah Kiely, an accountant from Galway; Mr. Ned Gleeson who is unique in that he was the county secretary of the local authority when the divorce took place in the mid-1980s; Mr. Michael O'Connor, a lawyer in Galway; and Mr. John Coyle, a hotelier in Galway. Therefore, Senator Craughwell's slogan that those who are local know best is dead right. The five locals who have no skin in the game politically know best. When they gave the report to me, they were surprised that I published it immediately. I absolutely accepted it

because during the years the practice was not to act on any difficult issue that arose and to kick it around for a few years, with the possibility of carrying out other reviews and everything else. Following on from that, another group with an advisory role was set up, again with Professor O'Sullivan as chair. Mr. Ned Gleeson who had previous experience was a member of the group, as were the chief executives of the city and county councils. All of its seven members had exceptional local knowledge, which addresses the argument that locals know best. These amendments suggest those with local political knowledge know best.

I ask Senators to acknowledge that there was no ground-swell of public opinion in Galway against the proposed merger, as Senator Boyhan admitted. Like much of local government, structural issues only come to the attention of the public when something goes wrong or an issue arises. Senators should be aware that there is not even minor public opposition to the proposed merger. Councillors have legitimate concerns. I can only state I am absolutely committed in respect of the funding issue. I have committed myself and my potential successors to allocating half of the funding for local government reform for the next three years directly to Galway County Council on foot of this section. That will not happen if the section is not included in the Bill because the fund is dedicated to local government reform.

Senator Boyhan is correct on the issue of shared services. The best example of that is in County Carlow. The relationship between counties Carlow and Laois is unique in terms of two local authorities and two sets of county loyalties that operate well together. It is a different situation from that in County Galway because it involves two sets of county loyalties. It is probable that after the bank guarantee and the arrival of the International Monetary Fund, Ministers considered proposals to merge local authorities. I have not found documents relating to such proposals in the Custom House and I do not want to find them because I do not believe local authorities should be merged against the wishes of the local population. I refer to more than half of the local population lodging submissions against the proposals in respect of counties Roscommon and Westmeath. The issue of identity does not arise in the merger of the Galway councils, which is why public opinion in there is that we should get on with ensuring it has the best local government structure possible.

I reiterate that there will be a local government Bill 2019 which will focus on Galway. The Bill before the House deals mainly with issues relating to County Cork. The prerequisite in mergers of local authorities is the need to have someone in charge at management level. That has been proved by the mergers in counties Waterford, Limerick and Tipperary. The significant difficulty in Galway, as highlighted by all Oireachtas Members and councillors from the area, is that many members of staff are acting up in positions in the councils that have not been filled on a full-time basis. We are proposing that there be a full-time, permanent chief executive to run the management structure in both local authorities.

I am somewhat confused by a number of Senator Boyhan's comments. He complained that I had put forward too many Bills. That is a criticism I have not heard before. When I was a Member of the Seanad, its primary function was to deal with legislation. Next year, I will bring forward a local government Bill which will focus on Galway and another in regard to urban area committees. Senator Boyhan mentioned Deputy Ó Broin, for whom I have a lot of time. He is a member of the Joint Committee on Housing, Planning and Local Government which decided not to carry out pre-legislative scrutiny of the Bill. At the time, the proposals relating to County Galway formed part of the Bill. Having spoken to Deputy Ó Broin and others, I decided that the sections regarding urban area committees should form part of a separate Bill. I make no apology for believing that legislation in respect of those areas is required. It is the

job of Senators to consider such legislation and I expect them to do so, as is being done tonight.

There are already many shared services between Galway city and county. The Bill does not deal with shared services in Galway. This section relates to a local authority area that will have a population of approximately 300,000. As the major city on the west coast – apologies to Limerick – we need it to be a major economic driver not just of its hinterland but, rather, the entire region. A group of experts who happened to be outsiders was tasked with looking at the structure of the councils. It reached a unanimous decision which is supported by the managers of the two local authorities that there should be a merged council. If the section is withdrawn or the amendment agreed to, this issue will have to be addressed when the local government Bill 2019 which will focus on Galway reaches Committee Stage in the middle of next year. Nothing magical will happen in the coming months to create agreement. Disagreement in politics is normal. There should be more of it. I do not disrespect any of the Senators who are doing their job by tabling amendments, but it is incorrect to state that the issues will be resolved because we will talk to each other between now and next May. There will never be unanimity on this issue at local government level. In answer to Senator Ó Domhnaill, I fully respect the position of councillors and their right to disagree with me. We must be prepared to disagree, particularly in the context of structural issues such as this.

