



DÍOSPÓIREACHTAÍ PARLAIMINTE  
PARLIAMENTARY DEBATES

**SEANAD ÉIREANN**

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

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## SEANAD ÉIREANN

*Dé Máirt, 22 Eanáir 2019*

*Tuesday, 22 January 2019*

Chuaigh an Cathaoirleach i gceannas ar 2.30 p.m.

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*Machnamh agus Paidir.  
Reflection and Prayer.*

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### **Gnó an tSeanaid - Business of Seanad**

**An Cathaoirleach:** I have received notice from Senator Lorraine Clifford-Lee that, on the motion for the Commencement of the House today, she proposes to raise the following matter:

The need for the Minister for Education and Skills to consult Fingal County Council on acquiring a site for St. Joseph's secondary school, Rush, County Dublin.

I have also received notice from Senator Anthony Lawlor of the following matter:

The need for the Minister for Housing, Planning and Local Government to make a statement on objective 19 of the national planning framework.

I have also received notice from Senator Fintan Warfield of the following matter:

The need for the Minister for Housing, Planning and Local Government to outline the timeframe for holding a referendum to reduce the voting age to 16 years.

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

The need for the Minister for Justice and Equality to consider the provision of a Garda station for the community of Clongriffin and Belmayne in north Dublin.

I have also received notice from Senator Neale Richmond of the following matter:

The need for the Minister for Children and Youth Affairs to provide an update on the planned nationwide roll-out of baby boxes.

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

The need for the Minister for Transport, Tourism and Sport to outline the national strategy for promoting viable trade routes between southern Ireland and the Continent in the light of the plans by Irish Ferries to reduce its port services from Rosslare.

I have also received notice from Senator Máire Devine of the following matter:

The need for the Minister for Health to make a statement on the policy whereby patients in receipt of medical care, while in the process of applying for a medical card, are responsible for fees incurred.

I have also received notice from Senator Maura Hopkins of the following matter:

The need for the Minister for Transport, Tourism and Sport to provide an update on the N5, Ballaghaderreen to Scramogue, project.

I have also received notice from Senator Frank Feighan of the following matter:

The need for the Minister of State with responsibility for mental health services and older people to provide an update on progress in providing the new 90-bed unit planned for St. Patrick's Hospital in Carrick-on-Shannon and the new 50-bed unit at Sacred Heart Hospital in Roscommon town.

The matters raised by the Senators are suitable for discussion. I have selected the matters raised by Senators Lorraine Clifford-Lee, Anthony Lawlor, Fintan Warfield and Aodhán Ó Ríordáin and they will be taken now. Senators Neale Richmond, Tim Lombard, Máire Devine, Maura Hopkins and Frank Feighan may give notice on another day of the matters they wish to raise.

## **Nithe i dtosach suíonna - Commencement Matters**

### **School Accommodation Provision**

**An Cathaoirleach:** I welcome the Minister for Education and Skills, Deputy Joe McHugh.

**Senator Lorraine Clifford-Lee:** I too welcome the Minister. I wish to talk again about St. Joseph's secondary school in Rush. The Minister will recall that on 6 November last I had a Commencement matter on the urgent need to provide temporary accommodation and that he announced on that day that the application had been approved. We spoke then about the need for a permanent new school building. I wish to remind him that St Joseph's is a secondary school with 1,000 pupils and that it is the only secondary school in the town of Rush. Rush and all of the towns in north county Dublin are expanding rapidly. It is the fastest growing part of the country with the youngest population. Obviously, there is a very strong demand there for primary and post-primary school places.

The capacity issue needs to be addressed as a matter of urgency. At the time the Minister approved four prefabricated buildings because there was a crisis. There are 102 students on the waiting list for places in September 2019 who could not be offered places. Thankfully, that issue has been resolved. I mentioned at the time that there was no extra capacity to expand in the school. Enrolments in the primary schools in the town of Rush had indicated a similar demand for places next year and into the future. At that time, the Minister said he was actively pursuing a site for the school. St. Joseph's secondary school has an excellent reputation in Rush and be-

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yond. Its principal, Ms Patricia Hayden, and the teaching staff in the school do an excellent job. It is a DEIS school and linked into the Trinity access programme. There is 100% progression to third level and apprenticeships from the school, which the Minister will agree is exceptional. This year, the school had six entries in the BT Young Scientist exhibition. As there was only one other school in the country with a higher number of entries, that is an exceptional record, particularly when one considers that the school does not have sufficient science laboratories. All credit must go to the principal, the teaching staff and all the other staff in the school and, of course, the commitment of the parents to the school.

The young people of Rush want to be educated in this school. They demand to be educated in it, but capacity makes that very difficult. It is worth noting that secondary schools in the neighbouring towns of Lusk and Skerries are also experiencing capacity issues. As such, they will not be able to accept any overflow of students from Rush. On 6 November last the Minister said a site was being acquired. However, when my colleague, Councillor Brian Dennehy, a Fingal county councillor who lives in Rush and whose children attend St. Joseph's secondary school, tabled a motion on the matter to Fingal County Council on 8 November, he was told by a senior official of the council that there was no instruction from the Department of Education and Skills to acquire a site. As I understand it, that remains the position. We were all dismayed with the response received to Councillor Dennehy's motion because we had been led to believe this announcement was imminent. There has been land zoned in the town for the school for ten years. Following on from the work of Councillor Brian Dennehy in Rush, upgrading works on the Park Road are due to commence imminently, which will allow for access to that site. When will the Minister issue a request to Fingal County Council to acquire this site and when will construction of the new school commence?

**Minister for Education and Skills (Deputy Joe McHugh):** I thank the Senator for raising this matter as it allows me the opportunity to clarify the position on St. Joseph's secondary school, Rush, County Dublin. I acknowledge that my colleague, Senator James Reilly, has kept me up to speed on this issue. The school is currently located at Convent Lane, Rush and consists of a number of buildings, some permanent accommodation and others prefabricated accommodation. The site is limited for development due to its size and location in the centre of the village in a settled residential area and it was determined that a new site was required to facilitate provision of sufficient permanent accommodation for the school.

The school's trustees have recently confirmed to my Department that they are not in a position to provide a site to accommodate a new school building. Following on from this, officials of my Department have requested the assistance of officials in Fingal County Council in procuring a site for the school under the memorandum of understanding for the acquisition of school sites. Under the memorandum of understanding for the acquisition of school sites, local authorities assist my Department with the process of identifying and acquiring sites for the development of school accommodation. The first step in this process is the identification of suitable sites by the local authorities. The identified sites are then technically assessed on a joint basis by officials from the local authorities and my Department's professional and technical staff.

The Senator will appreciate the importance of a thorough appraisal of site options at this point to ensure the achievement of value for money and minimise the potential of any issue arising during the planning and development stages. The relevant local area plan provides for the location of a post-primary school site in the Kenure area of Rush. My Department understands this site was reserved by Fingal County Council on foot of representations made on behalf of St. Joseph's secondary school. To date, access issues have inhibited the potential development of

this site but Fingal County Council is working to deliver a new roadway which would facilitate such development. Engagement between my officials and council officials on the potential acquisition of the site is ongoing. It is difficult to indicate a timeline for completion of the acquisition of a site for the school in question as it is dependent on the outcome of current negotiations and also on the complexity of the conveyancing process. Once a site has been acquired the project can progress to architectural planning.

I assure the Senator that my Department is cognisant of the school's current accommodation constraints. The Department received an application for temporary accommodation from the school. Subsequently, it issued approval, in principle, to the board of management for the rental of two science laboratories - one being a technical graphics or design communication graphics room and one general classroom - as an interim measure, pending delivery of the permanent school building. The responsibility for the installation of this accommodation has been devolved to the school authority for delivery.

Ba mhaith liom buíochas a ghabháil leis an Seanadóir faoi choinne an seans labhartha leis an Seanad inniu ar an ábhar tábhachtach seo.

**Senator Lorraine Clifford-Lee:** I am sorry, but it is unsatisfactory to say the engagement is ongoing. We had been led to believe acquisition was imminent. Fingal County Council requires a direction from the Minister and his Department to acquire the site. As the site has been zoned for ten years, it has been sitting there. The access issues have been resolved. The upgrade of the park road is imminent and should be completed by the end of the second quarter of this year. There is no reason the Minister cannot issue the instruction to acquire the site. It is not good enough for him to come here and say engagement is "ongoing" and claim there are complex conveyancing reasons. This is completely unacceptable. We have been led to believe by plenty of local representatives that this project is a done deal, that there will be a new school and that the devil and all will be done. It is clear from the Minister's reply that the acquisition is not imminent. It is an absolute disgrace that children in Rush are on this site without a playing pitch, a library and with inadequate science and woodwork rooms. There is simply a capacity issue. Next year there will not be any room. There is no room for any further prefab on this site. There will be great anger in Rush when people realise the Minister is not even on the verge of issuing the instruction to acquire the site.

**Deputy Joe McHugh:** For the purposes of clarification, it is important for me to point out what my role is, as Minister, in site acquisitions. I do not issue instructions to buy a preferred site. There is a memorandum of understanding, which is an engagement between the local authority - not just Fingal County Council but all local authorities - and the Department of Education and Skills. As part of that process, there is a communication between departmental officials and Fingal County Council to ensure a number of preferred sites are put on the table. It is up to them to ensure the communication is open and transparent. The Senator has stated a county councillor said that there is no engagement ongoing between officials-----

**Senator Lorraine Clifford-Lee:** A senior official from Fingal County Council called Coilín O'Reilly-----

**An Cathaoirleach:** I am not going to allow this.

**Senator Lorraine Clifford-Lee:** -----in a response to a motion tabled by Councillor Brian Dennehy-----

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**An Cathaoirleach:** I have been very fair to the Senator.

**Deputy Joe McHugh:** Let us clarify that.

**Senator Lorraine Clifford-Lee:** Yes.

**Deputy Joe McHugh:** Let us find out who is not telling who the right information.

**Senator Lorraine Clifford-Lee:** Yes.

**Deputy Joe McHugh:** As far as I am concerned, my officials are engaging. That process has started. Now we have to-----

**Senator Lorraine Clifford-Lee:** Ultimately, the Minister issues the instruction to buy the site.

**An Cathaoirleach:** Will the Senator, please, allow the Minister to conclude?

**Deputy Joe McHugh:** Now we have to ensure we prioritise the younger people who are looking for a satisfactory building for their education. That is my priority.

The Senator has raised an issue and claimed that there is a blockage in communications. Let us get to the bottom of the matter. Let us find out and continue the work that we do on a bipartisan and cross-political basis. In my engagement, whether it be with the Senator or Senator Reilly, I am happy to find out what the problem is. Let us find out what it is and get to the bottom of it. Importantly, I do not decide-----

**Senator James Reilly:** Please-----

**An Cathaoirleach:** As we are three minutes over time, please let the Minister conclude. If Senators are not happy - I cannot allow Senator Reilly in - this matter can be revisited again. Three other Members are waiting for-----

**Deputy Joe McHugh:** I am happy to come back to the Senator with any information.

**Senator Lorraine Clifford-Lee:** The purchase of the site is not imminent.

**Senator James Reilly:** It is.

**Senator Lorraine Clifford-Lee:** The purchase of the site is not imminent.

**An Cathaoirleach:** Please, Senator.

**Senator James Reilly:** That is not correct.

**Senator Lorraine Clifford-Lee:** The Minister clarified it.

**Deputy Joe McHugh:** That is not correct.

**Senator Lorraine Clifford-Lee:** The Minister has clarified that the acquisition is not imminent.

**An Cathaoirleach:** Never the twain might meet. I thank the Minister. We will move on to the next matter.

**Senator James Reilly:** Senator Clifford-Lee's information is out of date. I was in contact with Fingal County Council earlier and it confirmed that it was liaising with the Department to acquire a site.

**An Cathaoirleach:** I cannot allow the Senator in.

**Senator James Reilly:** It is important that that information be recorded in the House.

**An Cathaoirleach:** I do not want any argy-bargy involving two Senators who live in the same constituency. I am trying to be fair to everybody and there are other matters to be dealt with. I am sure this matter will be revisited, perhaps when I am gone.

### **National Planning Framework**

**An Cathaoirleach:** Senator Lawlor has the next matter. He has a maximum of four minutes. Some Members think it is the minimum but it is the maximum.

**Senator Anthony Lawlor:** The Cathaoirleach can rest assured that I will not use the four minutes.

**An Cathaoirleach:** Go raibh maith agat. Ar aghaidh leat.

**Senator Anthony Lawlor:** First, I congratulate the Minister of State on his nuptials over Christmas and wish him and his good wife all the best for the future. Given his positive news over Christmas, I hope he will have positive news for me.

Under objective 19 of the national planning framework, local authorities are imposing different interpretations in the context of planning decisions. I am sure the Cathaoirleach has had experience of this also. I am seeking definite clarification and, if necessary, a circular should be sent to local authorities on the exact intention of it when the Minister put it forward. When he came before the House previously, the Minister for Housing, Planning and Local Government, Deputy Eoghan Murphy, stated what it should be. It should not compound the issue for people who are justifiably applying for planning permission and able to get it. I look forward to hearing what the Minister of State has to say in clarification.

**An Cathaoirleach:** I thank the Senator for his brevity.

**Minister of State at the Department of Housing, Planning and Local Government (Deputy John Paul Phelan):** It is the first time in his life that the Senator has been brief.

**An Cathaoirleach:** Do not tempt fate.

**Deputy John Paul Phelan:** I thank him for his congratulations also.

The Senator is correct that this is a major issue in rural areas. It is fair to state, however, that rural housing has been a major issue for 20 years, not least in the Senator's area of north Kildare. I will outline the position from the perspective of the recently announced national planning framework, NPF. It was published in 2018 and sets out the overarching strategic planning approach underpinning the sustainable development of both urban and rural areas in the period to 2040. To articulate the broad content of the NPF in clear and understandable terms, the framework contains national planning objectives to guide and inform the planning process.

National policy objective 15 of the NPF fully supports the concept of the sustainable development of rural areas. It seeks to encourage growth and arrest decline in areas that have experienced low population growth or population decline in recent decades, while also highlighting the need to manage certain areas around cities and towns that are under strong urban influence and under pressure from unco-ordinated and ribbon-type development in order to avoid over-development of those areas. Some of that took place in the past, particularly in areas close to large urban centres. This is supplemented by national policy objective 19 which points to the need to ensure that in providing that rural communities meet housing requirements a policy distinction should be made between areas experiencing significant overspill development pressure from urban areas, particularly within the commuter catchments of cities, towns and centres of employment, and other remoter and weaker rural areas where population levels may be low, declining or both.

In the context of weaker rural areas, objective 19 provides that the determination of planning applications for single houses in the countryside should be based on general siting and design-based criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements. These criteria include matters such as landscape, vehicular access and wastewater disposal. On the other hand, where development pressures and the risk of haphazard development in the vicinity of larger urban centres as designated in local authority development plans are evident, objective 19 advises that it is reasonable that the determination of applications for housing in such rural areas should be informed by considerations beyond the siting and design criteria for rural housing contained in statutory guidelines and plans. In particular, account should be taken of whether there is a demonstrable functional requirement for such housing in social, economic or occupational terms and whether such development, of itself or in combination with existing and permitted development, would lead to detrimental haphazard and unco-ordinated development.

These objectives represent a balanced approach, consistent with long-standing Government policies on sustainable development and previous planning guidelines issued in 2005 under section 28 of the Planning and Development Act. Planning authorities are required to have regard to these guidelines on sustainable rural housing in the framing of planning policies in their development plans and the assessment of individual planning applications for rural housing. Under the 2005 guidelines, planning authorities are required to adopt a balanced approach to ensure the housing needs of rural communities are met, while avoiding excessive urban-generated housing and haphazard development, particularly in the areas we have mentioned. Accordingly, the objectives of the national planning framework are aligned with the approach that is already expected of planning authorities under the current guidelines.

Arising from a European Court of Justice ruling in the Flemish decree case which is of relevance to the local needs criterion, the 2005 guidelines are being reviewed by a working group comprising officials from the Department of Housing, Planning and Local Government and representatives of planning authorities nominated by the local government sector. It is likely that many of the planning applications referred to by the Senator fall into the categories of the local needs criterion or the 2005 guidelines. The Flemish decree which linked the sale or transfer of property in certain Flemish communes with the condition that there should exist a sufficient connection between the prospective property buyer and the relevant commune was ultimately and perhaps not surprisingly deemed by the European Court of Justice to be in breach of Article 43 of the treaty on the freedom of movement of citizens. Following engagement between the Department and the European Commission further to the case and subject to the completion

of the working group's ongoing deliberations, the Minister for Housing, Planning and Local Government, Deputy Eoghan Murphy, expects to be in a position shortly to finalise and issue planning authorities with revisions to the 2005 rural housing guidelines that take account of the judgment in the Flemish decree case.

From my perspective, I will certainly talk to the Minister. It is not unreasonable for someone who grew up in a rural area and has lived there all for all of his or her life to expect to be able to continue living in that community. Obviously, that depends on other important factors like the design of the house, the availability of wastewater treatment, access and the extent to which development has already taken place in the area. I am aware of some of the inconsistencies about which the Senator has spoken. To answer his question directly, the ultimate objective is that the revised guidelines will be circulated to each local authority as soon as they are finalised to ensure there is a uniform approach to the national planning framework when it comes to individual decisions at local authority level. In my distinct role in charge of local government, I must emphasise that each local authority is an independent republic. It is a bit of an oxymoron to be the Minister of State with responsibility for local government, given that local authorities - quite rightly - jealously guard their own independence, such as they have it. It is not unreasonable to think the new guidelines should be completed as soon as possible and circulated to ensure there is a uniform approach across the country.

**An Cathaoirleach:** I ask Senator Lawlor to be brief because the Minister of State has given him a very long response.

**Senator Anthony Lawlor:** I know, but he has not provided much clarity. In the case of virtually every application for planning permission for a one-off house that has been refused in County Kildare since 1 November last, objective 19 of the national planning framework has been quoted as part of the refusal. There is no clarity on objective 19 which refers to "economic or social need". It has been interpreted as meaning "social and economic need". The Minister of State added another consideration to the list when he referred to "social, economic or occupational terms". This will confuse things further. We want clarity in order that people can go by their local county development plans. Something from higher up should not be dictating what should and should not happen. It is unfortunate that planners, particularly in County Kildare, are taking objective 19 of the national planning framework on board as a greater priority than their own local county development plan which was put in place by councillors at local level.

**Deputy John Paul Phelan:** The councillors' role is to devise the development plan for their area. If there is an issue with the development plan in County Kildare, it is open to the councillors in the county to amend it. I understand what the Senator is saying about objective 19. By the way, I do not see how the use of the word "occupational" complicates things. It is quite clear that in the case of someone like a farmer who has an obvious reason to be building in the countryside, that is surely a clarification of things, if anything.

**Senator Anthony Lawlor:** It is not mentioned in objective 19.

*3 o'clock*

**Deputy John Paul Phelan:** It is open to the councillors in County Kildare to have their planning meeting in the morning. In the meantime, the Minister will issue the planning guidelines when he has finalised them.

## Constitutional Convention Recommendations

**Senator Fintan Warfield:** It is six years since the Constitutional Convention recommended that the State consider reducing the voting age to 16 years. The previous Government accepted this recommendation and in July 2013 Deputy Enda Kenny announced plans to hold this referendum. By January 2015 those plans had been abandoned by that Government. In September 2017 the current Government revived this commitment when it announced an indicative timetable for referenda to be held, which included a referendum to lower the voting age to 16 years, to be held in May or June 2019. As of last month, the Government appeared to have abandoned the plans to facilitate this referendum by stating it was not within its plans to hold the referendum in 2019. One has to presume that unless Fine Gael's coalition with Fianna Fáil is formalised, the confidence and supply agreement will end soon after 2019 and that, therefore, we will not see this referendum being held in the Government's term.

If I am honest, I have become cynical about Fine Gael's willingness to re-examine the voting age. We brought forward legislation in this House that would have lowered the voting age in local and European elections and the Government froze it on Second Stage for six months, stating more time was needed to examine the proposal. We sought to engage with Fine Gael and Fianna Fáil constructively, but we were stonewalled in those efforts. When the legislation returned nine months later, Fine Gael chose to oppose it section by section, stating a referendum on the matter would be held and that it would, therefore, be premature to extend voting rights in certain elections when we did not have the consent of the people to extend voting rights in all elections. I do not know why it took nine months for the penny to drop. We are now in a situation where Government has not only failed to facilitate this referendum but has also opposed others in their efforts to reduce the voting age through legislative change. It is time to allow young people to have their say in matters that affect their lives. We will all reap the reward and all profit from their inclusion.

We are looking for clarity on whether a referendum can be held within the lifetime of the Government. Has that potential been explored? Has the Government considered holding the referendum on the same day as a general election? If the Minister of State cannot give any further indication as to when the referendum will be scheduled, will he concede that the Government has failed on its commitment to young people and will he give reasons a referendum that has been sitting on the agenda for six years has failed to come to fruition?

**Deputy John Paul Phelan:** I thank the Senator. This is at least the second time we have had this discussion in the Commencement debate. I acknowledge that the Senator and other Members are strong advocates for a reduction in the voting age to 16 years, which was recommended in the report of the Constitutional Convention in 2013, as the Senator pointed out.

The convention examined this issue extensively and during its deliberations, three ballots took place to inform its proposals in the matter. In the first ballot there was a small majority, 52%, in favour of the proposal that the voting age be reduced. In the second ballot the members were asked to consider whether to reduce the voting age to either 17 years or to 16 years and the stronger support was for the latter reduction. A total of 48% supported a reduction to 16 years, while 39% were in favour of a reduction to 17, with 14% expressing no opinion. A third ballot was also held on whether the voting age should be reduced for some types of election only, for example, local elections. The overwhelming view of the convention did not support a reduction in the voting age for specific types of election only, which is why the Government opposed the

Bill to which the Senator referred. Some 68% of the members of the Constitutional Convention, by far the widest margin in a vote on any of these matters, said there should be no difference between voting ages. I do not think it was too controversial a position for the Government to have adopted when that Bill was being considered.

In line with the majority opinion of its members, the first report of the Convention on the Constitution contained a recommendation to the effect that a referendum be held in order to amend the Constitution to reduce the voting age to 16 years for all elections. Against this background, on 26 September 2017 the Government announced an indicative timetable for the holding of a number of referendums that came from the work of both the Citizens' Assembly and the convention. Included in that indicative timetable was the referendum on reducing the voting age to 16 years, which, subject to the timely passage of a Constitution Amendment Bill by each House of the Oireachtas, was to be held on the date of the local and European elections scheduled to take place in late May 2019. The forthcoming European Parliament elections must be held in all member states between 23 and 26 May next. Two further referendums were also to be held on the same date as the local and European elections.

The Department is responsible for the development of the necessary constitutional (amendment) Bill in respect of reducing the voting age to 16 years. On a related matter, it will also be responsible for bringing forward appropriate amending legislation to extend the franchise at presidential elections to Irish citizens' resident outside the State. These referendums, when held, will address two of the recommendations of the Convention on the Constitution. If passed, these amendments to the Constitution would give rise to the need for supplementary amendments to the Electoral Acts in order to address the practical considerations that would arise. However, at its meeting on 4 December 2018, the Government reviewed further the progress on the overall programme of Bills to amend the Constitution. Having regard to other referendums proposed to be progressed in the short term and having particular regard to the heavy legislative programme scheduled for the first half of this year arising from the withdrawal of the United Kingdom from the European Union, the Government agreed that only two referendums would be held in tandem with the local and European elections and that further consideration would have to be given to the timing of a referendum on reducing the voting age to 16 years. While the Government remains committed to the holding of a referendum to reduce the voting age to 16 years, it is not proposed that said referendum will be held this year.

I am sorry the Senator feels cynical about the Government's position but, as matters stand, people will be obliged to complete two ballot papers for the local and European elections. With two referendums, there would be two further papers. There will be several plebiscites at which people will be obliged to complete five ballot papers. I may be wrong but I do not think that we have ever had an election day when there have been five ballot papers. The idea that there would be a sixth was actively considered by me and the franchise section and we formed the view that it would be too much. We also had to be cognisant of the fact that in terms of the preparation of the Bills necessary to hold referendums, there is only certain scope in the Department to continue with them. Preference was given to the question of those outside the State and whether they would have the right to vote in presidential elections.

Deputy Adams tabled a Bill in the Dáil which combined voting for citizens overseas and reducing the voting age in presidential elections. I had a meeting with him in the middle of last year when we discussed several of the issues involved. He was to revert to me and the Department but never did so. That is not a sufficient excuse but I would have expected a response within the past eight months to some of the queries the officials and I raised at our meeting, par-

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ticularly if he was interested in ensuring those referendums would be held. The Government's position is that it wants the referendum to be held but we cannot have a polling day on which people would be given more than five ballot papers. That is why the decision was made at the end of last year that only two referendums would be held in conjunction with the two elections and the plebiscite.

**Senator Fintan Warfield:** I keep Deputy Adams up to date on all of our work in the Seanad. The Minister of State has noted that many others in this House and I are strong advocates for a reduction in the voting age to 16 years. Referendums proposed more recently than those recommended by the Convention on the Constitution have somehow leapfrogged this referendum. This shows that we do not have a voice at the Cabinet or someone at the table who cares about the issue. The Minister of State should lead with legislative change to give this referendum the best chance of passing when we eventually get there.

### **Garda Stations**

**An Cathaoirleach:** I welcome the Minister of State, Deputy Stanton.

**Senator Aodhán Ó Ríordáin:** I appreciate the Minister of State coming to the House to take this matter.

The area of Clongriffin and Belmayne is growing in size, as is the population. Renewed plans are frequently put in place for the expansion of that entire community and a population of 50,000 is projected in the coming years. We are effectively talking about a population on the scale of a large town, if not a small city. A number of years ago I had a debate in this Chamber with the then Minister for Education and Skills, Deputy Richard Bruton, about the need for a new secondary school in that area. At the time I was told by the Minister that it was not necessary and that the population did not warrant it. Within 18 months the Department had changed its mind, having looked at the population trends and the projected population, and granted the establishment of a new second level school in the area. Thankfully, Educate Together is to be awarded patronage and the school is to open in September.

I make that point purely because we believe a Garda station would benefit policing, security and bring about a sense of community in that community. There is what we might call a Garda clinic which takes place in one of the rooms of the Junction Community Centre in Clongriffin. On a Saturday, gardaí sign forms, do basic Garda work and are available to assist the community. An Garda Síochána is doing the best it can with the resources it has to serve the community in whatever way it can. Clearly a Garda presence of that nature is seen to be needed in that area.

This area is growing in size. In the past politicians have been criticised for not engaging in forward planning. We build residential units but we do not build a community around those residential units to serve them. I am saying at this early stage that there is a need for a Garda station, just as I said two years ago that there was a need for a new second level school. The campaigners and I were proved to be correct and we managed to be successful in that endeavour. I know that Government policy has changed in the past few years, moving away from stationary Garda stations and emphasising the transportation of gardaí in vehicles, on bikes and in cars. I appreciate that move. However, given the scale of this community, the size of the population and the number expected to move into that area, at the very least, a positive response from the Minister of State's Department on looking at establishing a Garda station in the area,

one that can work with the new communities, give advice to planners on how best to construct new residential entities and with transport links, etc., would be of huge benefit to what I am sure he will accept is a large town, if not effectively a small city, being built on the outskirts of Dublin.

**Minister of State at the Department of Justice and Equality (Deputy David Stanton):**

The Minister for Justice and Equality, Deputy Flanagan, is in the Dáil and sends his apologies. The Minister and I would like to thank the Senator for raising this matter.

The Senator will be aware that the resources provided by the Government for An Garda Síochána have reached unprecedented levels, with an allocation of €1.76 billion for 2019. This represents an increase of more than 6% on the initial allocation for 2018. Very significant capital investment is also being made in An Garda Síochána, including investment of more than €242 million in Garda ICT infrastructure between 2016 and 2021, to enable investment of €46 million in the Garda fleet over the same period, as well as considerable capital investment in addressing the deficiencies in the Garda estate. This investment is in support of the Government's commitment to ensuring a strong and visible police presence throughout the country in order to maintain and strengthen community engagement, provide reassurance for citizens and deter crime. However, the Senator will appreciate that the Garda Commissioner is primarily responsible for the effective and efficient use of the resources available to An Garda Síochána, including responsibility for the formulation of proposals regarding the opening and closing of Garda stations, taking into account crime trends and policing priorities, to ensure the best possible use is made of these resources. Furthermore, the programme of replacement and refurbishment of Garda accommodation is progressed by the Garda authorities working in close co-operation with the Office of Public Works which has responsibility for the provision and maintenance of Garda accommodation.

The Minister has no direct role in these matters. He and I are aware that the Senator and some local representatives have suggested a new Garda station at Clongriffin-Belmayne is required owing to population growth and development in the area. Bearing in mind that it is a matter for the Commissioner to efficiently manage Garda resources, on behalf of the Minister, I can confirm that the Clongriffin-Belmayne area, as referred to by the Senator, is located within the Coolock Garda district. I also confirm, on behalf of the Minister, that the Garda authorities indicate that the area receives ongoing attention from gardaí assigned to Coolock district. We further understand local Garda management in the Dublin metropolitan region north division is aware of issues relating to anti-social behaviour in the locality and, in addition to routine patrols by mobile patrol units, Garda foot patrols and members of community policing units have deployed additional personnel, particularly to specific areas identified as public disorder and anti-social behaviour hotspots, to address this type of criminality. In addition, the Garda authorities indicate that the community policing unit at Coolock Garda station has ongoing engagement with various residential, commercial and business groups within the community, providing personal security and crime prevention advice at regular meetings throughout the district.

We understand Garda management locally has put in place specific initiatives targeting anti-social activities of young drivers, including intelligence-led initiatives, and that An Garda Síochána works closely with the local authorities to reduce such incidents and opportunities for joyriding, anti-social behaviour and public disorder. Garda checkpoints to prevent and detect criminality across the districts have resulted in the detection of road traffic offences, the recovery and seizure of firearms, the disruption of the sale and supply of drugs and the execution of warrants.

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We are informed that monitoring of crime trends and initiating frequent, short-term and varied crime prevention and detection initiatives continue to be strategies employed by local Garda management to target criminal behaviour and spikes in specific types of criminality, including driving-related offences and other forms of anti-social behaviour.

As I stated, it is a matter for the Commissioner to manage and direct Garda resources. This includes responsibility for the formulation of proposals for the opening and closing of Garda stations. In that regard, the Senator may recall that a programme for a Partnership Government included a commitment for a review of Garda districts and dispersement of resources. The resulting report of the Garda Inspectorate entitled, Policing with Local Communities, which was submitted to the Minister by the Policing Authority and published in December 2018, also finds that the responsibility for decisions on boundaries and dispersement of Garda resources, including the number, type and location of Garda stations, should rest with the Garda Commissioner, as is currently the case. I understand the Garda authorities do not propose a new station in the area referred to by the Senator.

**An Cathaoirleach:** I ask the Senator to be brief.

**Senator Aodhán Ó Ríordáin:** I appreciate the Minister of State's response but I do not accept it. It is nonsense to suggest to this House or me that it is the role of the Garda Commissioner to make these decisions when we all know that a member of the Cabinet is well able to trumpet that he apparently was successful in reopening Stepside Garda station. He is also willing to tell all his constituents as often as he possibly can that it was his intervention that made that happen. For the Minister of State to suggest there was no political interference or influence on that decision is a statement of an untruth. I know that it certainly went against the advice of the assistant Garda Commissioner. As was stated in the Houses of the Oireachtas, he was not in favour of it and did not believe it was a proper use of Garda resources. It is not good enough for the Minister of State to tell me that this issue has nothing to do with the Government when it has.

I have advised the Minister of State that the Government stated two years ago that there was not a need for a secondary school in the Clongriffin-Belmayne area and now it has stated a school is needed. A Garda station is also needed in the locality because of the projected population. I am sure that in years to come somebody in the Minister of State's position will inform the House that the Government has changed its mind in that regard. I ask the Minister of State to stop telling us that this is not a political decision when clearly it is. Will he review the priorities of the Department to take account of this new population centre and give it the service it clearly needs?

**An Cathaoirleach:** I am not sure if the Minister of State has anything to add.

**Deputy David Stanton:** I will make a brief comment. I again thank the Senator for raising this matter. It is an important one, of that there is no doubt.

**Deputy David Stanton:** I again thank the Senator for raising this matter. On behalf of the Minister, I reiterate that while we understand the Garda authorities do not propose a new station for the area to which the Senator refers, they have informed the Department of Justice and Equality that they are aware of the issues arising in the locality and that local management has put in place specific initiatives to address them. I also understand An Garda Síochána works closely with the local authorities and local stakeholders, as appropriate.

### **Teachtaireachtaí ón Dáil - Messages from Dáil**

**An Cathaoirleach:** On 16 January 2019 Dáil Éireann passed the Criminal Law (Sexual Offences) (Amendment) Bill 2018, to which the agreement of Seanad Éireann is desired. On 16 January 2019 Dáil Éireann passed the Personal Injuries Assessment Board (Amendment) (No. 2) Bill 2018, to which the agreement of Seanad Éireann is desired.

*Sitting suspended at 3.20 p.m. and resumed at 3.30 p.m.*

### **An tOrd Gnó - Order of Business**

**Senator Jerry Buttimer:** The Order of Business is No. 1, motion re arrangements for the sitting of the House on Tuesday, 29 January to facilitate an address to the House by an t-Uachtarán, Cumann Lúthchleas Gael, Mr. John Horan, to be taken without debate at the conclusion of the Order of Business; No. 2, motion re appointment of Mr. Paul Mageean to the membership of the Policing Authority, to be taken without debate at the conclusion of No. 1; No. 3, motion re appointment of Dr. Vicky Conway to the membership of the Policing Authority, to be taken without debate at the conclusion of No. 2; No. 4, statements on the Government's Brexit preparedness, to be taken at 4.45 p.m. and conclude not later than 6.15 p.m., with the contributions of spokespersons not to exceed eight minutes each and those of all other Senators not to exceed five minutes each and the Minister to be given not less than ten minutes to reply to the debate; No. 5, Judicial Appointments Commission Bill 2017 - Committee Stage (resumed), to be taken at 6.15 p.m. and adjourned not later than 9.30 p.m., if not previously concluded.

As this is the first sitting of the new year, on my own behalf and that of the Government, I extend sympathy to the family of our late colleague, Mark Killilea Jr., who passed away during the Christmas period. He was first elected as a Senator in 1969. He was re-elected in 1982 and served until 1987. We extend our deepest sympathy to his wife, Anne; wider family and friends.

**An Cathaoirleach:** I wish to be associated with those remarks. Former Senator, Deputy and MEP Mark Killilea was a jovial and affable man who served in this Chamber for approximately 13 years in total. He had a tradition of public service, including in his European role as an MEP. It was a sad passing. I knew him well and presume that, at some stage, there will be appropriate tributes to him

**Senator Jerry Buttimer:** I propose a minute's silence at the end of the Order of Business. We will have tributes in due course.

**Senator Catherine Ardagh:** I also wish to be associated with the expressions of sympathy to the family of Mark Killilea. Ar dheis Dé go raibh a anam dílis.

On behalf of the Fianna Fáil group I condemn in the strongest terms the car bombing at Bishop Street in Derry at the weekend. It shows how delicate and fragile the situation is in the North and that we cannot take for granted the Good Friday Agreement and peace on this island.

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What we have in the Good Friday Agreement must be nourished continuously and we cannot take our eyes off it at any stage. It was confirmed today by the Commission that a no-deal Brexit would result in a hard border, something we all knew. Unfortunately, the suspension of the Northern Ireland Assembly and the imminent threat of a hard border have added fuel to the fire of some dissident groups and provided them with a *raison d'être*. As a result, we are seeing a resurgence. I acknowledge the work of the Government and civil servants and note that we very much stand by that work in navigating Brexit. However, we must be cognisant of the fragility of peace on our island and ensure the Good Friday Agreement is sustainable. As such, I ask the Leader what will happen and what plans the Government has to maintain and sustain the Good Friday Agreement in the wake of a crash-out Brexit?

I raise also the issue of the lack of green spaces and amenities in inner cities. I do not apologise for supporting a campaign on Cork Street, namely, the Weaver Square community garden allotments campaign. This is a small site in the inner city consisting of 27 allotments. On this small plot, a community garden has been created which has been boxing far above its weight and providing a huge community gain. Obviously, there is a major housing crisis, an issue I have raised weekly in the House since elected, but there are many alternative sites in Dublin 8, including the St. Michael's Estate site, St. Theresa's Gardens and the Player Wills factory. These are huge tracts of land which could, with a bit of imagination and proper planning, provide a great deal of housing and proper amenities. The local authority has served an eviction notice on the allotment owners which was to have been executed on Monday in order to facilitate the construction of rapid build homes. It is a real shame the community is losing the community garden. It is a small patch of land but it provided a great deal in community gain. There are many other large tracts of land which could have been used instead.

I refer finally to the 500 psychiatric nurses who have gone on strike today on foot of a refusal by the HSE to recognise NASRA, the ambulance branch of the Psychiatric Nurses Association. Ultimately, it means 500 healthcare workers are not working today. We cannot afford to lose 500 workers from a system which is already under strain. The Government must act quickly and cannot allow further strikes to take place in the health sector. The Irish Nurses and Midwives Association has, as we know, scheduled six 24 hour strikes by its 37,000 members to take place on 30 January and 5, 7, 12, 13 and 14 February, respectively, if its members' pay and conditions are not addressed. While the nurses will provide for emergency responses, the full service these nurses, most of whom are women, carry out will not be provided. To lose 37,000 members of the health service on any of these days would be shameful and the Government must act to ensure the strikes do not go ahead.

**Senator Marie-Louise O'Donnell:** I am a new speaking member of the Independent Seanad group, since I realised what it was like to be sitting at the back of the Seanad with no voice. I could not let that go on for much longer and I am delighted to be a part of the group.

I want to make three quick points. The first is to alert Senators to "Showcase Ireland" which is something I think they probably know about. "Showcase Ireland" is a platform for all that is great in the creative arts in Ireland, in manufacturing, glass, ceramics, wool, fabric, design, silver and gold. All the products are created and designed in Ireland. Everybody should, in whatever way he or she can, platform them in their counties, towns and villages. To see the artists' stuff in the RDS in the past few days - the exhibition continues until Wednesday - has been in absolute privilege. To mention one in particular, Eamonn Terry was a glass-blower in Waterford Glass - we know what happened there - but he went out on his own. He now has Criostal na Rinne and makes beautiful stuff. I would also like to mention Jerpoint Glass, an

Irish handmade glass company. These are people who are still blowing their own glass in Ireland; it is not being imported from any other country. It is apt that we look at arts and crafts in Ireland, especially with what is happening with Brexit, because we need to take our artists, creatives, manufacturers and designers very seriously and make sure they are well resourced.

The second thing I want to say is that Garry Hynes, Philip King, Mark Patrick Hederman and Theo Dorgan will be coming to speak to the Joint Committee on Culture, Heritage and the Gaeltacht tomorrow, representing music, literature, theatre and poetry.

Will the Leader let me know when the Adoption (Information and Tracing) Bill will be brought to the Seanad? It was delayed before Christmas. Will he also let me know when the Children and Family Relationships (Amendment) Bill will be before the Seanad, something I asked about two months ago? Many are in limbo awaiting the Bill. I also ask when full commencement of the Assisted Decision-Making (Capacity) Bill will happen. I was very involved with it in the last Seanad. Will the Leader give an update on those Bills?

I am standing up for the arts and creativity because now, more than ever, they matter. It is not just economic graft that means something. Our island is a great creator of arts, crafts and literature and we should look to it as a half saviour.

**An Cathaoirleach:** I thank the Senator and hope she finds solace in her new relationship with the group.

**Senator Rose Conway-Walsh:** I also extend my sympathy to the wife and family of former Senator Mark Killilea.

I certainly want to condemn the car bomb in Derry and the other actions. It is welcome that it has been condemned by all leaderships in the North and every right-minded citizen. There is no support or tolerance for that behaviour. We have a pathway to peace. We have peace and a pathway to Irish unity; in fact, we have never been closer to Irish unity. The conversations and discussions being had in civic society about the possibility of Irish unity mean we can further garner support for it across the board. There is no support, tolerance or justification for these actions and I ask those responsible to just stop that behaviour.

My colleague, Deputy Maurice Quinlivan, has received information from Údarás na Gaeltachta that shows that 89 units it owns are vacant. Eight of these units are located in Údarás na Gaeltachta sites across County Mayo. One such unit is in Béal an Mhuirthead and has been lying empty for 20 years. It is hard to believe no use has been found for this site since 1999. Instead of lying empty, these and similar units should be used to help start-up businesses, community groups or charities. Even letting these premises for free is better than seeing such a valuable public asset lying idle for such a long period of time. I call on the Minister for Business, Enterprise and Innovation to come to this House and tell us how she will facilitate greater co-operation between IDA Ireland, Údarás na Gaeltachta and Enterprise Ireland to ensure these vacant sites will be taken into account and fully utilised for the benefit of communities. To achieve this, many more site visits to County Mayo and the west by IDA Ireland, especially in Gaeltacht areas, are needed. Last year, up to November 2018, there were only seven such IDA Ireland visits to Mayo. If the Government is serious about creating jobs in County Mayo and other places in the west, all available infrastructure needs to be utilised. This will not happen if they do not bother coming to see and assess it for themselves. These units and land in public ownership need to be used as a factor of production and address many of the problems we have

across the State relating to housing and unemployment. We cannot say we support indigenous business and enterprise and that we have situations where there is full employment. There are pockets of very high unemployment in rural Ireland, many of which are in the Gaeltacht. We cannot have assets which are not fully utilised.

**Senator John Dolan:** I offer heartfelt thanks to all involved yesterday in the commemorations of the First Dáil. It was a magnificent and fitting event. I was privileged to be part of it as a Member of the Seanad. I never thought that would happen. The Seanad was recently saved by a referendum but if it was not for the determination and steel of those people 100 years ago, there might have been neither a Dáil nor a Seanad and that is worth remembering. It was also a moving and personal occasion for me because I grew up hearing about one Member of the First Dáil, a man named Phil Shanahan, from a small place, Foilmacduff in Hollyford, County Tipperary. My late mother, Judy, was my teacher and instructor in the case of Phil. Her family, the Daverns, were fast friends of the Shanahans in Hollyford. I was delighted yesterday to meet Phil's great grandniece, Emer Fhatherta, who was there to remember Phil. My mother told me of his lifelong commitment and the sacrifices he had made, about his family members, specifically his sister, Sarah, his hunger strike and generosity. He went from being a comfortable publican in Dublin to his death in November 1931 in poor circumstances. He was in Jacob's Factory with MacDonagh. His pub in the heart of Monto was a home from home and a meeting place for other Republicans. I spent last Saturday night with his grandnephew, Ramie Shanahan, in the same place where Phil had returned to spend his last years before his death. I saw the treasure trove of documents, papers, memorabilia and talked into the night.

It struck me that in the Seanad we should consider some way by which we might be a focal point to remember, honour and promote a better understanding of the lives of these people, their motivations, family circumstances, interests, places of origin, families and comrades. Yesterday in the Mansion House the downgrading of history was mentioned. Such a focus as this, possibly carried out throughout the year, could reignite the curiosity and interest of the young and not so young in the lives of these ordinary people who did extraordinary things and gave us a legacy to which we have a responsibility to live up. I would be happy to support any such initiative and ask the Leader if he will consider something along these lines.

Phil was a Teachta Dála for Dublin Harbour. He beat the unbeatable Alfie Byrne to take that seat but there were four other Tipperary men. Pierce McCann died from the flu in March that year. Séamus Burke went on to be a Minister in Cosgrave's Government. There was also Joseph McDonagh, brother of Thomas, and P. J. Moloney who, like me, was from Tipperary Town. He had his home burnt out. They are minor anecdotes of the lives of what I call ordinary people who did extraordinary things. We might consider some ways throughout the year to give some impetus to it.

**Senator Ivana Bacik:** Like previous speakers, I commend all of those involved in the organisation of yesterday's very successful and impressive Dáil 100 centenary event in the Mansion House. I was privileged and honoured to have been present to listen to the very dignified, respectful and appropriate way in which we commemorated the important first sitting of the Dáil 100 years ago. As a member of the Labour Party, I was pleased and heartened by the emphasis on Tom Johnson's democratic programme and the important values and ideals espoused in it. It was beautifully portrayed. The event was organised in a really tasteful and appropriate way. I commend the communications unit, the Oireachtas staff, the Ceann Comhairle's office and all involved in organising it. The Labour Party had its own event on Saturday to launch its rewritten democratic programme for the 21st century. We will be highlighting it during the

year. Senator Dolan spoke about how to reignite interest. It is really important that all of us look in all sorts of ways at commemorating and highlighting the centenary of the First Dáil and ensure different aspects of it are honoured and commemorated.

I thank the Leader for organising the statements on Brexit. They are timely. It was in marked contrast to the shambles at Westminster to see the Dáil and the Seanad holding the joint sitting in the Mansion House yesterday. We will have an opportunity to talk about Brexit later.

I echo the words of others in condemning the car bombing in Derry and those involved in carrying it out. It reminds us of the really serious and very real fears that a hard border will follow if Britain crashes out of the EU on 29 March. The European Commission confirmed today that a no-deal Brexit would mean the return of a hard border. That is a really serious worry for everyone.

I ask the Leader for a debate on the follow-up to the legislation we passed just before Christmas, which I am glad to see is now in effect. I refer to the legislation allowing for terminations of pregnancy. Many of us were concerned last week by reports of one particular case in the Coombe Hospital which was reported as being dealt with in a way that was somewhat troubling. I hope we will see less of that. The publicity about the case in question was of concern generally. Other events in recent weeks have shown us the really urgent need for the legislation to protect women accessing services at GP clinics and hospitals. The Minister for Health, Deputy Harris, promised that the relevant legislation would emerge in early course this year. I will be pressing for a debate on it and bringing the legislation forward. As far as I know, the Bill in question has not yet been drafted. We need to know when it will be drafted. I ask the Leader to make inquiries in the Department of Health about when we will see that legislation because it is essential that those seeking to access services will be protected from harassment and intimidation when they do so.

I express my satisfaction on seeing the first conviction reported today under the Swedish or Nordic model. My dear friend and colleague, Senator Norris, will not agree with me.

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

**Senator Ivana Bacik:** We are seeing the new law on prostitution being enforced and coming into effect.

**Senator David Norris:** It is a disgrace.

**Senator Ivana Bacik:** I commend gardaí for their work on it.

**Senator David Norris:** It is utter hypocrisy.

**Senator Maria Byrne:** I, too, condemn the bombings in Derry at the weekend. It was horrific and frightening to see the videos on the news.