Senator Murnane O'Connor raised the need for detailed discussion and to remove the section dealing with County Galway from the Bill. There will be very detailed discussion on Committee Stage of the local government Bill 2019 which will address the mechanism of merger in County Galway. Removing the section dealing with County Galway from the Bill before the House tonight will do nothing other than create a massive financial headache which will force the reopening of the budget in County Galway in the coming weeks. In the middle of next year, we would find ourselves back in the position of having to grasp the nettle and take what everyone understands is the right decision for County Galway in the long term. That is why I think we should make the decision sooner rather than later.

Senator Boyhan referred to the proper funding of local authorities and a fundamental review. As Senators are aware, Ms Sara Moorhead is carrying out a fundamental review which will examine the role and functions of councillors, as well as remuneration. The Senator stated he wanted me to be clear about from whom the powers of the directly elected mayor will be transferred. As I stated on Second Stage here and previously in the Dáil - and as I will state on many occasions in the coming months during the discussion of local government - the powers of directly elected mayors will be transferred from managers and chief executives. No power will be removed from councillors. Their key reserved powers such as budget-making and signing off on development plans will not be affected in any way by the introduction of directly elected mayors. There is a significant democratic deficit in that regard and we need to have a discussion and plebiscite on the matter. Having directly elected mayors will introduce some accountability into the management structure of local government. I share many of the Senator's concerns, although I must point out that we have been extraordinarily well served by the great majority of local authority managers and chief executives. However, in a democracy that is not sufficient. As well as being well served, there must be a level of accountability. There is not that accountability currently, which is why we need directly elected mayors.

Senator Craughwell referred to the general support among councillors for the amendment.

I hope other Senators who are not familiar with Cork got the sense from some of the con-

tributions of the Cork Senators this evening that there is absolutely not unanimity in Cork. Far from it, there is complete disagreement on what needs to happen in certain respects, even though it was kept very civil in the Chamber.

Someone referred to the three Galway Deputies who are against it. Eleven Deputies represent Galway or part thereof; three have expressed legitimate and strong concerns but no one has referred to the other eight Deputies and where they stand.

Senator Victor Boyhan: The Minister of State might share that information.

Deputy John Paul Phelan: I am not talking about my party colleagues; I am talking about a former Independent councillor who is now a Minister, Deputy Seán Canney, who has been a leading advocate for the merger. He comes from one of the larger towns in County Galway which, as some would say, would suffer in the event of the merger. Would he support it if he really felt that Tuam would be destroyed? Instead he takes the view, which I share, although I will not go so far as to say that it is the correct view, that parts of Galway cannot be looked at in isolation to the entirety. That reflects what I said in my response to Senator Ó Domhnaill about how people's habits have changed, such as shopping or where they do business. There are large regional towns in Galway which have been transformed, largely in a negative way, since the Celtic tiger years, where many main streets are empty and idle because traditional businesses do not exist. Many people commute into Galway and do their shopping there or they do it online. That structure is no longer in place.

Despite the best efforts of the councillors in County Galway under the two separate local authorities that have existed since 1985, to reverse that or do something about it, there has been no fundamental reform that might ultimately re-energise those streets. I do not see how keeping them separate, which some political opponents of this section have suggested, is a solution for those regional towns in Galway into the future. Rather, what needs to happen in Galway is what has happened in Cork city where we will have one authority which is responsible for all the city and its hinterland, and a bit more besides, for the next 50 years and beyond. We need a local authority structure in Galway that will do the same for it.

I share and understand some of the regret and reservations that Oireachtas Members and councillors have expressed about changes in population that would result in changes in representation levels. I sought to address it last night and do so again as best I can tonight in the absence of the full Galway Bill. I am not only opposed to that but very much supportive of the idea that there would be two separate chambers. We are providing that there will be two separate elections, notwithstanding the fact that the law will have been enacted and there will be one manager.

I believe Wandsworth and Richmond - the name of the former has come back to me - are the two London boroughs that merged their local authorities but still have two chambers, or two councils. That was how it was in Galway city and county until 1985, when there was an experiment to give it a separate city council. It worked for a long time but, to my knowledge, and I might be wrong, it contributed to some of the hollowing out of some of the regional towns around Galway. I do not think it was done deliberately but it was an effect of what happened in the mid-1980s. It was also open to every Minister and politician who has served in the last thirtysomething years to do something to address the under-funding that it created in County Galway, but that was never done. It was never done through the years of the Celtic tiger when there were enough millions of euro that we could talk about abolishing certain forms, or nearly

every form, of property taxation, and there was enough to resolve many of these issues.