I compliment all of those who were involved in organising yesterday's event. It was very appropriate and went off really well. I attended another event this morning when I took a taxi to and from my destination. Both drivers had watched yesterday's proceedings on television and were very emotional in expressing their thoughts on them. Many families and descendants of the Members of the First Dáil were present yesterday. One of my neighbours is a descendant of Michael Colivet. It was lovely to meet the Collins family. Another event is being held in the Mansion House today, with students from 15 schools engaging in a debate on Dáil 100. This is

to be commended. I was over there this morning because two of my neighbouring schools were successful in having two pupils selected, namely, Megan from Gaelcholáiste Luimní and Katie from Laurel Hill Coláiste. It is good that they were both from all-Irish-speaking schools. It is to be commended that they were selected among the 15 to speak. I heard some of what they had to say and their speeches were fantastic. One spoke about the harmful effects of alcohol and the other one questioned where our Irish had gone to. They were two topical debates. I congratulate all those involved. It is good that the youth are continuing the debate today.

**Senator Robbie Gallagher:** As Members know, we cannot underestimate the important role the National Ambulance Service plays, particularly in counties Monaghan, Cavan and many other rural counties. Unfortunately, we have already had serious issues with ambulance response times in County Monaghan. In some instances it has taken 70 minutes for the ambulance to reach the patient concerned. The current dispute in the ambulance service is of particular concern to the people of counties Monaghan, Cavan and other rural areas. As the Leader will agree, ambulance workers play a vital role in the provision of health services and those of us in rural areas depend very heavily on those services. It could be said people's lives are being put at risk because of this dispute. I urge the Minister and the HSE to engage as a matter of urgency with the ambulance workers concerned to try to find a solution to the dispute in order that the lives of people in counties Cavan and Monaghan and elsewhere are not put at risk.

**Senator Victor Boyhan:** I wish to speak about Bethany Home. We heard on "Morning Ireland" this morning that the Minister for Children and Youth Affairs was due to bring a memorandum to the Cabinet this morning seeking a 12-month extension for Judge Yvonne Murphy to carry out her very important work, on which I commend her. We do not need a lesson here today to explain why things have gone way beyond the original timeframe set. We know from reports from the commission that the Tuam babies issue came up in 2015 and that it was an added piece of work for Judge Murphy to deal with.

My concern is with Bethany Home, a Protestant organisation. For some reason the Government and previous Administrations have failed to take on the importance of this establishment. It is now known as fact that it was an incarceration house for many women and children. There is no dispute about it. These children were in State care or the State should have had a responsibility.

The Taoiseach made an excellent presentation at yesterday's commemoration of the centenary of the First Dáil. He talked about our shameful past. He talked about institutions, including mother and baby homes. He said we would need to do things in different ways and face new challenges. He is dead right and has my full support.

The Minister, Deputy Zappone, discussed this very important issue with us previously. If possible, we should ask her to come back to the House to debate the matter with a particular emphasis on Bethany Home. Abuse knows no religious bounds. This wholly Protestant institution has been excluded for reasons I do not know. In any place where children were in care there was a duty of care on our society, the Government, public administration and every arm of the State. It is important that we give reason. More importantly, Bethany Home should be included in a redress scheme.

I do not think the suggestion reported in the media today that the commission has to work through the initial 17 institutions is correct. While I accept its remit was to deal with these 17 institutions and that some people will be disappointed that this will continue for another year, it

is important that we send a clear message to people, including Senators and Deputies, who have long campaigned for this organisation to be investigated. It is fair, right and proper. I ask that the Minister come to the House to share her views, particularly on Bethany Home.

*4 o'clock*

I call on everyone in this House to use his or her influence on the Government to try to push this forward and have this group of people included in the redress scheme.

**Senator Maura Hopkins:** I raise the issue of the N5 project between Ballaghaderreen and Scramoge. It is positive that An Bord Pleanála has given approval for this project which has long been needed. It will involve the alignment of approximately 15 km of existing roads and a new carriageway of approximately 35 km. It is important because this is a dangerous stretch of road. Motorists travel at high speeds through the villages of Frenchpark, Bellanagare and Tulsk, in particular, on their way to and from the west. Now that An Bord Pleanála has issued approval, it is critical that this project be progressed to construction as quickly as possible. It is important that the Minister for Transport, Tourism and Sport, Deputy Ross, gives us an update on the project. It is included under Project Ireland 2040 but it is critical that construction progress without delay because there is a high risk involved and there have been far too many accidents on this dangerous stretch of road. It is nonetheless positive that An Bord Pleanála has given approval. Significant work has been completed by the national roads design office in Roscommon, which should be strongly complimented on all its work thus far. It is to be hoped we will see progression in the project proceeding to construction very quickly.

**Senator Máire Devine:** I also give a big thanks to all staff and the organisers of yesterday's An Chéad Dáil commemoration. It was an enjoyable event and a reminder to us all of the need for us, as legislators, to progress the Democratic Programme as set out 100 years go. I do not wish to put a dampener on it, but members of the deaf community have asked that in the future consideration be given to the interpretation of such events broadcast nationwide because they feel they missed out on it.

I also bring up the National Ambulance Service Representative Association, NASRA, strike that commenced at 7 a.m. I tabled a Commencement matter on the subject on 7 November. In 2010 we marched down the street from Parnell Square as part of what was called the 24-7 Alliance. The years of austerity had seen attacks on our pay. We marched in order that pay would not be attacked. The State was going to retain core pay but let additional payments for night duty, working at weekends and Christmas go to the wall. Thus the 24-7 Alliance was born. Then 500 ambulance personnel made a request to join the Psychiatric Nurses Association, PNA. It was a little odd at the time but it has worked out well in the nine years since. I have questioned the Minister previously and put him on notice on 7 November that we do not need to escalate this dispute. As has been said, the health service in its entirety is escalating the staff's dispute and it is not just about pay and conditions. The strike concerns the treatment by the State and the duty of care that they feel they cannot carry out. The dispute is about the right to be heard. It is about having a fundamental right to join a union and having the union of one's choice to represent one. Sinn Féin has no position on the merits or otherwise of pay and conditions claims, only that we believe such disputes are best resolved through dialogue and negotiation. The Trade Union Representation (Miscellaneous Provisions) Bill 2018 has been introduced by Sinn Féin and we wish to see it being enacted as soon as possible.

**An Cathaoirleach:** By way of clarification, at the request of the deaf community, the

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Oireachtas provided a service for it and it was done by prior agreement. Therefore, if anyone complained, he or she should not have done so because he or she got a fair crack of the whip.

**Senator Máire Devine:** Okay.

**An Cathaoirleach:** I understand the Senator's concern but I think they were looked after fairly.

**Senator Alice-Mary Higgins:** I support Senator Boyhan's comments on Bethany Home. This is not a new issue and the group has been advocating since the days I was working with the National Women's Council of Ireland before I was elected to the Oireachtas. It is shocking that the former residents are still waiting for recognition and support. The number of survivors is reducing and it is important that those who were in Bethany Home should get satisfaction.

I join in the commendations of yesterday's event. Let me articulate my sincere expressions of appreciation for the people of 100 years ago and all those who have followed since in the work of maintaining our democracy. I was particularly happy with the content, the Declaration of Independence, the Message to the Free Nations of the World and the Democratic Programme of the First Dáil which was an extraordinarily important programme, as drafted by Thomas Johnson and reflecting so much of the social movement which had fed into the national movement of that time, the thinking of Connolly and the ideas of the Proclamation. Will the Leader create an opportunity to discuss at an appropriate time some of these visionary documents and perhaps see how we could place ourselves in the current vision for the next centenary? I believe Senators are inheritors of the democratic challenge in the same way as those in the Dáil and it is very important that we would assign time for reflection and set ourselves the challenge to move forward. If we look at the extension of the franchise that took place in the 1918 elections, it would be extraordinarily positive if this was the year in which we delivered Seanad reform and extended the franchise and the delivery of greater democracy.

Let me draw the attention of Members and those in the wider world to an extraordinary exhibition - Women in Politics and Public Life, from 1918 to 2018 - which is taking place in Dublin Castle and closes at the end of January. I urge everybody to visit it. It very much tracks the full century of women's political action, the political actions from every decade and the contribution women have made across all parties.

I pay a brief tribute to some politicians, as a key reminder for all of us of the importance of democracy. We spoke about the tragic murder of the British politician, Jo Cox, a parliamentarian and a person who had championed an inclusive form of politics. In the past few weeks another champion of inclusive politics who had contributed to an extension of civic participation in the most inclusive sense in this city, the Mayor of Gdansk, Pawel Adamowicz, was tragically murdered. There was also an incident where a bomb was placed in The Diamond in Derry in the heart of the city. These are all challenges to democracy and it is important that we never retreat from them but instead redouble our commitment to democratic debate and representation of the people as sovereign.

**Senator James Reilly:** I also commend all of those involved in the ceremonial commemoration of the Centenary of the First Meeting of Dáil Éireann and the Cathaoirleach's contribution to the proceedings yesterday.

My only comment about the issues raised in respect of the bomb in Derry and the violence and murder in Gdansk is that democracy is fragile and needs to be constantly nurtured and

minded. Sometimes we take it for granted.

I raise an issue related to St. Finian's community college in Swords. In March 2010 the board of management expressed concern about the school's general condition. There were leaks in the ceilings, a lack of heating and health risks to both students and staff. A design team started work in February 2013 and produced a report in June 2013. The final design was produced in August, with planning permission granted in December 2015. There was not a single objection from any of the local residents. In April 2017 all issues were resolved and the project was expected to go to tender immediately afterwards, with work expected to begin in the summer of 2017. In September 2018 staff were told the school was at pre-qualification stage for the appointment of contractors. This had been completed by the ETB and sent to the Department but was returned to the ETB without an explanation by the Department. However, the ETB was told to resubmit. We are in January 2019. Last week I visited the school and saw for myself rooms that had no natural light and a home economics room that contained cookers but had only one entrance or exit. As far as I am concerned, that is a fire risk. I also saw a disgraceful dilapidation of the building with ceilings coming down. One can see in the picture I am holding in my hand, although it may be difficult to see it, a roof collapsing, with vegetation growing in the room, yet in 2019 students are supposed to learn and study in these conditions and staff are supposed to teach in them. It is just not good enough.

Having made a video with Luke Corkery who is on the student council in the school, I am delighted that 7,000 people saw it and that some action has resulted. The ETB has been in touch and, in turn, the Department of Education and Skills has emailed the board advising it to have the design team commence plans for the inclusion of a new zero energy building. My only concern is that if that means a whole new design and new planning application, we will be back to square one, which is simply not good enough. The population of Swords is over 40,000 and 10,452 people under the age of 18 years await education or an opportunity to attend educational facilities. These young people need a proper place for their education. They have suffered.

Please do not ask the staff of this DEIS school, the students and their parents who support them to continue to have to exist in these conditions. I call on the Minister to ensure the Department will take action immediately. People have been waiting since 2010. The school has passed all of the tests and done all that is required but now it seems to be rejoining the queue, which is not fair. It is certainly not fair to a DEIS school that has done so well over the years.

**Senator David Norris:** I support Senator Boyhan in his remarks about Bethany Home. Many years ago the Anglican Archbishop spoke out clearly on the matter and asked for it to be taken into account. It is nothing other than religious discrimination that this has not happened. The issue would have been forgotten only for the great work done by Derek Leinster.

I completely disagree with my colleague, Senator Bacik. I do not know how anybody can be pleased about the prospect of a lonely 65 year old man, coming from a deprived area of Dublin, being named and fined in court. It seems that this is rank and smug hypocrisy. I remember that during the debate here it flew in the face of all of the academic research produced by Queen's University, Belfast, which I outlined. I urge anybody who wants to see that research and know the truth about this matter to read the debate in which I outlined these facts.

**Senator Ivana Bacik:** Highly contested.

**Senator David Norris:** What was highly contested was the rubbish the Senator produced

from Sweden.

*(Interruptions).*

**Senator David Norris:** I want to raise another issue. An Egyptian television interviewer has been arrested, jailed for one year and fined 200 Egyptian pounds for interviewing a gay man on Egyptian television. The interviewer is a well known homophobe who comes out repeatedly with homophobic remarks. He interviewed a man about his life as a gay man in Egypt where homosexuality is not illegal. However, gay men who are consenting male adults in private are consistently nowadays arrested for blasphemy, immorality and debauchery. I would like to ask that this House request the Leader to get the Minister for Foreign Affairs and Trade to send a strong protest, on behalf of the House, to the Egyptian ambassador.

**Senator Jennifer Murnane O'Connor:** I would like to address an issue with the Irish passport. Ireland has been ranked among the top ten countries that hold the strongest passports according to the Henley Passport Index. The index measures the strength of a passport based on a citizen's ability to travel visa-free or using an easy access visa. Irish passport holders have the freedom to travel to 184 countries, which makes the Irish passport an attractive product. In that context, I raise an issue that came to my attention over Christmas when I was speaking to somebody who was home for the festivities. He is a British national who is married to an Irish woman. Their children have Irish passports. He inquired about the possibility of getting an Irish passport but was told that, while it would be possible, he would have to live in Ireland for one year to qualify for naturalisation and thus citizenship. I agree that there should be rules and stipulations but in cases where a spouse is not of Irish descent and the rest of the family are, are we unfairly discriminating against the foreign spouse where there is a long-standing relationship and proof of many years of travel to Ireland? We allow generous access to Irish citizenship to people around the world - in many cases to individuals who might never travel to this land in their lifetimes. However, can we restrict access for a family unit where connections are real and visible for all to see?

The Constitution insists on a special affinity with people of Irish ancestry living abroad who share our culture, identity and heritage. Is marriage not the most special affinity? Can we ask a family to split to reconcile residency issues or ask them to move lock, stock and barrel to Ireland for a year? That is not practical. This man has an important job in England, as does his wife. His children are in school. The Minister should clarify what we are preparing to do for such hard-working families who travel to Ireland regularly to see elderly relatives and family here. What are our contingency plans? What could Brexit mean for the right of UK citizens, derived from Irish law under the EU freedom of movement legislation, to come and live in Ireland without residency permits? These are serious questions. Irish passports will have a massive role to play in the context of Brexit. I accept that the Minister is coming to the House later but we must address these issues. As the uncertainty is unreal, we must obtain clarification on this matter.

I agree with Senator Ardagh. We support the nurses and ambulance personnel. They are doing a great job. We must give them our support because they work extremely hard.

**Senator Frank Feighan:** I join other Senators in absolutely condemning the wanton act of terrorism in Derry on Saturday night last. Thankfully, nobody was killed or injured but what happened shows that this is a dangerous time when it comes to dissident republicans. Everything must be done to ensure they do not have a voice or threaten the Good Friday Agreement.

Yesterday's centenary of the first meeting of the First Dáil was a great success. I congratulate everybody involved. Yesterday's event reminded me that today is the centenary of the appointment of the first Minister for Foreign Affairs, George Noble Plunkett or Count Plunkett, who, in what was known as "the election of the snows" - effectively a by-election for the British Parliament - was elected to represent the old constituency of North Roscommon. That election rocked the British establishment to its core. Count Plunkett was also a Member of the First Dáil. I was at Westminster on Wednesday night last. The place was in a complete frenzy. I do not believe that many of the people who were voting understand the backstop or the Border. A Brexit without a withdrawal agreement will mean border infrastructure. Nobody wants a border. In the absence of leadership in many of the parties at Westminster, I thank MPs such as Ms Yvette Cooper, Mr. Hilary Benn, Sir Keir Starmer and Mr. Dominic Grieve who are from different parties. They have shown great leadership in trying to finding a solution from the referendum. The Government should thank the people in question, as well as many more who are outside the parties and standing up to be counted. Democracy needs these elected MPs to stand up and be counted. We need a withdrawal agreement or some other mechanism to ensure there will not be a hard border on the island of Ireland.

**Senator Pádraig Ó Céidigh:** Ba mhaith liom cúpla focal a rá mar gheall ar chomóradh an chéid a bhí againn i dTeach an Ardmhéara inné. Ar nós chuile dhuine eile, ba phribhléid agus onóir mhór í dom bheith i láthair. Is mian liom cúpla smaoinemh mar gheall ar an ócáid a chur in iúl. Bhí sé iontach go raibh chuile dhuine le chéile. Ní raibh muid ag caint ar pháirtithe éagsúla. Is Éireannaigh muid uilig. Bhí muid ag caint ar chúrsaí daonlathais. Bhí chuile dhuine ag tarraingt le chéile. Teastaíonn i bhfad níos mó den chineál sin comhoibriú, seachas lá amháin chuile 100 bliain.

Ba mhaith liom rud eile a lua a chuir mé suim an-mhór ann. Glacadh buíochas le go leor daoine. Ceapaim go bhfuil sé tábhachtach go n-aithnímid cé chomh bródúil atáimid as an obair a rinne an Captaen agus a fhoireann i dTithe an Oireachtais le hócáid chomh stairiúil agus chomh hiontach sin a chur le chéile

Tá rud amháin eile le rá agam. Bhí béim an-mhór ar chúrsaí Gaeilge inné. Labhródh faoin teanga go rímhinic. Faraor, ní dóigh liom go bhfuilimid ag leanúint tríd leis sin. Tá mise agus lucht na Gaeilge an-bhuíoch agus an-sásta go ndearna an Taoiseach agus an Rialtas bliain faoi leith - Bliain na Gaeilge - anuraidh. Tá súil agam nach ndéanfaimid dearmad ar an nGaeilge i mbliana, agus go leanfaimid ar aghaidh leis an bhfeachtas sin. Tá go leor le déanamh ó thaobh na Gaeilge de go fóill. Ar an bpointe sin, tugaim cuireadh don Chathaoirleach agus do chuile dhuine sa Seanad agus sa Dáil teacht ar an gCeathrú Rua i mí an Mhárta seo chugainn ar feadh deireadh seachtaine le Gaeilge a fhoghlaim. Tá súil agam go dtiocfaidh siad uilig agus go mbeidh deireadh seachtaine an-mhaith againn. Is cuma má táthar láidir sa Ghaeilge nó ar bheagán Gaeilge. It does not matter if one has very little Irish or a lot of Irish because we will all be there together. I invite all Senators to come. This is being organised through an Acadamh, which is part of NUIG. It provides very professional courses. We should join hands together for the first time. Ba cheart dúinn roinnt Gaeilge a fhoghlaim le chéile.

**Senator Fintan Warfield:** RTÉ has a responsibility to create a space for conversation, debate and dialogue. As the national broadcaster, it has a responsibility to recognise and respect the vulnerabilities and mental health of the people and communities who are the subjects of its debates. Tonight "Prime Time" will feature a conversation about transgender young people. I want to make it clear that young people accessing legal gender recognition certificates does not mean that they will undergo surgery. In an advertisement for tonight's show that has been

aired on RTÉ the presenter Miriam O'Callaghan asks why there has been so little discussion of these issues in Ireland. There are individuals who are desperately trying to transfer to Ireland the division that has been fostered on these issues in Britain. This is not Britain. Our extremely progressive Gender Recognition Act was passed into law in 2015 after a very long conversation about marriage equality and the lives of LGBT people. Since that time, this House has unanimously supported the principle of the Gender Recognition (Amendment) Bill 2017 which focuses on trans young people. There have been conversations. I hope this House can send a message today that we value the contribution of trans people to the diversity of this island and that we reject transphobia in all its forms. The US Supreme Court has today allowed President Donald Trump's ban on transgender troops to come into effect. I remind the House that people like President Trump and others closer to home have a shopping list and that it does not stop with the Traveller or the trans community.

**Senator Paddy Burke:** I would like to be associated with the vote of congratulations to the Houses of the Oireachtas for the way it put on stage yesterday the celebration of 100 years of the Irish Parliament. I thought it was a fantastic occasion. Everything about the whole occasion, including the colour and the decor, was magnificent. I think the Houses of the Oireachtas deserve great credit for putting it on.

I would like to ask the Leader to arrange for the Minister responsible for jobs and small business to come before the House. Small businesses like high street shops, bars and restaurants are finding it very difficult to deal with difficulties related to insurance, rates, employment, PAYE and PRSI. They have to deal with 13 or 14 agencies. They have difficult decisions to make and are operating in difficult times. It would be appropriate at some stage in the near future to have a discussion here on small businesses and how we could help them in some way as a Parliament and listen to them, as well to hear about what difficulties they have on the ground.

**Senator Paul Coghlan:** I concur wholeheartedly with the words of my colleague, Senator Paddy Burke. I am sure other colleagues who I did not hear also spoke about how yesterday was a truly wonderful day. I thank the Clerk and the Clerk-Assistant and every person who was involved in any way in organising the day because great organisation obviously went into it and they did the Oireachtas proud. I wish everybody well. It was delightful to be part of it.

**An Cathaoirleach:** One cannot emphasise enough the gratitude and thanks that most Members and I have for the staff of Leinster House, from the Captain of the Guard to the Seanad staff, the Dáil staff, the ushers and the communications staff for the choreography that went into that event. I happened to be in Dublin on Sunday. I was asked to attend and saw at first hand the great task that was at hand. I was in early again yesterday. It was a major commemorative event and an enormously successful event. Sometimes we take the staff of Leinster House for granted but the Captain of the Guard, the Superintendent and all of their staff did an extraordinary job yesterday. It was not something that was planned overnight and the work that went into it probably went on for a couple of months. I express my gratitude to them personally and on behalf of the House. It was a great occasion and they did a wonderful job.

**Senator Jerry Buttimer:** I thank all Members of the House for their contributions. I join Senators Dolan, Bacik, Byrne, Devine, Higgins, Feighan, Paddy Burke and Coghlan in speaking about the commemorations yesterday. Ar an gcéad dul síos, gabhaim mo fíor buíochas agus mo chomghairdeas le gach duine a bhí páirteach sa chomóradh. Bhí sé an-spioradúil agus inspioradúil. Yesterday was a wonderful day, lá iontach, stairiúil de cheiliúradh agus lá iontach agus speisialta do gach Ball den Oireachtas. Mar a dúirt an Seanadóir Ó Céidigh, tá suim mhór ag

a lán daoine, ach go mórmhór ag gach Ball den Teach seo agus den Dáil i gcúrsaí Gaeilge agus beimid ag plé cúrsaí Gaeilge an tseachtain seo chugainn. Yesterday was a wonderful occasion to commemorate the first sitting of the First Dáil.

On my own behalf and that of the Government, I commend all members of the staff of the Houses of the Oireachtas and all who were páirteach san ócáid speisialta seo. It was a wonderful day. It shows the importance of Oireachtas TV and the need for us to promote and use same as a means of broadcasting the work being done in both Houses of the Oireachtas and committees. In addition, as Senators Warfield and Marie-Louise O'Donnell indirectly referred to in their contributions, it shows the importance of creativity and what happens within this compound of the Houses of the Oireachtas in terms of visits and being able to re-enact significant moments in our history. Yesterday was one such occasion and I offer my sincere congratulations and thanks to all involved. I will not name people but I welcome and congratulate all those involved in the wonderful event yesterday.

Perhaps the pin we all received as Members could be replicated and given to all staff of the Houses of the Oireachtas as a token of our appreciation for their contribution. I happened to be in discussion with a member of staff yesterday whom I will not name. That person has been here since 1982. That illustrates that it is not just a job; it is a commitment. This is a place of work but it is also much more than that. Yesterday's event was fantastic. We were all privileged to be elected. Some of the contributions perhaps offered a dystopian view of the world but I reflect on the fact that we have passed transgender and marriage equality legislation and achieved some infrastructural development. The country is near full employment, notwithstanding the challenges we face. The men and women of the First Dáil would be proud of what this and previous Governments have achieved. I want to put that into perspective.

I join all Senators who condemned the car bombing in Derry last weekend. Violence has no place on our island, north, south, east or west. We had all hoped we had left the dark days of violence behind us. As Senator Ardagh stated, we must nurture and inculcate in all a desire to maintain the peace process through upholding the Good Friday Agreement and bringing all communities together. It behoves us to work to ensure we do not take the peace we now enjoy for granted.

Senator Higgins, rightly, mentioned the brutal killing of the mayor of Gdansk, Paweł Adamowicz, who was stabbed while speaking. We are democrats and democracy is something we cherish. We must work not only to ensure it is nurtured, as Senator Ardagh stated, but also to protect those who are elected as public representatives. We must also protect the right to speak and hold a different viewpoint. On behalf of the House, I offer Mr. Adamowicz's wife, Magdalena, and their two young children our deepest sympathy.

Senator Ardagh referred to the lack of green space in Dublin's inner city. I hope we can engage in a debate on that matter in due course. It is important that a city has green spaces and trees, places of refuge away from the concrete jungle, the traffic and the noise. I will be happy to arrange a debate on that matter.

Senators Devine, Murnane O'Connor, Ardagh and Gallagher referred to today's dispute involving ambulance staff. We all recognise the importance of ambulance personnel but the HSE is questioning the right to have a representation heard. The PNA represents 500 National Ambulance Service staff. The HSE recognises SIPTU which also represents ambulance personnel. I hope we can resolve this issue. It is important that patients not be used as pawns in a dispute.

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It is also important that all voices be heard. I appeal to those on all sides to come to the table.

Senator Marie-Louise O'Donnell raised the very important issue of the Adoption (Information and Tracing) Bill 2016, elements of which are being refined. Work is ongoing and when it is complete, the Bill will be brought back to the House. I certainly hope that will happen in the short term, namely, in the spring.

The Minister for Employment Affairs and Social Protection, Deputy Regina Doherty, has published the Civil Registration Bill 2019 which will allow for same-sex parents to have the word "parent" recorded on birth certificates. That Bill will be brought forward in the spring of this year. I do not have the exact timetable. We have asked the Department for more information but we have not received it yet.

I did not understand the Senator's question about the Assisted Decision-Making (Capacity) Act 2015.

**Senator Marie-Louise O'Donnell:** The legislation has not been fully commenced.

**Senator Jerry Buttimer:** I will obtain information for the Senator on that matter.

I agree completely that the arts and creativity are integral to who we are. Earlier the Oscar nominations were announced and we can all see the success of the Irish in the arts. The Senator is right to ask that we consider this matter. The Joint Committee on Culture, Heritage and the Gaeltacht is debating it this week but I would be happy to have a significant debate on the arts, the arts community and our culture and how they can be part of a new, modern Ireland emerging from the shadows of recession. I would be happy to have that debate and commend the Senator for raising the matter.

I do not have the answer for Senator Conway-Walsh regarding Údarás Na Gaeltachta and the vacant units in County Mayo. Perhaps she might raise the matter in a Commencement debate.

Senator Dolan raised the issue of history. As Members will know, the Minister for Education and Skills, Deputy McHugh, has set up a review of the teaching of history as an optional subject. It is to be completed by the National Council for Curriculum and Assessment in the coming weeks and we will have a debate on it in the House when it is complete.

I do not have information to hand on the health issues raised by Senator Bacik, but I would be happy to liaise with her on them.

I join Senator Byrne in congratulating all of the schools involved in the debate today. I thank them for their work.

Senator Boyhan raised the issue of Bethany Home, as did Senator Norris. The Government has today given a 12-month extension to the mother and baby homes commission of investigation. The fourth interim report has been published today. On Bethany Home, the Minister for Children and Youth Affairs, Deputy Zappone, has said she will wait until she has received the final reports before making any decision. I note the comments of Senators Boyhan and Norris and the commission. On 6 February we will have a debate in the House on the matter raised by Senator Boyhan.

Senator Hopkins raised the issue of the N5 project, which is a very important one in provid-

ing a gateway to the west. A Commencement matter might be a more expeditious way to get an answer. I do not have the answer to hand about the project.

I have answered Senator Devine about the nurses' strike.

In response to Senator Higgins, perhaps we need to have a reflective look at what happened yesterday and some of the contribution she made this afternoon and have a series of rolling debates, as Senator Marie-Louise O'Donnell said. That would be of assistance to us all. I would be happy to talk to Senator Higgins about the matter.

Senator Reilly raised the issue of St. Finian's community college in Swords. Perhaps raising the issue by way of a Commencement matter might be a better way to get a reply.

Senator Norris raised a number of issues, in particular about an Egyptian television presenter. We should all stand with and send a message of support to that person. The Tánaiste and Minister for Foreign Affairs and Trade needs to communicate quite clearly to the Egyptian Government our displeasure at the jailing of any person for interviewing people in a manner that allows differing viewpoints to be expressed on television and in the media. We should all condemn the incarceration of someone for interviewing a gay person. I hope the Tánaiste and Minister for Foreign Affairs and Trade will send a message to the Egyptian authorities on the issue.

On the issue of passports, having the Tánaiste and Minister for Foreign Affairs and Trade come to the House to discuss a Commencement matter might perhaps be a better way for Senator Murnane O'Connor to get a reply. I do not have the information she sought.

Senators Feighan and Ó Céidigh raised the issue of the centenary and the appointment of the first Minister for Foreign Affairs, Deputy George Noble Plunkett, 100 years ago today.

Senator Warfield made a very pertinent point in advance of the RTÉ "Prime Time" programme tonight. We need to send a very strong message of support and solidarity to the trans community which is marginalised and needs support. We need people to understand and be educated properly, not in a sensational way. I hope tonight's programme will be educational, informative and factual. As the Senator rightly said, we should all reject transphobia. We should all work to ensure we bring people on a journey and inform them. There are members of the community who are feeling vulnerable, isolated, rejected and completely unheard. I hope tonight and from now on we can stand together and have that debate and a movement of equality and inclusivity. I would be happy to have a debate in the House following tonight's programme. I thank the Senator for making the remark. As the national broadcaster, it is important that RTÉ inform in a way that is not sensational or derogatory and ensure equality and respect for all people and citizens.

Senator Paddy Burke raised the issue of retail and asked for the Minister to come before the House. I would be happy to arrange for that to happen.

The issue of Brexit was mentioned by a number of Members, in particular by Senator Ardagh. We will have a debate on the issue this evening. Rather than give a substantial reply to Members now, we can have that debate when the Tánaiste and Minister for Foreign Affairs and Trade is in the House later.

I have proposed that at the end of the Order of Business we stand for a minute's silence in

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memory of our late colleague and former Seanadóir Mark Killalea.

**An Cathaoirleach:** I accept the proposal made by the Leader. We will now stand for a minute's silence.

*Members rose.*

Order of Business agreed to.

### **Address by President of the Gaelic Athletic Association: Motion**

**Senator Jerry Buttimer:** I move:

That Seanad Éireann agrees with the recommendation of the Committee on Procedure and Privileges that, in accordance with Standing Order 57(2) of the Standing Orders relative to Public Business, the President of the Gaelic Athletic Association (GAA), Mr. John Horan, be invited to address Seanad Éireann on Tuesday, 29th January 2019 and, unless otherwise ordered, the following arrangements shall apply:

- (i) the Seanad shall meet at 12 noon on Tuesday, 29th January 2019;
- (ii) Standing Orders 29 and 30 shall stand suspended;
- (iii) the Order of Business shall be taken at the commencement of public business;
- (iv) the proceedings in respect of the address shall commence at 1.30 p.m., shall not exceed two hours, and shall consist of—
  - (a) a speech of welcome by the Cathaoirleach,
  - (b) an address by the President of the GAA, Mr. John Horan,
  - (c) a contribution not exceeding five minutes by a spokesperson from each Group,
  - (d) a contribution not exceeding three minutes from other Senators,
  - (e) a contribution not exceeding three minutes from the Leas-Chathaoirleach,
  - (f) a concluding response of not less than ten minutes by the President of the GAA, Mr. John Horan,
  - (g) a speech of thanks by the Leader of the House.

Question put and agreed to.

### **Appointments to Policing Authority: Motions**

**Senator Jerry Buttimer:** I move:

That Seanad Éireann recommends, pursuant to section 62C(7) of the Garda Síochána Act 2005, that Mr. Paul Mageean be appointed by the Government to be a member of the Policing Authority.

Question put and agreed to.

**Senator Jerry Buttimer:** I move:

That Seanad Éireann recommends, pursuant to section 62C(7) of the Garda Síochána Act 2005, that Dr. Vicky Conway be appointed by the Government to be a member of the Policing Authority.

Question put and agreed to.

### **Government's Brexit Preparedness: Statements**

**Tánaiste and Minister for Foreign Affairs and Trade (Deputy Simon Coveney):** The Government condemns in the strongest possible terms Saturday's car bomb in Derry. I spoke to the Secretary of State for Northern Ireland yesterday when I offered both our concern and assistance. The police investigation is ongoing to bring to justice those who are behind this act of terrorism. Such violence has been rejected by the people of this island again and again. The group that carried out this act cannot claim in any way to be acting on behalf of the Irish people. I know that Senators from all parties and none will share in this condemnation. There can be no return to the dark days of the past anywhere on this island.

The Brexit process in the UK is at a critical juncture. The Government regretted the outcome of last week's vote in the House of Commons on the withdrawal agreement, even if the outcome was not a big surprise. Prime Minister May yesterday stated her continuing commitment to the withdrawal agreement and said she would continue efforts to build the necessary support at Westminster. The British political and parliamentary process will take some time to play out. What we need is for the UK to make it clear on the basis of the outcome of that process how it proposes to move forward. Only then, in truth, can the EU consider how to respond.

As Senators know, the backstop is an insurance policy to ensure there will be no hard border on this island following Brexit. It is an essential part of the withdrawal agreement and we continue to advocate for it. However, it is our strong hope a comprehensive and ambitious future relationship agreement will achieve the same end and ensure the backstop is never triggered or needed.

Our EU partners have been consistently supportive and understanding of the unique circumstances on the island of Ireland and the need to protect the Good Friday Agreement. Their solidarity has been consistent throughout the negotiations. This was reaffirmed to me by Michel Barnier as late as yesterday and the unambiguous message remains that there can be no withdrawal agreement without the backstop. Lest there be any doubt, there should be absolute clarity also that the EU negotiates as one and that this united approach will remain intact until the end of the process.

Domestically, preparing for Brexit and the possibility of a no-deal Brexit is a whole-of-

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government priority. Our planning began ahead of the UK referendum and in recent months has become more focussed on our no-deal plans. We are all deeply aware of the potentially profound political, economic and trade impacts of a no-deal Brexit. The Government is taking clear steps to mitigate these impacts, but given the scale and uncertainty surrounding a no-deal Brexit, we must all recognise that if such an outcome materialises, there will be significant disruption and change. I have said repeatedly that it will put significant strain both on the political mechanisms in this country and the economy.

That requires a response from the Government but also preparations by businesses and other affected sectors, with the advice and support the Government is giving. Since July 2018, the Government has made a number of key decisions on Brexit preparedness, including on staffing, ICT and infrastructure at ports and airports. In the light of the risks of a no-deal Brexit, this work is being accelerated and, where necessary, interim measures are being put in place.

On 19 December the Government published its contingency action plan, setting out its approach to dealing with a no-deal Brexit. Members will have seen the further intensification of preparations so far throughout the month of January where we have added significantly to the detail of that document.

We are working on the preparation of temporary sites and infrastructure at ports and airports and accelerated staffing plans through recruitment and redeployment, where necessary.

The Cabinet earlier this month and again today advanced work on the legislation necessary in a range of areas to mitigate the damaging effects of a no-deal Brexit. There are multiple issues, including students who travel between Britain and Ireland, rail services and other public transport services, healthcare, particularly cross-Border, and in the justice and social welfare areas.

As the House will be aware, it is proposed to group all of the legislation affecting different sectors in one omnibus Bill. The Bill will have 17 Parts focused on the broad themes of protecting the citizen and supporting the economy, enterprise and jobs. It will be complemented by a range of measures by way of statutory instrument. Essentially, the legislation will be 17 Bills in one involving nine Departments, including the Department of the Taoiseach, and 28 statutory instruments or secondary Bills will be required to complement it. I look forward to providing all of the detail for the House shortly. I look forward to working closely with all parties and Oireachtas Members to ensure this necessary Brexit legislation will pass through the Houses in a manner which allows for necessary scrutiny but also ensures its passage and enactment before 29 March.

Our membership of the EU and the stability and solidarity it brings are central to our own preparations. The approach in areas of EU competence has included the publication of more than 80 separate stakeholder notices to assist businesses and citizens in their preparations.

The Commission contingency actions plans have provided some welcome reassurance in areas such as aviation and road haulage but they have also emphasised the significant disruption resulting from a no-deal Brexit. The plans have also helped to guide our domestic response. It is also important to say that while they are providing temporary solutions in areas that would otherwise be in crisis post 29 March in a no-deal scenario, particularly aviation and haulage, the solutions are only temporary, by and large, between the end of March and the end of the year.

Stakeholder engagement is also critical. We will convene a fifth plenary session of the all-

island Civic Dialogue on Friday, 15 February, in Dublin Castle. The dialogues have been an invaluable opportunity to hear directly about the all-island implications of Brexit from a variety of stakeholders and across a wide range of sectors.

A no-deal outcome is not the one we want but given the ongoing political uncertainty in London, it is only prudent at this stage to intensify our preparations for a no deal. As the Taoiseach has repeatedly said, we are not preparing any longer. We are putting the pieces in place, hoping they will not be necessary but ensuring we can do everything possible between now and the end of March, just in case.

I am grateful for the ongoing support of all political parties. Parties with which we have a competitive relationship politically have been helpful when it comes to Brexit. That includes all parties represented in this and the Lower House.

Regarding legislation, we are proposing that we will publish the heads of the omnibus legislation on Friday. It will then go to the Office of the Parliamentary Counsel, which has given a commitment to publish the Bill in its full detail on 22 February; therefore, its officials will have just over three weeks to do it. The following week, we will look to take it through Second Stage in the Dáil and the week after that, the week beginning 4 March, we will take Committee, Report and Final Stages in the Dáil. It will be the following week, the week beginning 11 March, that it will be brought to this House. That will be the week in the build-up to St. Patrick's Day. Many Deputies will not be present, therefore, but there is no reason we cannot get the work done in this House, should it be necessary to do so at that point.

In general terms, my approach to this subject is not party political; rather, it is transparent and open. Senators who need detailed briefings on Brexit will have them. I am confident that we will all work together to ensure preparations which are necessary for Senators to do a professional job as legislators in passing highly significant legislation to protect citizens will be accommodated. If we need to pass such legislation, we have a proposed process that can allow it to be done in time.

Nevertheless, this is all contingency planning. The real negotiation concerns how we can achieve an outcome that will allow for the passing of a withdrawal agreement and a transition period of between two and four years to give everybody the time and space to plan for the new realities; that will avoid the kind of crisis many people will face in the event that there is a no-deal Brexit, that will provide the protections the peace process on this island needs, and that will provide the reassurance that no physical border infrastructure will be needed, regardless of the outcomes of the political debates in the next few weeks. However, there is little we can do to provide clarity in those negotiations until we get clarity from Westminster, of which we should have more next Tuesday evening. We might not have all the clarity we need but at least there will be votes on different options. I look forward to the Prime Minister's response to those votes and her proposal for a way forward to which, I hope, we can respond in a helpful way.

Let me be clear: Ireland does not propose any renegotiation of the withdrawal agreement or the backstop provision therein. That is the position of both the EU and Ireland and it was reiterated yesterday by Mr. Michel Barnier and in the past few days by Mr. Jean-Claude Juncker and Mr. Donald Tusk. Despite yesterday's offer of an opinion by a Polish Minister who, it was subsequently clarified, was not speaking for the Polish Government, today in Brussels foreign Ministers lined up to reinforce the point that the position which I outline is the EU's position and that there is strong solidarity and unity behind it. I hope that reality will be part of the de-

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bate at Westminster as we look to find solutions for the future which, I hope, we can find in a new, changed and more ambitious future relationship declaration, on which the EU wishes to work with the United Kingdom, if the British Government wants to move in that direction. We will wait for a response at Westminster this week and next week, but the Irish position could not be clearer. It has been the same position for 18 months and will not change.

**An Leas-Chathaoirleach:** I call Senator Ned O’Sullivan, whom I congratulate on his new position in dealing with foreign matters.

**Senator Ned O’Sullivan:** Go raibh maith agat. I welcome the Tánaiste back to the House and join him in condemning the car bomb in Derry at the weekend. Most of us lived through decades of violence in the North. We saw the futility of that violence, how useless it was and how it put many obstacles in the way of people of both traditions in trying to work together. Thanks be to God, we thought we had put it aside as we moved on from the Good Friday Agreement but where there is a vacuum in politics, there will always be evil, violent men and women ready to fill that vacuum. It is incumbent on us, therefore, to continue to work for political solutions to the difficulties that face us, not only in dealing with Brexit but also in other areas.

To date, the bipartisan approach to Brexit in Leinster House has been remarkable.

*5 o’clock*

Politicians on most sides realise that the significance of Brexit allows no time for point scoring. I am very proud of the position adopted by my party and my party leader, Deputy Micheál Martin, in agreeing to extend the confidence and supply arrangement for another year. Certain commentators and other parties have attacked our position. There has been some criticism from within the party-----

**An Leas-Chathaoirleach:** Not from this Chair.

**Senator Ned O’Sullivan:** Indeed not. However, the longer the current impasse continues the more the public realises how irresponsible it would have been to destabilise the Government and add even further to the confusion in an already fraught situation. I believe the electorate, in due course, will adjudicate on the courageous decision Deputy Micheál Martin and Fianna Fáil have made in that regard.

At the same time, the Government cannot take this consensus for granted, as it seems to have done from time to time. The language of Brexit is changing dramatically. In the beginning, the difficulties at Westminster were a cause for concern. They moved to becoming a very serious worry as it appeared that Mrs. May was not finding any way forward and could not get agreement even within her own party. We are moving very close to the deadline; therefore, the language in that regard has accelerated. There is general awareness among the public that there is a real crisis where Brexit is concerned.

The question in today’s debate is how prepared are we for Brexit. It is no longer an academic question, just as it is no longer a question of preparing for a doomsday situation which, deep down, we do not expect to happen. We are down to the wire, with an ever-shrinking number of days left to get an acceptable deal over the line. To an extent, we have been a bit like the three monkeys. We closed our eyes and ears to what was happening right in front of us, but we can no longer continue to do that. We have to beef up our Brexit strategy on all fronts in the event that there is a no-deal scenario.

I acknowledge the hard work the Tánaiste, Deputy Coveney; the Minister of State, Deputy McEntee, and their Departments have put into this project in recent years. I include Senator Richmond in that. Theirs has been no easy task but, as I said, they have enjoyed the support of my party through thick and thin in this entire period. I am asking the Tánaiste to come clean and tell us here in the Seanad Chamber the extent of our preparations for Brexit. When he went off script towards the end of his contribution, he gave us some indication of the legislative framework, which is welcome and news to me, but it was rather slow in coming and obviates the need for me to use a number of pages of my script, which he will be glad to hear.

People no longer want to hear vague reassurances. The public wants to know what is happening and this is the time and place for it to be told. It is very unfortunate that the action plan was announced on 19 December, just as both Houses were rising for the Christmas recess. We have not had a chance, as parliamentarians, to examine the Government's Brexit plan until now. We have been told that a raft of legislation will be needed. The Tánaiste has indicated a date for it and that we will have omnibus legislation reaching across a wide range of Departments and so on. The sooner we get it, the better. The sooner we see the heads of the Bill, the better. The Tánaiste might advise us when concluding on the level of the drafting of the Bill and whether there are difficulties attending it about which we should be told.

My party's spokesperson on Brexit, Deputy Lisa Chambers, set out our concerns at a press conference this morning. The Tánaiste has responded to her concerns and I hope there will be further clarification when the Taoiseach meets Deputy Micheál Martin and the other party leaders this afternoon.

Other European countries which will be far less affected by Brexit than Ireland have already promulgated necessary legislation, while we are still in the dark. There is also a great deal of confusion, misinformation and half information, for instance, on the employment of additional veterinary officers. We were told initially that up to 600 veterinary officers would be required. The Minister, Deputy Creed, contradicted this at the end of last year in saying he thought the figure would be 150. Farmers are worried about this. We need clarification and certainty on what will happen in the movement of livestock, for instance.

Road hauliers issued a statement lately to the effect that they were totally in the dark. We know that additional lands have been purchased at the major harbours, which is welcome. I hope the Tánaiste will be able to provide further clarification as we move forward.

To a certain extent, we have been distracted by the goings on at Westminster. What happens at Westminster is critical but, to a certain extent, it is a side show. It is impossible to understand the attitude of British politicians. Their bloody-mindedness has been staggering. The public in Britain were sold a bad bill of goods and the Tories have continued to compound the problem. I will never understand the political mentality of people like Boris Johnson, Nigel Farage and Jacob Rees-Mogg. Their capacity for ignoring the obvious is extraordinary. In any event, we must get on with our own affairs.

The Tánaiste might advise us of the position on the supply of pharmaceuticals. He has said he does not want people stockpiling medicines. That is usually a prelude to people stockpiling. He might tell us more about that matter. Also, what is the programme for time-sensitive operations in the transport of agricultural goods which will not last forever?

Already, the Dutch Government has employed 1,000 additional customs officials. We have

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hired only 200, yet it is far more important an issue for us.

Also, there appears to be a poor take-up in terms of business people's awareness of Brexit.

I raise the situation in the North, which is worrying. I note that the leader of Sinn Féin, Deputy Mary Lou McDonald, stated this morning that bringing back the Assembly would not be a silver bullet in terms of Brexit. She used the same expression in terms of Sinn Féin people taking their seats at Westminster. I know I am going over time-----

**An Leas-Chathaoirleach:** The Senator has just run into injury time.

**Senator Ned O'Sullivan:** -----but apart from the unfortunate ballistic analogy, flip answers such as that will not suffice. Sinn Féin was very opposed to the European Union at all stages. Let it come up now with proper alternatives and show real cause in that regard.

We have to make the best of the situation in which we find ourselves. We must prepare for the worst. We have a great deal of work to do in that regard.

**An Leas-Chathaoirleach:** The next speaker is Senator Marie-Louise O'Donnell.

**Senator Marie-Louise O'Donnell:** I am not speaking yet.

**An Leas-Chathaoirleach:** I am sorry. I am giving the Senator a place as part of the Independent group. The next speaker, therefore, is Senator Neale Richmond.

**Senator Neale Richmond:** I warmly welcome the Tánaiste who is a frequent visitor to the House and thank him for his remarks. As ever, they were very clear and give us a good idea of the position. They might cause a few people to pivot on their prepared scripts, but so be it.

I commend the Government on the preparations made so far in dealing with all of the possible consequences of Brexit. We should bear in mind that there is no such thing as a good Brexit.