(Interruptions).

An Leas-Chathaoirleach: Order, please.

Deputy John Paul Phelan: I have probably said enough.

An Leas-Chathaoirleach: The Minister of State to speak, without interruption.

Senator Victor Boyhan: We must always respect the Minister of State.

Deputy John Paul Phelan: It is late in the evening but we have had a discussion that has been wide ranging and necessary on Cork-----

Senator Máire Devine: It has been a very long night.

Deputy John Paul Phelan: The impact that this proposal in the Bill will have on Galway is very minor. The real Bill will come next year and is mostly a Galway Bill but it will be called the local government Bill. If this part is rejected tonight we will still have to deal with all of that in the middle of next year.

(Interruptions).

An Leas-Chathaoirleach: Order, please. Is Senator Craughwell pressing the amendment?

Senator Gerard P. Craughwell: Yes.

Amendment put:

The Committee divided: Tá, 21; Níl, 16.	
Tá	Níl
Black, Frances.	Burke, Colm.
Boyhan, Victor.	Burke, Paddy.
Conway-Walsh, Rose.	Butler, Ray.
Craughwell, Gerard P.	Buttimer, Jerry.
Daly, Mark.	Conway, Martin.
Davitt, Aidan.	Feighan, Frank.
Devine, Máire.	Lawlor, Anthony.
Dolan, John.	Lombard, Tim.
Gallagher, Robbie.	McFadden, Gabrielle.
Gavan, Paul.	Mulherin, Michelle.
Horkan, Gerry.	Noone, Catherine.
Lawless, Billy.	O'Donnell, Kieran.
Leyden, Terry.	O'Mahony, John.
Mac Lochlainn, Pádraig.	O'Reilly, Joe.
Murnane O'Connor, Jennifer.	Reilly, James.
O'Sullivan, Grace.	Richmond, Neale.
O'Sullivan, Ned.	

Seanad Éireann

Ó Domhnaill, Brian.	
Ó Donnghaile, Niall.	
Warfield, Fintan.	
Wilson, Diarmuid.	

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

Amendment declared carried.

Senator Gerard P. Craughwell: I move amendment No. 11:

In page 33, lines 3 to 5, to delete all words from and including “Waterford;” in line 3 down to and including line 5 and substitute “Waterford.”.

Amendment put:

The Committee divided: Tá, 21; Níl, 16.	
Tá	Níl
Black, Frances.	Burke, Colm.
Boyhan, Victor.	Burke, Paddy.
Conway-Walsh, Rose.	Butler, Ray.
Craughwell, Gerard P.	Buttimer, Jerry.
Daly, Mark.	Conway, Martin.
Davitt, Aidan.	Feighan, Frank.
Devine, Máire.	Lawlor, Anthony.
Dolan, John.	Lombard, Tim.
Gallagher, Robbie.	McFadden, Gabrielle.
Gavan, Paul.	Mulherin, Michelle.
Horkan, Gerry.	Noone, Catherine.
Lawless, Billy.	O'Donnell, Kieran.
Leyden, Terry.	O'Mahony, John.
Mac Lochlainn, Pádraig.	O'Reilly, Joe.
Murnane O'Connor, Jennifer.	Reilly, James.
O'Sullivan, Grace.	Richmond, Neale.
O'Sullivan, Ned.	
Ó Domhnaill, Brian.	
Ó Donnghaile, Niall.	
Warfield, Fintan.	
Wilson, Diarmuid.	

19 December 2018

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

Amendment declared carried.

Question put: "That section 39, as amended, stand part of the Bill."

Senator Gerard P. Craughwell: Vótáil.

An Leas-Chathaoirleach: Senators Gerard Craughwell and Victor Boyhan have been appointed tellers for the "Tá" side but as no tellers for have been appointed for the "Níl" side, I declare the question carried.

Question declared carried.

Sections 40 to 42, inclusive, agreed to.

SECTION 43

Senator Gerard P. Craughwell: I move amendment No. 12:

In page 35, to delete lines 24 to 35.