**Senator Niall Ó Donnghaile:** Hear, hear.

**Senator Neale Richmond:** Brexit will be bad for this island, the UK and the EU, regardless of whether there is a soft, hard, medium rare or a no-deal Brexit crash-out scenario. If I hear the phrase "managed no deal" one more time, I think I will go blue in the face. There is no such thing as a managed no deal. It is an absolute worst case scenario, about which everything is being done on both the European Union and the British side to avoid it. I hope that will continue in the fewer than 70 days until Brexit becomes a reality. Ultimately, when it comes to a crash-out scenario, those of us on this island can never be fully prepared. It would be unfair to assume that everything can be prepared for because there are so many variables that could come into the conversation at a later date but everything that can be done is being done. Regrettably, it is having to be done at this very late stage.

I speak regularly with colleagues in the UK but also across the EU. There is a maddening frustration among continental colleagues who believe this should have been sorted in July. Unfortunately, it was not and we are now in the position where we are edging ever closer to a crash-out scenario, however unlikely we all believe it may be.

I commend the Government's work and take on board some of the comments that have already been made. No doubt there are more such comments to come. We raised concerns about the fact that the action plan was presented on 19 December but we must be fair and recognise

that it could not be prepared until the European Commission had outlined its plans. That happened on the morning of 19 December last. Where criticism is due, make it but be sure to be clear. People state not enough work has been done to ensure the statistics are right and there are those who bandy about the number of 1,000 officials hired in the Netherlands. That number is aspirational. They have not all been hired; the process has not been completed. When comparing and contrasting, it should be remembered that the Port of Rotterdam is the gateway to the entire Continent. That is not the case with Rosslare Europort. The comparison is unfair and needless. When we are trying so hard not just to be bipartisan but also to be multipartisan - we are all working together on this one - we need to be fair in our criticism, as well as our compliments.

In the context of multipartisanship - I am sure that is the wrong word but my English teacher will correct me in due course - I refer to the report prepared by the Seanad Special Select Committee on the Withdrawal of the United Kingdom from the European Union and some of the recommendations made all the way back in July 2017. I thought the report would be dated and ancient history by now but much of the work undertaken in its compilation and many of the recommendations it contains refer to a stage we have not yet reached. Many will not arise until the trade negotiations that will commence soon after the UK actually leaves. I refer, for example, to those recommendations related to the common travel area. I welcome the work that has been done by the Government on that issue in the context of the withdrawal agreement and also the reference to the bilateral discussions last week, as well as the work that has been done on port infrastructure and discussions with the aviation industry. Much of it was underlined in the European Commission's preparedness, as well as in the context of trade. While the vista of a no-deal scenario is on the horizon and very worrying, despite its unlikeliness, the key issues the Government has pursued are in line with many of the recommendations made in the report by all members of the committee such as protecting the integrity of the Good Friday Agreement, recognising the rights of citizens across the island, recognising the importance of protecting the European Single Market and ensuring the relationship between the EU and the UK is as close as possible post Brexit. I will touch on that issue as I conclude my remarks.

What will Irish-UK relations be post Brexit? Many have tried to say UK-Irish relations are at their lowest ebb. They must have very short memories or not know their Irish history to make comments like that. I know from the work the Tánaiste does with his counterparts, including David Lidington and Karen Bradley and yesterday with Jeremy Hunt, that the relationships on a personal, political and every other level are warm and strong. Those of us who meet colleagues from Westminster, as the Leas-Chathaoirleach has done via the British-Irish Parliamentary Assembly, know that relationships are still as strong as possible. I will travel to Westminster tomorrow to speak at a conference, at which there will be five or six MPs who support either leaving or remaining and who come from all parties. We will continue to have discussions. When we welcomed our colleagues from the North from all parties - unionists, nationalists, republicans and others - to our special commemoration yesterday, there was a warmth. It is unfair to state relations have reached to a new low - far from it. We can see that by looking at the institutions of the Good Friday Agreement. We can map what will be the Anglo-Irish, North-South and east-west relationships after Brexit. The latter will absolutely be a relationship much closer than any other EU member state will have with the UK. That will allow Ireland to play a key role in the trade negotiations to ensure everyone in the UK knows we absolutely are its best friend within the European Union.

We also have a responsibility to look beyond Brexit to our role within the European Union

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which will then be a union of 27 member states. We need to double our efforts at our missions across the EU, whether it is with individual member states, within the Permanent Representation in Brussels or semi-State bodies such as Bord Bia, Enterprise Ireland and IDA Ireland. We have to make a financial and emotional investment in our diplomatic team which has provided us with such great service in the most trying of circumstances in the past five or six years. Within 12 months of the referendum, Irish diplomats, officials and politicians had held over 500 meetings with their counterparts. That has stood the test of time. We see it in the warm relations and the comments of President Juncker this morning, Michel Barnier yesterday and the German Federal Foreign Minister. They will stand the test of time beyond Brexit. We cannot let that slip.

I very much welcome the opportunity to contribute to the debate on this matter at every forum. I welcome the contributions of all Members. I know that all Members contribute in a positive manner. That is something we absolutely must maintain. As the Tánaiste stated, now is the time to keep calm and hold our nerve. The Good Friday Agreement will be protected by the Irish and, I hope and assume, British Governments in these testing weeks. We do not need to react to every kite or leak in British newspapers, whatever their hue.

**Senator Niall Ó Donnghaile:** Ba mhaith liom fáilte a chur roimh an Tánaiste. Tréaslaím leis an mhéid atá ráite aige ó thaobh na himeachtaí a thit amach i nDoire Cholm Cille le cúpla lá anuas. I begin by echoing the Tánaiste's words in condemning the events in Derry in recent days. My party's vice president, our MP in the area, our MLAs and councillors have been working hard, with many others, to offer a positive solution and an alternative to those who seek to bring us back to the past.

I thank the Tánaiste, as I have done consistently, for his committed attendance in the Seanad. I acknowledge his attendance to brief us and keep us informed in the best way he can of the situation as it plays out in the Brexit dynamic.

I will note a number of contributions. I agree with Senator Richmond about tempering our response to the agenda of some of those who leak certain red herrings to the media and who seek to further escalate the uncertainty and at times the very justifiable and understandable concern and panic within Irish political life and elements of British political life as this calamity plays out in front of us.

The most recent statement which has very firm credibility is from the Confederation of British Industry, CBI, in the North which has indicated that a no-deal Brexit would result in a loss of £5 billion per year by 2034 to the North's economy. So much for taking back control. That is the reality of the situation we face and which is being inflicted on our people against their will. I always make the point, because I was one of the majority of people in the North of Ireland who voted to remain in the EU, that when we think about all of this in its democratic context, it means that we are having this reckless danger inflicted on us very consciously and clearly against our expressed democratic will.

I welcome the Tánaiste's statement that there will be a reconvening of the all-Ireland Civic Dialogue. It is necessary, positive and useful and will be welcomed by the relevant stakeholders who have sought avenues to contribute and engage with the Government. The Government has been open to this in various forms in recent months and years. It is also welcome that Government representatives will attend the Ireland's Future conference taking place in Belfast on Saturday next. It will be a significant conference and an inevitable outworking and mani-

festation of the mobilisation of civic nationalism and how it has engaged with the Tánaiste, the Taoiseach and their Government colleagues. It is indicative of the live dynamic, not only within broader nationalism in the North but which also permeates right throughout various sectors, traditions and classes as we face further into the uncertain and choppy waters of Brexit. It is important and right that Government representatives will be present and engaged at the event. I am sure they will go with a listening ear and absorb what they will hear from the people on the ground dealing with the realities. They are the people who will deal with the potential fallout from Brexit as we move forward, not least the danger of a no-deal, crash-out Brexit.

The Tánaiste is right when he says we in this House have come together in a very uniform and united way to respond. We have had differences of opinion, which is fair enough. The purpose of these institutions is to provide a platform for the expression of different and legitimate views. I reiterate that it is not the time for party political swipes. It is the second time I have had to make that point in this House during the statements on Brexit. We do not need it. Regardless of Sinn Féin and our abstentionist policy - we all rightly celebrated abstentionism yesterday - increasingly people in the North see Westminster as part of the problem, not part of the solution. With the greatest will in the world - I am no mathematician - Sinn Féin's seven MPs certainly do not go into 230 seats, which was the number by which Theresa May lost her final vote, but *sin scéal eile*. That is a matter for another day.

This debate is about clarity on the Government's preparedness for Brexit. I have a few questions, on which the Tánaiste might reflect. I put them sincerely as they are being asked by people on the ground. The Government states it will defend citizens' rights in the context of Brexit and our citizenship rights as Irish and EU citizens, but one of the most basic elements of any citizen's rights is the right to elect democratic representation. With the allocation of the two additional seats to Ireland after Brexit, we had the opportunity to allocate those seats to the North to continue to afford citizens there the rights and the opportunities to have elected representation and have a voice at the heart of the EU institutions. We have fallen at that hurdle. The Tánaiste might reflect on this. I believe him when he says he does not want to see a hard border in Ireland. I take him at his word and know that he believes that. That is the outcome he has stated he would like but there have been remarks from the European Commission in that regard today. He might reflect on the matter and send a message in response to the people, not least those who live along the Border.

The Government has told us that it will defend, respect and uphold the Good Friday Agreement and I believe it. I take it at its word because it is far too important to do otherwise. However, on the other hand, the Government tells us not to look to the Good Friday Agreement and the potential lifejacket it offers us for a solution to Brexit in the form of a referendum on unity, for which there is an increasing demand, as displayed by the latest polls. If we are going to defend and uphold the Good Friday Agreement, we should also look to it and adhere to it in its fullest.

**Senator Frances Black:** I wish to share time with Senator Higgins.

I welcome the Tánaiste back to Seanad. I am glad that there is continued engagement on Brexit with both Houses of the Oireachtas. It was not long ago that we were in this Chamber marking the 20th anniversary of the Good Friday Agreement, but the closer it gets to 29 March, such debates become increasingly important.

We should not be partisan on this issue. I have said consistently that we need to give credit

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where credit is due. We have strong debates and disagreements in this House but it is important that we also recognise the significant time and energy being put into Brexit both by the Tánaiste, the entirety of the Department of Foreign Affairs and Trade and our diplomatic staff. We have managed to unite the entire EU 27 behind a common position on the importance of the backstop, but we cannot just assume that this was necessarily a given; it took months, if not years, of careful, intensive preparation. That should be noted and recognised.

The Irish position has been made absolutely clear and has strong support in these Houses. The backstop is crucial because it is, essentially, an insurance policy. It is a binding legal commitment that, no matter what future arrangements are made, we will not accept a hard border on the island of Ireland. I cannot emphasise this enough. Recent events in Derry, as the Tánaiste said, are extremely worrying and underscore just how important it is. On that basis, we also cannot afford to be complacent about where we go from here. I fully appreciate, for obvious diplomatic reasons, that we have been very careful in how we discuss what might happen in the coming months and years. We have chosen to emphasise the importance of a legally binding backstop, instead of dwelling on the implications of a no-deal Brexit that would not include such guarantees.

Recent events at Westminster make it clear that we need to work through these implications. We have had the firm support of the EU 27 but the depth of that solidarity will be seriously tested in the event that there is a no-deal Brexit. Significant sacrifices were made by ordinary Irish people to avoid the collapse of the European banking system, for example, and it would be great to see similar support offered if we are facing the worst impact of a no-deal Brexit when we will need financial and other support. We may also be faced with the prospect of an external frontier of the EU running across this island, with demands to maintain the integrity of the EU Single Market, as well as similar World Trade Organization, WTO, obligations binding on both Ireland and the UK. Recent comments by the Polish Foreign Minister were quickly and rightly nipped in the bud but they emphasise that difficult conversations will be coming in the event that there is a no-deal Brexit.

We are currently waiting on clarity from the UK, specifically the UK Parliament, on how it wants to move forward. There is a very real chance we will not get that. Broadly speaking, I can see three main scenarios for the priority of avoiding a hard border. The first is that the UK decides to remain in the EU; the second is that the North of Ireland remains in some form of customs union in the general spirit of what is in the withdrawal agreement, while the third is that a border poll is held on reunification. Worryingly, the current parliamentary numbers at Westminster are threatening the first two options. I fully understand the need for sensitivity on the third, but it is undeniable that the potential for a no-deal Brexit significantly increases the possibility that a border poll may take place in the coming years. That is something we need to be able to talk about in a manner that includes everyone on this island and demonstrates a generosity of spirit and respect for diversity. There is no one narrative; there never is. We need to be able to speak openly and carefully about what a border poll would mean in practice. If people may be asked to vote on reunification, we need to be able to discuss what that would mean economically, politically, socially, and culturally for everyone in Ireland. It is not inflammatory to recognise this possibility and want to account for it in a sensitive manner. The Tánaiste said that he is a “constitutional nationalist”, who would like to see a united Ireland in his lifetime, if possible in his political lifetime. That is an aspiration I share, but Brexit should offer a warning of what can happen when one plunges head-first into a referendum without proper discussion, care, consideration and planning beforehand. We need to be willing to have

these conversations.

I have taken part in discussions with the nationalist community in the North and also with the unionist community who engaged in good faith and regularly asked what a united Ireland would mean, what would the impact be on their daily lives and what would change. We need to be able to account for elements such as the economic impact, recognising any cost but also the potential benefits of an all-island economy. That is something a parliamentary committee could do in a non-threatening, inclusive and sensitive manner, working on a cross-party basis. I would look to the Joint Committee on the Implementation of the Good Friday Agreement where colleagues from all parties and none could engage with key principles of consent and parity of esteem, as outlined in the Good Friday Agreement, in this manner. I believe the attitude would be one of wanting to support the Tánaiste and his Department in such work. It is something we must consider.

Beyond this, we need to ensure our Brexit preparedness is not solely economic. This is something I have consistently emphasised at the committee. I think, for example, of the EU-supported PEACE programmes which have been responsible for incredible projects related to post-conflict recovery and counselling in the North. I think of the educational agreements needed to ensure the same opportunities for Irish students in the North. Post Brexit, how can we maintain crucial environmental protections, as well as human rights protections, both North and South? In terms of infrastructure, is there potential for increased capital investment such as new airport facilities, an issue on which the Tánaiste touched?.

These are issues that require a detailed debate. We must say very clearly now that we cannot have a single omnibus Bill presented here two days before Brexit, with hundreds of pages and no time to engage on it meaningfully. We need to be given time to do our work as legislators. Overall, I thank the Tánaiste and his Department for their hard work so far. I offer my full support in the months ahead and urge him to take the contributions made by this House on board.

**Senator Alice-Mary Higgins:** A great deal has been said and in the short time available I seek only to add to two points that have been made. Others have commended the Government on the role it played in the negotiations and the right emphasis it has placed on the Good Friday Agreement and its importance not only as an internationally recognised legal instrument and agreement but also as something with an extraordinary democratic mandate from all across these islands. It is important we underscore this when we hear talk about democracy being used in some of the debates we have seen in the UK. We have spoken about a hard border and although we have heard the assurance 100 times, we may need to hear it again in respect of ensuring we commit that in any and all negotiations with whatever parties, Ireland will endeavour to ensure we will not return to the hard border either of our own past or the hard borders we have seen in other parts of Europe. I do not believe that is something any of us want. Regardless of the scenario or whether there is a deal or no deal, that is something on which we will have to work.

An equally important part of the Good Friday Agreement is the guarantee of human rights which were given to citizens North and South. Some concern has been expressed in the past week in the House of Lords in the UK by the EU Justice Sub-Committee which noted there seemed to be some dilution in the language being used. The wording on the commitment to the EU Convention on Human Rights changed to “respecting the framework”-----

**An Leas-Chathaoirleach:** Senator Higgins’s time is up.

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**Senator Alice-Mary Higgins:** Really.

**An Leas-Chathaoirleach:** It is, yes. I am sorry.

**Senator Alice-Mary Higgins:** May I have just one minute to finish?

**An Leas-Chathaoirleach:** No. All speakers are running over time. I am trying to get a lot of speakers in.

**Senator Alice-Mary Higgins:** I think we will still probably have time as I chose not to take an extra five minute slot.

**An Leas-Chathaoirleach:** The Senator can have one minute. We will have to call the Tánaiste to respond at 6.05 p.m. I must ask the Senator to wind up.

**Senator Alice-Mary Higgins:** I will wind down. I urge the Tánaiste to address those concerns that have been expressed by the House of Lords about the commitment on human rights.

Lastly, in the legislative programme the Tánaiste set out for the omnibus Bill-----

**An Leas-Chathaoirleach:** I thank the Senator.

**Senator Alice-Mary Higgins:** -----he neglected to include one Stage, namely, the return to the Dáil after amendment in the Seanad.

**An Leas-Chathaoirleach:** The Senator has gone half a minute over time.

**Senator Alice-Mary Higgins:** I would like to be assured that there will be an opportunity for amendment in the Seanad-----

**An Leas-Chathaoirleach:** The Senator has gone half a minute over time.

**Senator Alice-Mary Higgins:** -----and that that Stage will happen. It is important that we plan now, in January, for that to happen in March.

**Senator Ivana Bacik:** I welcome the Tánaiste and thank him for giving us the opportunity to debate Brexit preparedness with him. I begin, as others have done, by condemning outright the dreadful car bomb in Derry and commend the prompt action of the PSNI which had already started evacuation before the warning was even received and the actions of which clearly averted what could have been terrible tragedy.

I also wish to refer to yesterday's impressive and dignified ceremony in the Mansion House where we had our joint sitting of the Dáil and the Seanad and were addressed by the President. The ceremony was conducted with such dignity, in such an appropriate fashion and with such respect for different traditions on the island. It was in contrast to the shambles we have seen at Westminster and the shambolic debates there. Our Oireachtas proceedings are conducted with more decorum and more respect for the views of others. It is quite distressing sometimes to watch the jeering and sneering in the House of Commons on such a serious issue as this and to see a gendered, almost public schoolboy style of debate. That is most unfortunate. I speak as somebody who lived in London for many years and was born there to Irish parents. I love the place. It is unfortunate that the Brexit debate has brought out the worst in British politics.

We have also seen ironies and contradictions in the Brexit debate and the general politi-

cal discourse on Brexit in Britain, not least of which is the irony that London, one of the most ethnically diverse places in Britain, voted so strongly to remain, as did Scotland and Northern Ireland. It is most ironic that the DUP purports to represent the people of Northern Ireland-----

**Senator Niall Ó Donnghaile:** It does not.

**Senator Ivana Bacik:** -----but it does not. It does not represent them in terms of the view that Northern Ireland wishes to remain. Likewise, it is ironic that no Northern Ireland Assembly has functioned for two years, as a result of which there is a clearly a democratic vacuum and an absence of political voices that would genuinely represent Northern Ireland and its interests.

I commend the Tánaiste, his officials, the team in the Department of Foreign Affairs and Trade and across government who have negotiated so hard on behalf of Ireland, not just on behalf of this jurisdiction but also on behalf of the entire island in the absence of a real forum for democratically expressing the views of the Northern Ireland electorate through the Assembly. That has been unfortunate and perhaps contributed to what has been notable from the British political system generally, namely, an ignorance about the potential and real impact of Brexit on this island, North and South.

With some notable exceptions, we have seen MPs and Ministers in Britain demonstrate a real ignorance about the impact on Ireland. There are exceptions of course. I might single out MPs such as Stephen Pound, the British Labour Party MP for Ealing North. Senator Richmond is aware that he gave an 80 second dissection of the Brexit impasse in September which went viral because he outlined very starkly what it would mean for Ireland. He said it was a matter of life and death for the people of Ireland. He pointed to the reality that the problem of a 500 km border with 282 crossing points could not be solved with cameras or surveillance. He said once a border was reconstituted, it would become a target. His words were deeply and depressingly prescient. He also said if one had a target, one had to defend it and that one must also protect the defenders. He further said that once one had uniformed officers on the Border the peace process would be undermined. The European Commission's confirmation today that a no-deal Brexit would mean a return to having a border starkly outlines the seriousness of Brexit, especially the implications of a no-deal Brexit.

We have heard some really good commentary from other MPs such as Keir Starmer and Hilary Benn, both of whom I have met, and Stella Creasy and Joanna Cherry from the Scottish National Party, SNP. I do not wish to condemn British politicians generally, but it has been most frustrating for the Irish side and the EU 27 to negotiate effectively in the dark not knowing what the British side is seeking and to see the split within the Tory Party deepening to the extent where we saw the enormous defeat for Theresa May's withdrawal agreement. Clearly, the withdrawal agreement was the best we could have hoped for in that context but it now seems to be dead in the water. As a Labour Party Senator, I very much welcome the significant shift from the British Labour Party last night. I hope we will see Jeremy Corbyn as Labour Party leader coming out strongly to back a second referendum. Unfortunately, that voice has been lacking but we now see 71 Labour Party MPs, including leading figures such as Sadiq Khan, backing the people's vote in a second referendum. It may be that it would become a more likely outcome in the 66 days left. Many of us very much hope for this. In the absence of any clarity in that regard and in advance of the votes next week, about which the Tánaiste has spoken, it is correct that the Government is now preparing and planning for a no-deal Brexit.

My party leader, Deputy Howlin, raised in the Dáil, as others have done here, real concerns

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about a lack of preparedness and a *laissez-faire* approach to many issues. In particular, he has raised the three stark concerns he has about ports and ferries, the recent worrying announcement by Irish Ferries on the lack of investment at Rosslare Europort and the absence of sufficient infrastructure in ports generally. He has also raised a concern others have raised about the pharmaceutical industry and the availability of short-life medicines in the event that there is a no-deal Brexit. I know that is a major concern for people in Britain also. He has also referred to the need for investment in infrastructure such as the electricity grid to ensure we will not be impacted on in that regard by a no-deal Brexit.

If there is a positive to be drawn, it is the unity of the EU 27 on the backstop. Others have spoken about the ostracising of the Polish Foreign Minister who broke the line and seemed to have been speaking very much on a personal level. The unity of the EU 27 on the backstop and the need for a backstop is very welcome, as is the unity of purpose nationally where we have seen political parties approach the issue in a constructive manner. Opposition parties have worked with the Tánaiste. I commend him for briefing the Opposition throughout the process. He can be assured of the support of the Seanad Technical Group. I think I can speak for them all, although not all members in the group are from the Labour Party. We will work constructively with the Tánaiste. We are very happy to co-operate on the timeline he has helpfully outlined for us for the Brexit omnibus legislation. We are pleased to see the plans for it crystallising.

I am also pleased to see the all-island civic dialogue. I attended previous sessions. It is very useful and helpful to hear stakeholders speak. There is some comfort and positivity to be gained from what is a very negative situation for Ireland from the unity we have had from our EU colleagues and within our own political system. However, there are serious questions about preparedness in specific areas and the need to ensure we will have adequate recruitment of additional personnel, where needed. Ultimately, while preparing for the worst, we must hope for the best. A people's vote with a strong, dynamic and positive "Remain" campaign remains the best outcome for Ireland.

**Senator Colm Burke:** I welcome the Tánaiste. I thank him, the Taoiseach and all Ministers for the work they have done on this matter to date in protecting Ireland's interests. I also thank all those in the Opposition parties for the work they have done and their contributions. We have shown very much a united front in the way we have approached Brexit, which is important because we have also won the support, as some of my colleagues have referred to, of the other member states of the European Union in dealing with the many challenges we face as a country. I also acknowledge the important contributions of my colleague, Senator Richmond, to public debates in both Irish and UK media. Whether it was the Tánaiste, the Minister of State, Deputy McEntee, the Taoiseach, or Senator Richmond, they have very much come across as knowing the issues well and positive about the way forward in dealing with Brexit.

There are many challenges and the Government has made provision for new legislation. It will have 17 parts which will be comprehensive and cover a wide range of areas, including health, which is important. Senator Bacik referred to the challenges we face in this area, as did other colleagues. The legislation will also deal with the areas of finance, taxation, financial services and amendments to EU regulations. In addition to the comprehensive legislation we must now put through, we must also approve approximately 20 separate statutory instruments. They will all have to be carefully drafted to deal with the challenges we face. I thank each and every one of the Departments and the officials in each Department for the work they are doing in that regard because we face a significant sea change, with which we must deal comprehensively in

the way we move forward.

We face a number of other challenges, for instance, the important issue of medicines. The Government has a short timescale to plan to ensure there will be no shortfall or delay in accessing them for those who require medicines. The Minister for Health, the HSE and the Health Products Regulatory Authority, HPRA, have done much work on this issue, but it is one area on which the Government needs to work and which it needs to ensure we will prioritise.

The transport of goods out of Ireland is another challenge. More than €21 billion worth of exports is transported from Ireland to other EU countries. It is important that at all stages Irish companies have access to the transport system to get their goods to their final destination in a timely manner. This is a challenge and something that must be dealt with. The Minister responsible is working on it but it is also important that he receive full co-operation from the various shipping companies, together with the transport organisations and the ports.

We have much work to do but I know that the Tánaiste, together with Ministers, is working on this issue. This is a new era because this is something we have not had to face previously and something on which we must all work together to ensure all the t's will be crossed and the i's dotted, no matter what the issue is. We must be ready for the situation which I hope will not happen where there is no agreement from the UK. It is challenging, but it is also one about which we need to be careful in the wording we use and the comments we make. It is important that the agreement negotiated by Theresa May be finally agreed at UK level and that an agreement be in place by 29 March. I again thank the Tánaiste for the work he is doing in this area.

**Senator Jennifer Murnane O'Connor:** I thank the Tánaiste. This is such a challenging unknown for all of us. Having spoken to people in my area, the issue is the uncertainty about what will happen. I welcome the all-island Civic Dialogue on Brexit to be held on Friday, 15 February in Dublin Castle because it will involve everyone working together to try to work on the serious issues that could face Ireland in the next few months. The greatest concerns relate to the Border, farming, businesses and employment. There is so much to be done, yet so much uncertainty.

I refer to the issue of passports because it is one of the biggest issues in my clinics. I recently spoke to a British national who is married to an Irish woman and has children. Their children hold Irish passports. He inquired about the possibility of gaining an Irish passport but was told that while it was possible, he would have to live in Ireland for one year to qualify for naturalisation, thus citizenship. Can we ask a family to reconcile residency issues or ask them to move lock, stock and barrel to Ireland for one year? It is not practical. This man has an important job in England, as does his wife, and his children are all in school. I would like the Minister to clarify what is being prepared for these hard-working families who travel to Ireland regularly to see elderly relatives and family here. What is our contingency plan in that regard? I would also like to know what Brexit could mean for the right of UK citizens derived from Irish law under the EU freedom of movement legislation to come and live in Ireland without residency permits. These are all important issues. Another man to whom I spoke is English and has lived here for 42 years with his wife. He has children here. He has paid his taxes, including property tax, all his life. He applied for an Irish passport but he was told that for refugees and stateless persons, passports are free; for widows or widowers of Irish citizens, the cost is €200; and for others, the cost is €950. This man does not have €950. What does he do? He has lived here for 42 years, is married to an Irish citizen, has children and reared them and paid his property tax and other taxes. What are we going to do to help these people who need Irish passports?

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I know that I only have five minutes. I ask the Tánaiste for more clarification. It is only 66 more days until we will know whether this will be good or bad for us. At this stage we must prepare. The Tánaiste knows the old saying, "Fail to prepare, prepare to fail". It is a true saying. If we are not prepared for a hard border, if we are not prepared to get Ireland back on track, we are in trouble because it is the Irish people who will end up paying the price. Perhaps he might come back to me with answers to some of my questions.

**Acting Chairman (Senator Gerry Horkan):** The next speaker is Senator Marie-Louise O'Donnell. She has eight minutes.

**Senator Marie-Louise O'Donnell:** I will not take eight minutes.

**Acting Chairman (Senator Gerry Horkan):** All the better because-----

**Senator Marie-Louise O'Donnell:** Two will be fine.

**Acting Chairman (Senator Gerry Horkan):** Excellent.

**Senator Marie-Louise O'Donnell:** I will leave the rest to colleagues who do not keep to the time limits.

The Tánaiste has been an outstanding voice on this issue, both North and South, and given brilliant representation, both distinctive and distinguished. Much has been said about Brexit. As those who know more than me have spoken better and know the issues better, I will not re-hash in any way what they have said. We have given our views in several languages and at all levels and all territories have been represented.

Speaking of territories, I would like to ask a question of my colleague from the North, Senator Ó Donnghaile. He spoke about citizens' rights. Sinn Féin MPs were elected in the North and are not in their seats. Would the Senator outline to us the Northern Irish people's citizens' rights in that regard? It would be interesting to find out what he has to say about that matter since he talked about citizens' rights. Furthermore, regarding the referendum on Irish unity, about which we have been hearing from some senatorial colleagues, when the parties cannot unify at Stormont, how do they expect to unify when it comes to cross-Border unification between the South and the North?

I have one question I would like to ask the Minister about the backstop. We know that it is essential. I know the arguments and that it is not up for negotiation. However, can the Minister outline how far does the fact that it is not up for negotiation create no deal? How linked is the backstop to no deal? In other words, what is the momentary and continuing level of causation between the backstop and no deal? Are the Brexiteers calling the backstop something that it is not? Leaving everything else aside, this is the impasse, or so we are told. I do not wish to know about the 26 member states which voted for it because it is an impasse everywhere. What is the link or level of causation between the backstop and no deal? Perhaps the Minister will answer that question because the rest of what I have listened to in the last hour or so is just wallpaper from some Senators.

**Acting Chairman (Senator Gerry Horkan):** There are 14 minutes left before the Minister responds. I will allocate five minutes each to Senators Kieran O'Donnell and Norris and Senator Paddy Burke can have the remaining time.

**Senator David Norris:** I will not need five minutes.

**Acting Chairman (Senator Gerry Horkan):** That is all the better in letting other Members contribute.

**Senator Kieran O'Donnell:** Senator Marie-Louise O'Donnell is an example to us all for brevity.

**Senator Marie-Louise O'Donnell:** No, but I believe we should have fair play. There have been many speeches and lots of wallpaper - cheap wallpaper at that - from some Senators but not from others. It is selfishness when it comes to time.

**Senator Kieran O'Donnell:** I welcome the Minister. He is in the cockpit and dealing with this issue daily. It is implicit in the Good Friday Agreement that there will not be a hard border. I would have thought that the UK, as one of the principal partners in that agreement, would wish to do nothing to undermine it. If there is a hard border, what impact will it have on the Good Friday Agreement? That is logical.

Second, the uncertainty Brexit is causing is as big an issue as the outcome. I see no upside to Brexit, particularly for us. Many of us follow the British Premier League and, consequently, watch British television channels. I find myself increasingly watching the news on Sky News and the BBC. "The Andrew Marr Show" is a weekly diet for me. I watch it in order that I can find out the thinking in the UK. The Minister can give his view on this but I have noticed a drift, certainly in the Labour Party, towards holding a second referendum. It appears to be a logical step on the basis that if a general election were to be held, it might not be specifically about the single issue of Brexit. A referendum is democratic. We hold referenda in this country. I support that because I believe the people are sovereign. What is the possibility of a second referendum being held in the UK?

Third, I welcome the Brexit preparations. I hope common sense will prevail. In the UK there is a danger that the British Parliament is playing the man rather than the ball. Members have found themselves in a position where they have no experience of what we have got used to by stealth, which is coalitions collaborating. Who would have thought in early 2016 that a coalition Government of Fine Gael and the Independent Alliance, with the support of the supply and confidence agreement with Fianna Fáil, would have survived until now? That has been in the national interest. What the UK needs to consider is what is in its best interests. There is no upside to Brexit either for here or the UK. I believe a second referendum could provide a solution. It would be a decision of the people in the UK. I am not certain that people were fully aware of what they were voting for when the first referendum took place. It is now a question of finding a way that is ultimately in everybody's best interests. I do not foresee Europe being strong without the UK or the UK being strong without the EU. In our case, Britain is our major trading partner and for many in our indigenous business sector, it is their only trading partner.

I ask the Minister to give his view on the Good Friday Agreement, the impact of not having a hard border and whether it is implicit in the agreement. I also seek his opinion on whether there is scope for a second referendum in the UK.

**Senator David Norris:** As I have spoken at length on this subject, I do not intend to take long or repeat myself. I have referred previously to the insanity of placing such a politically complex matter before the most politically unsophisticated and illiterate public in Europe. I can say that as I am half English. I am not racist in this matter.

I admire the dignity that has been displayed by political leaders from all parties in this coun-

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try in the face of ignorant and ill-informed comment from political figures in England. There were reasons the people voted in the way they did. First, they have shown themselves to be rather unsophisticated politically. However, a large part of the response was in reaction to the fact that governments all over the world, including in the United Kingdom, in the face of the economic crash opted straightaway to rescue the financial institutions that were criminally responsible for causing the crash in the first place. They allowed the people, the citizens, to go to hell. Of course, that caused a response, even though it was an unfocused and largely illiterate response.

One of the most unattractive prospects has been the sight of people such as Mrs. Theresa May violating their beliefs. Mrs. May believes in remain but she pushes leave policies. This is utterly disgraceful and to be condemned. It is not democratic. People ask if Members of Parliament know more than the people. Of course, they bloody do. If they did not, they would not be elected. If one thinks dustmen know more about financial institutions and the way the system operates, put them in parliament. By and large, however, they do not, although I was rather surprised to see a dustman winning “Brain of Britain” on the topic of James Joyce. He knew everything, including a great deal about *Finnegans Wake*.

The result was close and the people voted having been basted in a swirl of lies and deceit by the Brexiteers. It may not be politically correct to say Members of Parliament know more than their constituents but it is clearly common sense. English politicians should develop, at last, a little backbone and spine and stand and speak for the things in which they believe. They should develop some principle. So what if it costs them their seats? They are supposed to be there for the good of the people, not for their own or for the interests of their parties. They should be for the interests of the country. Nobody except a complete eejit would believe it is in the interests of the United Kingdom to leave the European Union.

I will conclude on the issue of a second referendum. People in England say it would not be democratic. That is absolute rubbish. It is the most democratic thing possible. They did not have a proper debate before it. We have only had the debate since they made their half-baked decision. Let us have a referendum now when people know the issues and about the cliff over which the political parties are determined to trundle them. I am a great admirer of Jeremy Corbyn but I wish he would get off the fence and do something proper.

*6 o'clock*

**Senator Paddy Burke:** I think Senator Norris is being very unfair to Prime Minister Theresa May. She is trying to do the best she can for the decision the people made.

**Senator David Norris:** She is violating her principles.

**Senator Paddy Burke:** The British people decided to leave the EU. I think Prime Minister May is trying to carry out their orders in the best possible way she can. I congratulate the Tánaiste on the intense work he is doing over long hours to keep the Irish cause and the Irish position to the fore in Europe. I would like to ask a number of questions, the first of which relates to the possibility of a hard border with lots of checks and controls. When the EU Commissioner for finance came before the Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach, I asked him specifically about who would cover the costs of border controls. He said a portion of the money collected at customs posts would go towards covering the costs of setting up and operating border controls. If the UK stays within the customs union and there

is no great need for border controls, I am sure significant costs will still be incurred when collecting customs. The Irish Government will have to come up with the cost. It might not be in a position to do so through tariffs or anything else. Regardless of whether we have a hard border or the UK stays within the customs union, will the EU make a contribution towards the establishment by the Irish Government of European border controls? The Tánaiste has mentioned that legislation will come through both Houses of the Oireachtas in mid-February. In the light of the composition of the Seanad and the Dáil, it is not beyond the bounds of possibility that this Parliament will disagree with the proposals made by the Government in that legislation. If significant changes are made to the legislation in question, will it have a significant impact on our position at European level? What would be the consequences of changes to the legislation to be introduced by the Government?

**Acting Chairman (Senator Gerry Horkan):** As no Senators who have not already contributed are looking to contribute, I ask the Tánaiste to bring the debate to a conclusion.

**Tánaiste and Minister for Foreign Affairs and Trade (Deputy Simon Coveney):** Perhaps Senator McDowell would like to speak for a couple of minutes.

**Senator Michael McDowell:** No.

**Acting Chairman (Senator Gerry Horkan):** Is the Tánaiste suggesting the Senator could prolong this debate?

**Senator David Norris:** He is still residing in 1919.

**Acting Chairman (Senator Gerry Horkan):** If the Senator were to speak until 9.30 p.m., we would not reach the Judicial Appointments Commission Bill 2017.

**Senator Niall Ó Donnghaile:** I know to what I would rather listen.

**Deputy Simon Coveney:** I am afraid there is no filibustering on this one. Maybe that should be the new tactic.

**Senator Kieran O'Donnell:** There may be method somewhere in there.

**Deputy Simon Coveney:** Many questions have been asked. I would like to make a few comments to provide clarity. Some quite generalised statements were made to the effect that we were not sufficiently prepared or that there was not enough detail. I suggest anyone who has read the document we published on 19 December will see that while it does not have all the answers, it certainly has a lot of detail. We could not publish the contingency planning document until the European Commission had released a series of documents and memos on planning for a no-deal Brexit in areas of EU competence like aviation and road haulage, which it did that afternoon. It would not have made much sense for us to have produced a document dealing with up to 20 sectoral areas, in great detail in some cases, until we could show we had answers in the cases of sectors that would be vulnerable in the event that there was a no-deal Brexit. The haulage licensing sector is an obvious example. The temporary solution we have until the end of the year to enable EU hauliers to access the UK and *vice versa* involves the waiving of the licensing requirements that would normally apply to a third country. In aviation, the safety certification of British airports will be extended beyond the date of a no-deal Brexit, again on a temporary basis, to facilitate point-to-point access into the EU from the UK for non-EU airlines.

These are the kinds of practical things where there is real detail. Ireland cannot provide that

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detail on its own; it needs to be provided by the EU collectively. Approximately 80 contingency plan papers have come from the Commission at different times. Most of it is contained in our rulebook for contingency planning which is evolving and changing all the time. We built on the detail last week by bringing four memos to the Government, one of which dealt with access to medicines. As long as Britain retains its access as a member of the EU, between 70% and 80% of all medicines in Ireland will continue to come here from or through the UK. After Britain leaves the EU, many of those products will need to have a different route into Irish pharmacies and hospitals because they will no longer have the authorisation of the EU Medicines Agency in Britain. Therefore, we may have to look for alternative routes to market. Last week, the Minister for Health, Deputy Harris, provided a lot of reassurance inside and outside the Cabinet that there would be a continued supply of medicines beyond 29 March in the event that Britain crashed out of the EU.

We have also dealt with the complexity of the transportation of goods to and from this island. The vast majority of goods that come to Ireland come via the UK landbridge. Every year, approximately €21 billion worth of trade comes on and off this island via roll-on, roll-off haulage services. Helpfully, the UK has committed to signing up to the international transport convention which essentially allows a container to be sealed in Dublin, taken across Britain as a landbridge and brought back into the Single Market in France or the Netherlands without being checked. That does not solve a potential traffic jam in Dover which could be many kilometres in length. There is concern that we need to have contingency plans to get goods to and from this island, without being able to use the landbridge that is the UK, in as efficient and timely a manner as we do today. There have been detailed discussions between the Department of Transport, Tourism and Sport and shipping companies to look at issues around capacity and access points, etc. Likewise, infrastructure is being put in place at Dublin Port, Rosslare Europort and Dublin Airport, the three key access points into Ireland from the UK, to ensure we can, if we need to, comply with the necessary EU requirements for customs checks, sanitary and phytosanitary checks and health checks, etc. from 29 March. We are going into a great deal of detail on what exactly we are doing with regard to parking bays, inspection bays, staffing numbers, ICT systems and so on.

We have also outlined what is needed in terms of legislation. By the way, this is not being done at the last minute. The Cabinet signed off on the heads of the legislation today. As nine Departments are involved, some presentational work is required before it can be published as a collective Bill. That will be done before the end of this week. The legislation will then go to the legal draftsman. The target date for its publication is 22 February. I was asked whether we were factoring in enough time, in the event that amendments were made in the Seanad, to allow the legislation to be brought back to the Dáil to be finalised. That is a perfectly valid question. We hope to conclude Committee, Report and Final Stages in the Seanad on 13 and 14 March. That will provide enough time to go back to the Dáil the following week, if necessary, to finalise the legislation in order that it can be signed before the end of March. We have factored in a little cushion room at the end, but we need to be disciplined as a Parliament in both Houses to pass emergency legislation, if necessary.

There are some experienced legislators among the Senators who will understand what we are doing. An example of the situation is the current conditions of cross-Border healthcare, where people from County Donegal go to Altnagelvin hospital and children travel from Belfast to Dublin for specialist paediatric care. We need to ensure we protect that kind of normalisation which we have created on this island, where we share health infrastructure in a way that makes

sense, both north and south of the Border. That seamless relationship of health provision which works for everybody is the kind of matter for which we will have to legislate because we will no longer operate in a Single Market, customs union and shared Union in a way that does not involve borders for goods, services or people.

The issue is the same for students. We must ensure the Government can continue to support Irish students going to university or college in the UK, British nationals coming here and so on. Likewise, basic services such as cross-Border transport, including rail networks and the train service from Dublin to Belfast, will travel from the EU to outside the EU before returning. We take these circumstances for granted in a union but we will need to legislate for them in the context of a no-deal Brexit.

In important areas such as welfare provision or pension provision, many people in Ireland receive part of their income from a British pension, while many Irish people in the UK receive part of their income every week from an Irish pension. That is all part of EU common recognition, the necessary EU directives and so on, but we will have to replace some of those measures with legislation in both the UK and Ireland and a bilateral understanding to ensure a continuation of income post Brexit. People do not even think about these matters but they have a significant impact on everyday life and we will have to legislate for them. There are also other complex financial areas such as the central securities depository for the buying and selling of shares, where we rely on a UK-based system and will need to legislate to facilitate them in the future.

I could go on because there are many other areas but we will have an opportunity to debate them with detailed explanations. I reassure Senators that there is preparedness for a no-deal Brexit and what we call a central case scenario. The latter is still the most likely scenario, where there will be a transition period of somewhere between two and four years followed by a Brexit which will result in changes that we will all have to learn to live with, legislate and prepare for. Either way, legislation will be needed. If that legislation must be passed in an emergency way on 29 March, however, we will accelerate our state of preparedness to be as ready as we can be.

No matter how good we are at no-deal contingency planning, however, we will not be able to create a situation where the *status quo* persists through a no-deal Brexit. It will be an extremely demanding time for Ireland - for many across the economy, for many vulnerable sectors that rely on seamless trade between the UK and Ireland and for the fragile peace process, North and South, in the absence of devolved government in Northern Ireland, which is unlikely to be back up and running by 29 March. I hope I am wrong in that regard and we will work to break the current political impasse in Northern Ireland.

I will finish with one other aspect of the Border issue because it has been raised by a number of Senators. I have missed a number of other matters, but I will be happy to return to them if Senators wish to discuss them with me afterwards. To give clarity on the Border issue, the Government is not preparing in our contingency planning for physical border infrastructure between the two jurisdictions on this island and we will not start doing so either. We have a deal that took two years to put in place, that addresses all of the complexity of both the politics of the issue and the legal, regulatory issues thereof, and that has found a way to prevent in a worst-case scenario the requirement for physical border infrastructure by creating regulatory alignment and putting a customs arrangement in place. That deal was done and signed up to by the British Government, EU institutions and EU governments. To Theresa May's credit, she insisted on doing that, despite pressure not to do so, and continues to defend the need for a

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backstop, in spite of many others making a political football out of the issue and describing it as something it is not, namely, a threat to the constitutional integrity of Northern Ireland, although, unfortunately, that has become the narrative on the backstop.

I have also noted that the absence of a backstop and a deal creates a complex and challenging situation for the Government to work with the British Government and the EU institutions to find a way of avoiding the need for physical border infrastructure on the island of Ireland. The idea that we would throw away a solution which took two years to put together and to which everyone has signed up because it has become something at Westminster that it is, in fact, not is very frustrating. The focus should be on asking those who advocate doing away with the backstop to answer the question of how they would solve the issue because they also advocate for no border infrastructure. They make the simplistic argument that because they, the Irish Government, the UK Government and the EU do not want it, there is nothing to worry about. As Theresa May, the Taoiseach and I have said many times, the issue cannot be wished away. Rather, a legal, regulatory mechanism that is agreed to by all sides is needed to reassure people that we do not face border infrastructure in the future as an unintended consequence of Brexit, given our obligations as an EU member state to protect the integrity of the EU Single Market and the customs union, of which we are a part and because of which we thrive.

Deal or no deal, we will insist on finding ways to avoid having border infrastructure on this island, but that job will become highly complex and difficult if we do away with an agreed mechanism to solve the problem and create the time and space for a future relationship agreement which, I hope, can be so close and comprehensive that the backstop will never be required to be used. Let me be clear: we continue to defend the withdrawal agreement in full, including the backstop, because nobody has alternative solutions to the problem in London, Dublin or the EU. The only solution is through regulatory alignment and those who talk about technology on the physical border do not understand the problem or the need for a level playing field to protect an all-island economy, whether for farmers, fishermen or those manufacturing a product, north or south of the Border.

I look forward to returning to the House. I hope I will not have to return with the legislation but if I do, I look forward to Senators' co-operation and talking to party leaders in preparation for it to ensure all of the information is available in order that nobody will be asked to rush matters and that, if necessary, we can pass emergency legislation for the sake of the country in a timely and efficient manner.

**Acting Chairman (Senator Gerry Horkan):** I thank the Minister and wish him well in all of his endeavours in the next few months. I am sure I speak for all of us.

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

### SECTION 39

Debate resumed on 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.”.

- (Senator Michael McDowell)

**Acting Chairman (Senator Gerry Horkan):** I welcome the Minister, Deputy Flanagan, back to the House and wish him a happy new year. This matter is to be adjourned not later than 9.30 p.m., if not previously concluded.

**Senator David Norris:** I thought it was 9.15 p.m.

**Acting Chairman (Senator Gerry Horkan):** The document in front of me states 9.30 p.m. and that is what was agreed to on the Order of Business. We are on amendment No. 85b. When we concluded the last day, Senator McDowell was making his third contribution and in possession. I invite him to continue on No. 85b before I return to the Minister.

**Senator Michael McDowell:** On the last occasion before the Christmas break, we were discussing a proposal on my part and the part of Senators Boyhan, Craughwell and Norris for the amendment of section 39 by the addition of three additional subsections, one of which was to provide that nothing in the Bill should 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 respect of those courts, including the offices of Chief Justice of Ireland, President of the High Court and President of the Court of Appeal. Subsection (6) of the proposed amendment was to provide that a member of those courts would still be able to notify the secretary to the Government in writing of his or her willingness and availability to be appointed to any vacancy for any such judicial office mentioned in the first subsection and to provide that where a judicial office mentioned in subsection (5) stood vacant that in the ordinary course the commission should seek applications from persons who were otherwise eligible for appointment to such office such as practising barristers, solicitors or members of the District Court or the Circuit Court, as the case might be.