Amendment put:

The Committee divided: Tá, 21; Níl, 16.	
Tá	Níl
Black, Frances.	Burke, Colm.
Boyhan, Victor.	Burke, Paddy.
Conway-Walsh, Rose.	Butler, Ray.
Craughwell, Gerard P.	Buttimer, Jerry.
Daly, Mark.	Conway, Martin.
Davitt, Aidan.	Feighan, Frank.
Devine, Máire.	Lawlor, Anthony.
Dolan, John.	Lombard, Tim.
Gallagher, Robbie.	McFadden, Gabrielle.
Gavan, Paul.	Mulherin, Michelle.
Horkan, Gerry.	Noone, Catherine.
Lawless, Billy.	O'Donnell, Kieran.
Leyden, Terry.	O'Mahony, John.
Mac Lochlainn, Pádraig.	O'Reilly, Joe.
Murnane O'Connor, Jennifer.	Reilly, James.
O'Sullivan, Grace.	Richmond, Neale.
O'Sullivan, Ned.	
Ó Domhnaill, Brian.	

Ó Donnghaile, Niall.	
Warfield, Fintan.	
Wilson, Diarmuid.	

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

Amendment declared carried.

Question put: "That section 43, as amended, stand part of the Bill."

Senator Gerard P. Craughwell: Vótáil.

An Leas-Chathaoirleach: Senators Gerard Craughwell and Victor Boyhan have been appointed tellers for the "Tá" side but as no tellers for have been appointed for the "Níl" I declare the question carried.

11 o'clock Question declared carried.

Senator Jerry Buttimer: -----might experience something of the parliamentary practice of calling votes.

Senator Gerard P. Craughwell: The Leader should not be getting ratty.

An Leas-Chathaoirleach: Order, please.

Senator Gerard P. Craughwell: They have filibustered for the bloody night.

An Leas-Chathaoirleach: Please be respectful. Do not let the hour get to you.

NEW SECTION

Government amendment No. 13:

In page 35, after line 35 to insert the following:

"Report to Houses of Oireachtas

44. If a majority of the votes cast at a plebiscite held in accordance with this Part are in favour of the proposal, the Minister shall, not later than 2 years from the day appointed under *subsection (2) of section 40*, prepare and submit to each House of the Oireachtas a report specifying proposals for the enactment of a law providing for a directly elected mayor of the administrative area in respect of which the plebiscite was held."

Amendment agreed to.

Section 44 deleted.

19 December 2018

Sections 45 and 46 agreed to.

SECTION 47

Question put: "That section 47 stand part of the Bill."

The Committee divided: Tá, 16; Níl, 21.	
Tá	Níl
Burke, Colm.	Bacik, Ivana.
Burke, Paddy.	Boyhan, Victor.
Butler, Ray.	Conway-Walsh, Rose.
Buttimer, Jerry.	Craughwell, Gerard P.
Conway, Martin.	Daly, Mark.
Feighan, Frank.	Davitt, Aidan.
Lawlor, Anthony.	Devine, Máire.
Lombard, Tim.	Dolan, John.
McFadden, Gabrielle.	Gallagher, Robbie.
Mulherin, Michelle.	Gavan, Paul.
Noone, Catherine.	Horkan, Gerry.
O'Donnell, Kieran.	Lawless, Billy.
O'Mahony, John.	Leyden, Terry.
O'Reilly, Joe.	Mac Lochlainn, Pádraig.
Reilly, James.	Murnane O'Connor, Jennifer.
Richmond, Neale.	O'Sullivan, Grace.
	O'Sullivan, Ned.
	Ó Domhnaill, Brian.
	Ó Donnghaile, Niall.
	Warfield, Fintan.
	Wilson, Diarmuid.

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

Question declared lost.

Sections 48 and 49 agreed to. Schedule agreed to.

TITLE

Government amendment No. 14:

In page 5, lines 11 to 13, to delete all words from and including "to" where it secondly occurs in line 11 down to and including "purpose;" in line 13.

Amendment agreed to.

Government amendment No. 14a:

In page 5, lines 13 to 16, to delete all words from and including “to” in line 13 down to and including “councils;” in line 16.

Deputy John Paul Phelan: This amendment will change the Long Title of the Bill to reflect the changes that have just been made.

Amendment agreed to.

An Leas-Chathaoirleach: Amendment No. 15 has been ruled out of order.

Amendment No. 15 not moved.

Title, as amended, agreed to.

Bill reported with amendments, received for final consideration and passed.

Message from Dáil

An Leas-Chathaoirleach: On 19 December 2018 Dáil Éireann has agreed to the amendments made by Seanad Éireann to the Employment (Miscellaneous Provisions) Bill 2017.

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

Senator Jerry Buttimer: Ar 10.30 maidin amárach.

The Seanad adjourned at 11.10 p.m. until 10.30 a.m. on Thursday, 20 December 2018.