I want to point out to the Minister something by which I was taken aback. During the Christmas break there was some coverage of this legislation and its passage through this House. The coverage was generated by the Minister for Transport, Tourism and Sport, Deputy Ross. On 2 January he said it was totally unacceptable to see inordinate delays because of vested interests and that it was a terrible waste of parliamentary time. I would not expect him to say any different. In an interesting *Irish Examiner* article he went on to say: “The Irish Times has been constantly critical of him for some time ... the opposition there which is relentless is all down to their opposition of the Judicial Appointments Bill.” He was effectively saying that the poor press he was getting generally in *The Irish Times* largely stemmed from its concern about this legislation, which is a bit over the top because his other activities merit close scrutiny and

sometimes condemnation, with or without this Bill. He said: “The bill has passed the Dáil but is being filibustered in the Seanad and being cheered on by the Irish Times which is a fairly irresponsible attitude for the newspaper, but that is up to them.” On 31 December he said:

The filibuster by legal insiders in the Seanad has come up with an ingenious new delaying ruse. They will appeal to the judiciary itself to make independent judgments on the very system of political appointment that landed them in their current positions. Wow.

I will stop there. I presume that was a reference to a suggestion on my part that the constitutional issues in this Bill would be well teased out by an Article 26 reference, which is within the power of the President.

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

**Senator Michael McDowell:** In reference to that, to so misconstrue and misrepresent Article 26 of the Constitution so as to say effectively a “new ruse” had been dreamed up to allow them to consider the validity of the terms of this legislation before the President signed it into law and say it was somehow designed to assist a conspiracy of judges and other opponents to effect the way in which this legislation was passed or whether it was passed at all is demeaning for a Minister. The President’s role in this is for the President to operate under Article 26. It is a matter for him to consult the Council of State and take its advice but to exercise in the last analysis his own personal judgment as to whether an Article 26 reference would or would not be appropriate.

I refer to the suggestion, therefore, that a “new ruse” was to:

Appeal to the judiciary to make independent judgements on the very system of political appointment that landed them in their current positions. Wow.

That was a disgraceful remark for any Minister in the Cabinet to make about the Article 26 reference process. It is disgraceful in many respects because it shows remarkable ignorance and a remarkable disloyalty to the terms of the Constitution because this legislation is eminently suitable for an Article 26 reference if that is the view of the President. I do not presume to advise the President on this issue, although I have clear views which I have expressed.

The point I am making is about why it is wrong for a Minister to try to impugn the Article 26 procedure, as applicable to this Bill. It is wrong because if the Bill is unconstitutional for any or all of the reasons I have proposed or others which I have not yet seen or which may occur to others on an Article 26 reference, or if any part of it is arguably unconstitutional in a manner that would require or justify such a reference, I will say the very purpose of Article 26 is to make sure something which becomes law and which should be looked at before it becomes law should have an adjudication made on it in limited circumstances. From my experience as Attorney General, Minister for Justice, Equality and Law Reform, Tánaiste and a member of the Council of State, I know that Presidents are very sparing in their use of Article 26 precisely because of the *stare decisis* rule to the effect that once a Bill has been referred to the Supreme Court under Article 26 and found to be valid, the matter may never again be canvassed in any court at any level. Commentators query whether that should be the case. I would not have inserted it into the 1937 Constitution but it is there and, as a result, Presidents rightly take the view that they should not cut off constitutional challenges to legislation for all time where factual situations, changing values and views on the Constitution may emerge which nobody could envisage and which might justify a constitutional challenge to legislation.

The converse is equally true. Why is Article 26 there and why would the President refer the relevant matter to the Supreme Court? There are circumstances in which, having regard to a number of distinct issues, it is crucial that a preliminary check before final promulgation as a law by the President's signature take place. One of these is that if legislation which had the effect of unconstitutionally tainting the manner in which judges were appointed were to be passed, it would be far better if that was discovered at the earliest available opportunity. There are two reasons for this. The first is that there can be downstream consequences of appointments being made in a unconstitutional manner. The second is that the fact that whether a challenge might be made depends largely on who is likely to make it. Without going into an overly long discussion on the matter, we must consider who is likely to make a challenge of this kind. The person who is most likely to do so is somebody who is directly affected by the legislation. Will it be a disappointed judge who believes that he or she was improperly excluded from being shortlisted by unconstitutional legislation? Will it be a disappointed would-be appointee to a position on the Bench? Who would have *locus standi* to challenge this? It is perhaps not just anybody who is an ordinary citizen. It might be argued that ordinary citizens simply do not have it. In the context of some views of the law, it might be argued that they do have standing.

**Senator David Norris:** I think they do. It affects them.

**Senator Michael McDowell:** It affects them, albeit indirectly and distantly. Article 26 has functions, one of which is to deal with situations where something the President is considering signing into law constitutionally appears suspect. Another function is in circumstances where the President comes to the view that it should not become law until it is tested because it is unlikely that an action will be taken subsequent to his or her signature of the Bill and its promulgation as a law that somebody will be in a position, without significant embarrassment, to make such a case. The Minister criticised me for using the term “embarrassment” in the context of asking sitting judges to make applications for all promotional appointments. Surely it would be far more embarrassing if a member of the Judiciary started an action, the subtitle of which is the pop song “It Should Have Been Me”.

**Senator David Norris:** To quote the Minister for Transport, Tourism and Sport, Deputy Ross: “Wow.”

**Senator Martin Conway:** Give us the words of the song.

**Senator Michael McDowell:** That would hardly be an edifying or proper position in which to put a judge, as the only person who could really protest about the new method of requiring all judges to submit themselves to external adjudication and exclusion by a process which is utterly non-transparent, from being shortlisted or made available to the Government as a would-be appointee. That judge would have to litigate. It would be deeply embarrassing and unedifying. It is wrong to put anybody in that position. If anybody was of the view that this process tended to subvert the independence of the Judiciary by requiring its members to periodically and frequently make applications for promotional appointments, a phrase which I use loosely, that person would find it exceedingly embarrassing to make a claim that the process somehow prevented him or her from being shortlisted, especially since he or she would not be told that he or she had been shortlisted or not. We would have discovery issues and other unsatisfactory aspects.

On the remarks attributed to the Minister for Transport, Tourism and Sport about the new ruse of having the Judiciary look at this issue under Article 26, it is not a ruse at all. It is a per-

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fectly sensible issue for this House to consider when it is trying to come to the view of whether there are constitutional difficulties which should make us hesitate. It is interesting to note what the Minister, Deputy Ross, is reported as stating on this subject by the *Irish Independent*. The article in question reads:

“By delaying the judicial bill in the Seanad, they’re perpetuating political patronage, they’re perpetuating political favours,” the minister said in an interview with the *Sunday Independent*.

“That is what they are doing. So, if that’s what they want to do, let them say so,” he added.

“They’re not dictating policy because they are not introducing new policies. They’re quite destructive, that’s all.”

It continues with a fascinating statement that those behind the delaying of the legislation were “horribly powerful” people. Then the Minister stated, “We beat the vintners and we’re going to beat the judges and barristers.” Those are shameful words from any Cabinet Minister.

**Minister for Justice and Equality (Deputy Charles Flanagan):** I am not here to defend the comments of someone who is not present but I do not think the intention was to physically beat anybody.

**Senator Michael McDowell:** No, quite the reverse.

**Acting Chairman (Senator Gerry Horkan):** I do not think anyone suggested that.

**Deputy Charles Flanagan:** The Acting Chairman must not have been listening.

**Acting Chairman (Senator Gerry Horkan):** I was. The idea-----

**Senator David Norris:** There is nothing worse than a reformed tart.

**Acting Chairman (Senator Gerry Horkan):** Much as I may not have wanted to listen, I was listening when Senator McDowell used the term “We beat the vintners.” I do not think I saw the Minister, Deputy Ross, go out and physically beat vintners either. I presume Senator McDowell’s inference was that he had won his row with the vintners.

*(Interruptions).*

**Acting Chairman (Senator Gerry Horkan):** I was listening to the Senators. I also listened to the Minister, Deputy Flanagan.

**Senator Michael McDowell:** I am grateful to the Chair. I do not believe it was an admission that he had physically beaten them.

**Deputy Charles Flanagan:** Is it in order that the past 20 minutes have been devoted to criticising somebody who is not in the House to defend himself?

**Senator Martin Conway:** That is a fair point.

**Senator David Norris:** Criticising his views is not criticising him. This is criticising views that appear in the public forum.

**Acting Chairman (Senator Gerry Horkan):** At the start I suggested Senator McDowell had spoken three times on this amendment and was in possession the last time. The difficulty is that he was referring to the comments of the Minister for Transport, Tourism and Sport, Deputy Ross, which were related to amendment No. 85b.

**Senator Michael McDowell:** Yes.

**Acting Chairman (Senator Gerry Horkan):** That is the issue. They were related to the amendment. It is not a general discussion about the Minister, Deputy Ross's contribution. If I am right, he was discussing amendment No. 85b in his comments. That is what we are talking about.

**Senator Michael McDowell:** If he had read it. I think he does take a close interest. The other point-----

**Senator David Norris:** The Minister was asleep.

**Acting Chairman (Senator Gerry Horkan):** I am in the Chair. I am independent.

**Senator Michael McDowell:** I am grateful to the Acting Chairman, but I also make this point. This is a Government Bill. Under the Constitution, the Government meets and acts as a collective authority. The Minister for Justice and Equality, Deputy Flanagan, is here representing the Government and part of his collective authority, his Cabinet colleague, has said those things-----

**Deputy Charles Flanagan:** I do not intend to read the comments.

**Senator Michael McDowell:** What?

**Deputy Charles Flanagan:** I have not read the comments to which Senator McDowell refers and do not intend to read them.

**Senator Martin Conway:** Wise words.

**Senator Michael McDowell:** On the other hand, I do not read much of what is attributed to the Minister's colleague, but this jumped off the page at me and I thought the Minister should be aware of it. He is now aware of it. He also told the *Sunday Independent* that *The Irish Times* had been "ranting and raving in a kind of almost fervent zealotry" about his proposals. He said, "They're very keen to stop it and they expressed that editorial opinion in the last year and that's their point of view, I don't think it's the case with rest of the media".

Let us be very clear on the question of whether this relates to promotional appointments, which is what we are dealing with. As I understand it, the Cabinet has made judicial appointments to which this legislation would apply on 36 occasions. That was under the Judicial Appointments Advisory Board system. Some 36 appointments have been made to every court in the land-----

**Deputy Charles Flanagan:** Including today.

**Senator Michael McDowell:** I am glad to hear the Government has done it today.

**Deputy Charles Flanagan:** Excluding today then.

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**Senator Michael McDowell:** Excluding today.

**Deputy Charles Flanagan:** The Senator had not heard about it.

**Senator Michael McDowell:** I had not heard of it. There are more in the pipeline. I am glad to hear it.

**Senator Martin Conway:** Some very good judges were appointed today.

**Senator Michael McDowell:** It makes it very clear to me. The statement that this is about cronyism and perpetuating political patronage and favours and that that is what I am doing here really needs to be underlined when the Minister's own Cabinet colleagues have made 36 appointments. Either those are good appointments - I think they are good appointments - or they are not. Either they are exercises in political patronage or they are not and I do not believe they have been. Either the appointments that have been made fall into the category of political favours being given to people or they do not.

The Government, the Taoiseach and the Minister for Justice and Equality should publicly condemn that kind of language about the decisions the Government has made and say it is unacceptable. It must state that far from depoliticising the appointment of judges, this language accuses the Minister's colleagues in the most scandalous way of engaging in patronage and favour giving without any justification whatsoever. It is about time that Fine Gael got off the fence completely and admitted that it does not agree with this legislation. The great majority of Members of both Houses of the Oireachtas from the Fine Gael Party, with whom I have had private conversations, do not agree with a word of this legislation.

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

**Senator Michael McDowell:** Let it be there. It is scandalous that members of the Government, from the very top to the lowest member of the Government, whoever that might be - I have a candidate in mind, I have to say - refuse to condemn this kind of language in respect of decisions they are making. I really resent it. It is perfectly-----

**Deputy Charles Flanagan:** I have done so in the Dáil and the course of the 75 hours of this debate, if the Senator will check the record. I am not going to repeat it.

**Senator Michael McDowell:** It is about time that some discipline was imposed in the Government. Instead of telling us how to do our business in this job, I suggest the Government meet and act as a collective authority. Either it is engaging in patronage and favour-giving or it is not. If any member of the Government thinks the old system is inherently an exercise in patronage or favour giving, he or she should resign or the Taoiseach should tell him or her to stop making those remarks. It amounts to a dissent and an imputation about the quality of decisions to which the relevant Minister is a party.

**Senator David Norris:** The Minister, Deputy Ross, is an expert in cronyism. Did he not bring his entire family into the *Sunday Independent* financial section?

**Senator Michael McDowell:** I do not want to get personal. I do not want to go there.

**Senator David Norris:** He did.

**Acting Chairman (Senator Gerry Horkan):** Senator McDowell has the floor.

**Deputy Charles Flanagan:** The Minister is not here to defend himself. This is fundamentally unfair.

**Senator Michael McDowell:** The Minister is not here, but I have been told by his paid employees that he pays close attention to everything that is said in this House. From the media exposure over the Christmas break it seems he is quite happy to fire off volleys at those who oppose his legislation but like Mrs. Mulligan's dog, he is a devil to give it but cannot take it.

I draw the Minister's attention to-----

**Senator David Norris:** Was the dog educated at a rugby school?

**Senator Michael McDowell:** Without being disorderly, I bring the Minister forward to why this amendment is so important. It is because of what is later provided for in sections 48 and 49 of the Bill with which we are dealing. Section 48 innocuously states:

(1) Notice of an appointment to judicial office shall be published in *Iris Oifigiúil* and the notice shall, if it be the case, include a statement that the name of the person was—

(a) recommended by the Commission to the Minister in accordance with the provisions of this Act, or

(b) recommended to the Government under *section 44*,

as the case may be.

Subsection (2) is significant. It states:

(2) In the event that a person appointed to judicial office has not been recommended by the Commission under this Act, the notice of that appointment published in *Iris Oifigiúil* shall include a reasoned written explanation of the decision of the Government not to nominate a candidate recommended by the Commission.

I ask people to let that sink in for a second.

**Senator David Norris:** It is terrible. It is appalling.

**Senator Michael McDowell:** It is a shocking piece of nonsense.

**Senator David Norris:** It could amount to libel.

**Senator Michael McDowell:** What it is supposed to be, I do not know. Why it is there, I am not clear. The section I am dealing with aims to prevent sitting members of the Judiciary from having to go through this process and states it does not apply to them. It is partly motivated by the fact that section 48 requires the Government, if it does not agree with the commission's viewpoint, to give a written explanation, published in *Iris Oifigiúil*, of its decision not to nominate a candidate recommended by the commission, apart from stating it thought the appointee was better or more suitable for appointment than anybody else. Is that a reasoned explanation?

**Senator David Norris:** No.

**Senator Michael McDowell:** It is not a reasoned explanation. It is a self-evident piece of nonsense.

**Senator David Norris:** It is a statement of a view.

**Senator Michael McDowell:** As it does not give a reasoned explanation, why are we even being invited to consider legislation in this form? Why are we asking a member of the sitting High Court, the Court of Appeal or the Supreme Court who is seeking an appointment or seeking to signal an appointment to any position in those courts to go through this meat grinder process, which requires, if they are appointed notwithstanding the views of this so-called commission, the writing of a reasoned explanation of the Government's decision not to appoint a candidate recommended by the commission? Let us suppose 12 persons apply for a job in one of those courts and, typically, eight might be judges. Three people - one practising barrister and two judges - might be placed on the short list. As I pointed out on the previous occasion, this Bill is designed to prevent people from really knowing what happens. Let us also suppose the Government believes Mr. Justice Bloggs is a better appointee as Chief Justice than any of the three people chosen for inclusion on a short list by the commission. How could a reasoned explanation be given for that apart from stating the Government thought he was more suitable? How could that amount to a reasoned explanation? Unless it stated it had flipped a coin, it would not be possible to have a less reasoned explanation than to say the Government believed the person appointed by it was more suitable than those on the short list.

If one did not identify the people on the short list but merely identified the appointee by means of a little paragraph in *Iris Oifigiúil*, somehow asserting their superiority over unnamed persons who were short listed, what, then, is this subsection all about? It is deeply offensive. It is so ridiculous that I wonder how it got there in the first instance. It is deeply offensive because it is designed for one thing only. The only motive for such a strange provision in a Bill is to make it deeply embarrassing for the Government not to accept the short list, to plunge the Government into a kind of internal crisis that rather than just stating it prefers Mr. Justice Bloggs to the people on the short list, it must now engage in publishing a reasoned explanation as to why the particular judge it chose was better than three other judges who were recommended and give some reasons for it.

The undeniable and obvious inference to be drawn from the inclusion of that measure in this legislation is that it is designed to prevent the Executive from using its own discretion in cases where it thinks that is appropriate and disregarding what is, in effect, merely advice from an external body in the exercise of a constitutional function. That is the only possible reason for putting into *Iris Oifigiúil* a reasoned explanation for one person getting a job rather than others is to make it difficult, embarrassing and controversial and to impugn in ways the appointment it makes.

**Senator David Norris:** It does not happen in any other job.

**Senator Michael McDowell:** It is an astonishing provision. If one thought that this is just a little aberration, one must look at section 49. We will come to the latter in the fullness of time but it states, "Within 30 days after the end of each year, the Minister shall cause to be laid before the Houses of the Oireachtas a statement of appointments to judicial office made by the President during the previous year".

**Deputy Charles Flanagan:** I wish to make a very brief intervention. I seek the Acting Chairman's help. Once again, Senator McDowell is referring to sections 48 and 49. I agree with much of what he said. I have tabled amendments to change sections 48 and 49. I am not in a position to discuss them because we are actually dealing with amendment No. 85b. I ask the

Acting Chairman to assist the House by facilitating the provision of some order in this debate. That is all I ask.

**Acting Chairman (Senator Gerry Horkan):** To be-----

**Senator David Norris:** Could the Minister facilitate the House by revealing to us the nature of the amendments?

**Acting Chairman (Senator Gerry Horkan):** I am sorry, Senator Norris-----

**Deputy Charles Flanagan:** In due course, yes.

**Acting Chairman (Senator Gerry Horkan):** I have tried-----

**Senator David Norris:** We do not have them.

**Acting Chairman (Senator Gerry Horkan):** I am sorry, Senator Norris-----

**Senator David Norris:** We do not have the amendments.

**Acting Chairman (Senator Gerry Horkan):** I am sorry, Senator Norris-----

**Deputy Charles Flanagan:** The House will have them in due course.

**Senator David Norris:** In due course.

**Acting Chairman (Senator Gerry Horkan):** I have tried to facilitate the debate.

**Senator David Norris:** Like the Oracle of Delphi.

**Acting Chairman (Senator Gerry Horkan):** I can understand the level of frustration the Minister must be experiencing.

**Deputy Charles Flanagan:** There is no frustration on my part. I want to make that precisely clear. I merely seek the assistance of the Chair for what I regard as good order.

**Acting Chairman (Senator Gerry Horkan):** I have been providing good order. If the Minister feels I have not, I am sorry. However, I am not aware if anyone else is of his view.

**Senator Michael McDowell:** I have to deal with the Bill as it stands. If I look at the list of proposed amendments-----

**Senator David Norris:** There are other Government amendments.

**Senator Michael McDowell:** -----the Minister has not brought forward any. Now he is stating he intends to make some undefined amendments at some point because he agrees that these sections are unsatisfactory.

**Senator Martin Conway:** I am sure the Minister will do so on Report Stage-----

**Acting Chairman (Senator Gerry Horkan):** Amendment No. 96-----

**Senator Martin Conway:** I am trying to be helpful.

**Acting Chairman (Senator Gerry Horkan):** I am also trying to be helpful. In the context

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of section 48, amendment No. 96 states: "In page 32, to delete lines 12 to 17." Amendment No. 97, a Government amendment, states-----

**Senator Michael McDowell:** In my name.

**Acting Chairman (Senator Gerry Horkan):** Yes, but there is an asterisk beside it which means that it is also a Government amendment. Perhaps one of you copied the other or maybe it is a case of great minds thinking alike.

**Deputy Charles Flanagan:** I merely seek the Chair's assistance. I do not think it is too much to ask.

**Senator Michael McDowell:** I have to say-----

**Deputy Charles Flanagan:** I point out for the benefit of Senators who may have had the opportunity of reading the transcript of the previous debate in the House that I oppose the content of the current sections. The amendments that gave rise to the current text were inserted by the Opposition at an earlier Stage and I intend to revisit the issue. Again, I seek the assistance of the Chair in the maintenance of order.

**Senator Michael McDowell:** The Minister may not need the assistance of the Chair because-----

**Acting Chairman (Senator Gerry Horkan):** I have tried to assist everybody as much as possible.

**Senator Michael McDowell:** -----up to now I have regarded those amendments-----

**Acting Chairman (Senator Gerry Horkan):** As yours.

**Senator Michael McDowell:** -----as mine.

**Acting Chairman (Senator Gerry Horkan):** The asterisks indicate that they are also Government amendments.

**Senator Michael McDowell:** I am beginning to see that they are Government amendments, as denoted by the use of asterisks.

**Acting Chairman (Senator Gerry Horkan):** They are.

**Senator Michael McDowell:** I realise I will be speaking for the Government when proposing those amendments.

**Senator David Norris:** Senator McDowell is well used to that.

**Acting Chairman (Senator Gerry Horkan):** We have not reached section 49. We are still on amendment No. 85b which relates to section 39. Has the Senator concluded?

**Senator David Norris:** Is it not amendment No. 85a?

**Acting Chairman (Senator Gerry Horkan):** It is amendment No. 85b.

**Senator Michael McDowell:** If the Minister succeeds in persuading Dáil Éireann to accept a deletion of those, that is one thing. However, if he does not-----

**Deputy Charles Flanagan:** This is the Seanad.

**Senator Michael McDowell:** Hold on a second.

**Deputy Charles Flanagan:** I thought we were dealing with the Bill in the Seanad.

**Senator David Norris:** On a point of order, in the text I have, there is a very clear reference to amendment No. 85a.

**Senator Michael McDowell:** No, it is amendment No. 85b.

**Acting Chairman (Senator Gerry Horkan):** Amendment No. 85a was defeated on the previous occasion. We are dealing with amendment No. 85b and have been doing so since 6.20 p.m. or thereabouts.

**Senator Martin Conway:** I presume Senator Norris was not here at the time.

**Acting Chairman (Senator Gerry Horkan):** We are on section 39, not sections 48 and 49, although there is relevance.

**Senator David Norris:** I have been here all the time-----

**Senator Martin Conway:** No, you have not.

**Senator David Norris:** -----unlike the Senator.

**Senator Martin Conway:** Prior to Christmas, you were not.

**Senator David Norris:** I was.

**Acting Chairman (Senator Gerry Horkan):** Senators Norris and Conway should address their remarks through the Chair, please.

**Senator Martin Conway:** We want to be accurate.

**Senator David Norris:** You are getting no more envelopes.

**Senator Michael McDowell:** I am dealing with the Bill as sent forward to this House by Dáil Éireann. The Minister says he proposes, by means of these asterisks, to accept my amendments when I move them. Presumably, it is quite likely that the House will accept the amendments I am proposing. If that is to be the case, we are still not sure Dáil Éireann having in its wisdom, or in this case, I suggest, the lack thereof, inserted this into law, would take it out.

*7 o'clock*

I think I am entitled to deal with the Bill as I see it rather than the Bill as the Minister promises to try to amend it in this House.

**Acting Chairman (Senator Gerry Horkan):** The Senator will have the opportunity to do so when we will come to discuss the amendments to sections 48 and 49. We are still discussing amendment No. 85b.

**Senator Michael McDowell:** Regarding amendment No. 85b, a lengthy list of the appointments to the High Court, the Court of Appeal and the Supreme Court made by the Government

was read out.

Senator Norris is unaware that there is a second additional list of amendments.

**Senator David Norris:** I thank my colleague.

**Senator Michael McDowell:** Many promotional appointments to the High Court, the Court of Appeal and the Supreme Court give rise to a domino effect, whereby other vacancies arise. One of the curious things about this legislation is that if, for instance, the Government decides to appoint a judge of the Court of Appeal to the Supreme Court, a vacancy thereby will be created in the Court of Appeal. As the Bill stands, either the Government has to anticipate its decision to appoint an appeal court judge to the Supreme Court and seek in advance that the commission advertises the position in the Court of Appeal or the resulting vacancy has to be advertised. In respect of each of these matters, members of the Judiciary are supposed to put in a separate application to the commission seeking appointment. What I find difficult is that a Government that announces that Ms Justice Bloys in the Court of Appeal is to be made an ordinary judge of the Supreme Court, having discussed with the Attorney General the consequences of making such a decision, cannot say that morning that it will appoint Mr. Justice Smyth of the High Court to the Court of Appeal in consequence. The Government cannot do that. The new procedure will slow everything down and create an unusual situation where that position now has to be the subject of this mass circulation of the Judiciary and mass application by all members of the Judiciary who are intent on applying.

That is another reason this clumsy proposed legislation should not be law. One cannot have that situation. The Judiciary needs to function smoothly and Cabinets should be in the position that if they decide to appoint a High Court judge directly to the Supreme Court or a Court of Appeal judge to the Supreme Court or an existing Supreme Court judge to be Chief Justice, there will be a follow-on, domino-like sequences of events which they will want to fulfil. The Government will have to ask each member of the Judiciary who wants to be part of that snakes and ladder process to put in an application, to be considered afresh and short-listed by this commission simply makes no sense. For the Government to receive shortlists arising from a vacancy created by the promotion and to go through a process whereby a shortlist has to be devised by the commission based on a process involving interviews and all the rest is just nonsense. This is bad and foolish and we should not go down this road.

The 36 appointments I mentioned were good appointments and properly made in proper circumstances by a system that is not broken, if it is operated in good faith. To ask individual judges of the High Court, the Court of Appeal and the Supreme Court, respectively, to apply to outsiders for every promotional appointment within the courts system, especially in the context of what the Dáil has done in sections 47 and 48, is bad law and designed to create a situation in which the Government effectively is coerced into divesting itself of its judgment which is vested in it under the Constitution as to what kind of judge or who should be in the Supreme Court. As I have said previously, this is a political decision for the Government in the sense that it is a matter of policy and it is not one on which the JAAB is even asked to make a recommendation. It is not one on which its views are in any way relevant and particularly it is not one on which the Government should be curtailed in any way from making its own decision.

I regard my arguments as being reinforced strongly by the points I have made about the Attorney General not being in a position to tell the Government who the unsuccessful candidates who were not short-listed were. I believe all of these factors, taken together, strongly indicate

that this proposed legislation is unconstitutional. That is not a ruse; that is not a wheeze; that is not perpetuating patronage or doing anybody any favour; it is merely upholding constitutional values and the separation of powers.

**Senator David Norris:** I completely concur with Senator McDowell's points on the constitutionality of the Bill. It seems to be absolutely absurd to preclude the Government from knowing the names on the list. That is a complete absurdity and I believe it to be unconstitutional.

With regard to the article that was referred to, it was rather let down by the immature, comic book exclamation, "Wow", but reference was made to vested interests and legal insiders. I have been one of those who have been responsible for the detailed examination of this legislation and I do not apologise for one second for being in that position. I would like to know what vested interests I have, except as a Member of the Oireachtas. I would like to know in what sense I constitute a legal insider, apart from the fact that I have taken between 40 and 50 cases in the courts and won every single one of them.

**Senator Martin Conway:** Senator Norris is a cash cow for the legal profession.

**Senator David Norris:** I can tell the Senator that they are a cash cow to me. They paid for what they said about me in the presidential election.

I am very glad that Senator McDowell, in particular, and I, in a minor way, have seeded into this debate many valid reasons for the President to use Article 26 to refer the Bill to the Supreme Court for consideration as to whether it is constitutional.

I am concerned about what has been said about sections 48 and 49. I will not go into them in any great detail.

**Deputy Charles Flanagan:** I might remind the Chair who was not present when I made the point earlier that we are not debating sections 48 and 49; we have been debating for almost an hour amendment No. 85b.

**An Leas-Chathaoirleach:** That is correct.

**Senator David Norris:** I understand that and-----

**An Leas-Chathaoirleach:** It is an amendment in the names of Senators McDowell, Boyhan, Craughwell and Norris.

**Deputy Charles Flanagan:** Senator Norris has requested leave to debate sections 48 and 49.

**Senator David Norris:** No, I have not.

**Deputy Charles Flanagan:** I seek the protection of the Chair for the maintenance of good order.

**An Leas-Chathaoirleach:** The Chair is well aware that we are on amendment No. 85b.

**Senator David Norris:** I have not sought any-----

**Deputy Charles Flanagan:** I ask the Chair to remind the Senator-----

**Senator David Norris:** I have not sought any leave but I am seeking precisely the same

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treatment as was accorded to Senator McDowell, although I would just make a couple of comments.

**Deputy Charles Flanagan:** The Chair ruled on that matter in the absence of the current Chairman.

**Senator David Norris:** He did not rule in the Minister's favour.

**Deputy Charles Flanagan:** He did.

**Senator David Norris:** He did not.

**Deputy Charles Flanagan:** He most certainly did-----

**Senator David Norris:** He certainly did not.

**Deputy Charles Flanagan:** -----insofar as he requested Senator McDowell to stick to amendment No. 85b.

**Senator David Norris:** No, he did not.

**Deputy Charles Flanagan:** I defer to the Chair and request that he do the job of Chair.

**An Leas-Chathaoirleach:** We are on amendment No. 85b-----

**Senator David Norris:** Yes, exactly.

**An Leas-Chathaoirleach:** -----to section 39.

**Senator David Norris:** The situation regarding the section to which I have referred is that-----

**Deputy Charles Flanagan:** Which section is it? Is it section 49?

**Senator David Norris:** Is the Minister interrupting me?

**Deputy Charles Flanagan:** No, I am merely asking the Senator to which section is he referring.

**Senator David Norris:** The Minister is interrupting me.

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

**Deputy Charles Flanagan:** I am asking to which section is the Senator referring.

**Senator Martin Conway:** That is perfectly in order.

**An Leas-Chathaoirleach:** Why did I have to take the Chair at this point?

**Senator Martin Conway:** The Minister is looking for clarification from Senator Norris. That is quite in order.

**Senator David Norris:** How would the Senator know? The section states: "In the event that a person appointed to judicial office has not been recommended by the Commission under this Act, the notice of that appointment published in *Iris Oifigiúil* shall include a reasoned writ-

ten explanation of the decision of the Government not to nominate a candidate recommended by the Commission". That is most extraordinary. I am glad that the Minister has indicated that he will table an amendment agreeing with Senator McDowell. I am delighted that the debates-----

**Deputy Charles Flanagan:** To what section is the Senator referring?

**Senator David Norris:** -----and deliberations of this House are taken so seriously by the Government that it actually adopts amendments made by persons like Senator McDowell. I applied for a job in Trinity College Dublin for which there were 47 other applicants. I can assure the Minister Trinity College Dublin did not send 47 letters saying the applicants did not get the job because of this, that or the other. If it had done so, it might well have been subject to actions for libel. That is all I will say on it. I have been very reticent, despite provocation.

**Deputy Charles Flanagan:** I do not have anything to say on amendment No. 85b because it is repetition of amendment No. 85a which I opposed. I will also oppose amendment No. 85b and ask that the question be put.

Amendment put.

The Committee divided by electronic means.

**Senator David Norris:** In order to be absolutely certain, under Standing Order 62(3)(b), I request that the division be taken again other than by electronic means.

Amendment again put:

The Committee divided: Tá, 10; Níl, 21.	
Tá	Níl
Bacik, Ivana.	Burke, Colm.
Boyhan, Victor.	Burke, Paddy.
Clifford-Lee, Lorraine.	Buttimer, Jerry.
Daly, Paul.	Byrne, Maria.
Horkan, Gerry.	Coffey, Paudie.
Leyden, Terry.	Conway-Walsh, Rose.
McDowell, Michael.	Conway, Martin.
Murnane O'Connor, Jennifer.	Devine, Máire.
Norris, David.	Feighan, Frank.
O'Donnell, Marie-Louise.	Hopkins, Maura.
	Lawlor, Anthony.
	Lombard, Tim.
	Mac Lochlainn, Pádraig.
	McFadden, Gabrielle.
	Mulherin, Michelle.
	Noone, Catherine.
	O'Donnell, Kieran.
	Ó Donnghaile, Niall.
	Reilly, James.
	Richmond, Neale.

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	Warfield, Fintan.
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Tellers: Tá, Senators Michael McDowell and David Norris; Níl, Senators Maura Hopkins and Gabrielle McFadden.

Amendment declared lost.

Question put: "That section 39 stand part of the Bill."

The Committee divided by electronic means.

**Senator David Norris:** In order to establish the situation with absolute clarity, under Standing Order 62(3)(b), I request that the division be taken again other than by electronic means.

Question again put:

The Committee divided: Tá, 20; Níl, 5.	
Tá	Níl
Burke, Colm.	Bacik, Ivana.
Burke, Paddy.	Clifford-Lee, Lorraine.
Buttimer, Jerry.	Horkan, Gerry.
Byrne, Maria.	McDowell, Michael.
Coffey, Paudie.	Norris, David.
Conway, Martin.	
Devine, Máire.	
Feighan, Frank.	
Hopkins, Maura.	
Lawlor, Anthony.	
Lombard, Tim.	
Mac Lochlainn, Pádraig.	
McFadden, Gabrielle.	
Mulherin, Michelle.	
Noone, Catherine.	
O'Donnell, Kieran.	
Ó Donnghaile, Niall.	
Reilly, James.	
Richmond, Neale.	
Warfield, Fintan.	

Tellers: Tá, Senators Maura Hopkins and Gabrielle McFadden; Níl, Senators Michael McDowell and David Norris.

Question declared carried.

#### SECTION 40

**An Leas-Chathaoirleach:** Amendments Nos. 86, 87 and 91 to 93, inclusive, are related and

may be discussed together, by agreement. Is that agreed?

**Senator Ivana Bacik:** Amendment No. 91 was part of a previous grouping or did we change it?

**An Leas-Chathaoirleach:** I have been advised by the clerk that it is in this grouping.

**Senator Ivana Bacik:** I apologise. I made that change. It had been included in an earlier grouping.

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

**Senator Ivana Bacik:** I move amendment No. 86:

In page 28, line 22, after “persons,” to insert “at least one of whom must be of each gender,”.

Amendments Nos. 86, 87, 91 and 93 all deal with the same general principle of seeking to ensure gender balance among the Judiciary.

*8 o'clock*

Amendment No. 86 proposes to amend section 40 by inserting in subsection (2) the words, “at least one of whom must be of each gender”, after the words, “the Commission shall, in accordance with this Act, recommend to the Minister, in respect of the judicial office concerned, the names of 3 persons”. These names are to be ranked in the order of the commission’s preference. The amendment specifically seeks to ensure there is an adequate gender balance among the nominees for the Judiciary or those recommended.

I will not go through all of the other amendments in great detail. Amendment No. 87 proposes to make a similar change to section 41(2) by insert after the word “concerned” the words “, having regard to the objective that the membership of the judiciary should comprise equal numbers of women and men”.

Amendment No. 91 is to section 44 which deals with the appointment as Chief Justice, President of the Court of Appeal and President of the High Court. The amendment uses the same formula in providing that at least one of the nominees for these appointments must be of each gender. Similarly, amendment No. 93 proposes to change section 46 and refers to the objective that membership of the Judiciary should comprise equal numbers of men and women.

Before I speak about the gender balance amendments, I should note that amendment No. 92 is somewhat different, although it is related to the other amendments. It does not refer to the issue of gender balance but seeks to change section 46 by inserting a specific reference to the need for the commission to make a ranked recommendation. Section 46, as the Minister will see, refers to recommended persons to be considered first. It is the section that refers to the Government’s consideration for appointment of those persons whose names have been recommended to the Minister. There is no reference currently in section 46 to the Government having to consider those names in the order in which they have been ranked. This seems to be an omission, given the reference in section 40(2) to persons being “ranked in the order of the Commission’s preference” and an identical reference in section 41(2). While this may seem a somewhat technical point, as the Minister is well aware, every critique or criticism of the Judicial Appointments Advisory Board, JAAB, and the current judicial appointments process

has tended to refer to the flaw that JAAB recommendations are not currently ranked and, as a result, a group of names may be submitted to the Government for consideration. It would be preferable if JAAB were to rank the names, thus making the shortlisting process more real in the same way that we rank at interviews and so on.

**Senator Michael McDowell:** Which section is the Senator discussing?

**Senator Ivana Bacik:** I am referring specifically to amendment No. 92 which seeks to amend section 46. The reason I have singled out this amendment is that it is somewhat different from the other amendments in this group. I will speak more generally about the gender balance considerations in the other amendments when I have explained the reasons we tabled amendment No. 92. We did not do so to change the nature of the Bill but to strengthen the provisions of sections 40(2) and 41(2), both of which require the commission to rank the names of those it recommends in order of preference. There appears to be a gap or an anomaly in the Bill because whereas sections 40 and 41 include a requirement for ranking, the Government is not required to consider for appointment in the order of the commission's preference when the recommendations come to it, as provided for in section 46. Amendment No. 92 simply strengthens what is already contained by way of a principle in the earlier sections. The amendment is related to the other amendments because it concerns how the commission is to make its short list. However, it differs from them in that it refers not to gender balance but to the issue of ranking in order of preference.

Some argument has been made by Jennifer Carroll MacNeill and others that the Judicial Appointments Advisory Board could have ranked applicants before now but had not done so. One of the strengths of the Bill is that it requires ranking in sections 40 and 41. The new body will have strengthened powers in the sense that it will be required to rank applicants rather than only having the power to do so. That will strengthen the position of the commission because it makes the process more real and similar to other interviews.

Amendments Nos. 86, 87, 91 and 93 refer to the important policy objective of achieving a balanced Judiciary, in particular, that the Judiciary should represent the balance of women and men. I table these amendments as the author, some years ago, of the first and only major study of gender in the legal professions in Ireland, which I conducted with my colleagues, Eileen Drew and Cathryn Costello in Trinity College Dublin. The study which was published in 2003 under the title, *Gender inJustice*, examined the issue of gender balance in the Judiciary. We took note of processes that were being implemented in other jurisdictions to try to encourage more women to seek promotion to the Judiciary and ensure more women were appointed to the Judiciary. We noted at the time that Ireland was not the worst among common law countries in terms of the proportion of women in the Judiciary. From memory, I believe the proportion here stood at between 20% and 25% at the time. Ireland now leads in terms of gender balance in the Judiciary. I am conscious that two appointments made to the High Court last week slightly skewed my figures because I had looked at the data beforehand. I understand women now make up 37% of the Judiciary, that is, the District Court, the Circuit Court, the High Court, the Court of Appeal and the Supreme Court. Women make up three out of eight judges in the Supreme Court, which is 38%, and 50% of the Court of Appeal, which is the highest proportion. That is much better than we see in comparable common law jurisdictions but it is still not as good as in some civil law jurisdictions where there are career judges and a different method of appointment.

I will not dwell on the difference between the legal systems. Women make up 51% of the

population. In recent years, as the Minister will be well aware, more women than men have qualified as solicitors and women have joined the Bar in much larger numbers than before. It is important that we at least sustain a figure of 37% or 38% of the Judiciary being female. For that reason, it is important to place this in our legislation when we are reforming judicial appointment processes. The Minister will see that the provisions have been drafted in such a way to be gender neutral in the same way that our legislation on the gender quota in politics is gender neutral. The section of the Electoral (Amendment) (Political Funding) Act 2012 which provided for a gender quota for political parties is also framed in a gender neutral fashion. It requires parties to select at least 30% of their candidates of each gender. We saw the difference that legislation made in the 2016 general election when the proportion of women Deputies increased significantly from 14% to 20%.

It is very important that we are proactive when it comes to our commitment to ensuring gender equality and gender balance. It is in that spirit that my colleagues and I put forward these amendments. They build on the work that has already been done in terms of research and the policy objective framed in the political funding legislation. They also build on the very good work done on ensuring greater gender balance in the Judiciary. I have outlined the figures. The increase since my colleagues and I compiled our study in 2003 is very welcome but we need to ensure it is sustained and that we have a diverse Judiciary generally.

**Senator David Norris:** I have no problem with diversity in the Judiciary. However, probably more significant in terms of the judgments delivered and the appearance of equity in the courts would be to make clear that there should be representation from the less advantaged social groups in society. In my view, having spent a number of years, for one reason or another, viewing proceedings in the District Court, there very often was a clear sense, as far as I was concerned, of class justice.

I question the grammar of amendment No. 86 which reads: “In page 28, line 22, after “persons,” to insert “at least one of whom must be of each gender”.” That line seems unnecessarily to favour bisexuality or gender fluidity. I wonder if it could be rearranged some way because one person having to be of each gender would be a little awkward in the fitting of the gowns and matters like that.

On the question of ranked recommendations, I am not as enthusiastic about it as my colleague, Senator Bacik. When names are ranked as one, two and three, the natural presumption is that number one is the favourite, number two is the second favourite and number three is the third choice. It seems to be a further attempt to tie the Government’s hands. I am not against it but I have that hesitation. We should leave sufficient scope for the Government to make up its own mind but I will be supporting all of these amendments and really hope we will have votes on each and every one of them in the interests of democracy.

**Senator Michael McDowell:** Does Senator Bacik want to say something?

**Senator Ivana Bacik:** I thank the Senator. I want to briefly respond to Senator Norris’s point. I obviously bow to him in matters of English grammar and I am happy to withdraw amendment No. 86 in any case to see if I can draft it a little more elegantly. I apologise in that regard.

None of these provisions ties hands in terms of gender balance but in the same way as our 2012 political quota legislation, they are simply opportunity quotas that seek to ensure more

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women will be put forward as candidates and not to determine who will ultimately be selected as candidates.

On ranking, we will agree to differ but it has been suggested by those who have been critical of the current Judicial Appointments Advisory Board, JAAB, process and want to move away from political patronage because ranking ensures there is a clearer indication from the external independent body as to who are the most meritorious candidates.

**Senator David Norris:** With Senator McDowell's and the Acting Chairman's agreement, can I make one observation?

**Acting Chairman (Senator Catherine Noone):** It is not at Senator McDowell's discretion; it is my decision but the Senator can go ahead.

**Senator David Norris:** There could be an equal number of candidates but that could still lead to a situation where the Chief Justice of Ireland, the President of the Court of Appeal and the President of the High Court were all women or all men.

**Acting Chairman (Senator Catherine Noone):** Imagine that.

**Senator David Norris:** That cannot be prevented from happening.

**Acting Chairman (Senator Catherine Noone):** No, although many may try.

**Senator Martin Conway:** Would it not be great if they were all women?

**Acting Chairman (Senator Catherine Noone):** It would.

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

**Acting Chairman (Senator Catherine Noone):** I call on Senator Norris to speak without interruption.

**Senator David Norris:** I am interrupting myself by sitting down.

**Acting Chairman (Senator Catherine Noone):** That is fine. I call Senator McDowell.

**Senator David Norris:** The Acting Chairman has reminded me of something. This is such an important point. It would be much nicer if more people could be aware of our discussions in order that possibly we could-----

**Acting Chairman (Senator Catherine Noone):** Is the Senator calling for a quorum?

**Senator David Norris:** That is exactly what I was thinking of.

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

**Senator Michael McDowell:** While I appreciate Senator Bacik's commitment to fairness and justice for women and gender justice, I do not agree with her amendments. I will explain why. Section 7(1) states: "A decision to recommend, under this Act, a person for appointment to judicial office shall be based on merit." Section 7(2) states:

Subject to *subsection (1)*, where the function, under this Act, of selecting and recom-

mending persons for appointment to a judicial office falls to be performed, regard shall be had to -

(a) the objective that the membership of the judiciary should comprise equal numbers of men and women,”.

The subsection goes on to state it should reflect diversity and, third, should make provision for people with the Irish language. As I understand the Bill, its policy is that the commission must operate on the basis of merit, but while considering people from that point of view, it shall have regard to the objective that the membership of the Judiciary should comprise equal numbers of men and women. That is a simple intellectual exercise. The overriding rule is merit, therefore the three best people are always recommended. However, in looking at whether people are best or not regard should be had to the objective that the membership of the Judiciary should comprise equal numbers of men and women. We are either adhering to section 7 or we are not.

The first of Senator Bacik’s amendments relates to section 40. That section as it is proposed to be amended would add to the words “the names of 3 persons, ranked in the order of the Commission’s preference” an extra phrase, “at least one of whom must be of each gender”. Now we have a different concept. Merit is no longer the overriding cardinal principle. We are saying that even if one arrived at the view that three women were clearly the best, one must throw in a man and delete one of the women to conform with the Bill. That cannot be right. Either section 7 or section 40 operates. The commission is being told that having looked at the available people to be, for example, President of the Circuit Court and having come to the conclusion that the three best qualified are women, it must then grab the emergency brake because Senator Bacik’s amendment provides that it must dump one of the women from the short list and put a man on it. Even though they are clearly better, the commission must hunt for the best of the men who applied and put him on the list to satisfy this requirement.

I fully understand affirmative action and such ideas-----

**Senator David Norris:** The Senator does not like them.

**Senator Michael McDowell:** -----but the section 7 approach is based on merit and in making merit-based decisions there is a desideratum that there should be a balance between men and women in the Judiciary. However, in this section Senator Bacik is saying that even if the commission comes to the conclusion that three persons of one gender are the best people, it must slam on the brakes, delete one of them and add a person of the other gender. She is going too far. It is not something I could support and it is not something we should impose on the commission or the Government in such circumstances. It appears that the Senator is taking and pocketing section 7 as an advance and then seeking to overrule it also, whereby if there were three people of one gender, notwithstanding the fact there should be balance, the lowest of the three would be knocked off and a person of the other gender would be made available for the Government to choose from. That is unfair.

I have sympathy for the proposition that there should be gender equality in judicial appointments, up to the point of not producing a Judiciary that is not the best that we can do. My interpretation of section 7 is that the commission should do its best and give us the best judges but have regard to gender balance as a desideratum. That is the right solution. However, the Senator is inviting it to go a stage further whereby if a single gender slate turns up, be it women

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or men, the commission must delete one person and include a person of the opposite gender to the other two to achieve balance. I do not think that is what she believes. If there were three meritorious women, she would be horrified if a man was slapped in just for gender balance.

**Senator David Norris:** I do not think so.

**Senator Michael McDowell:** She would be horrified if that were to happen.

I indicated to the Minister, in the context of the reprehensible remarks made by Senator Ross about the judicial appointments that have been made by the Government since he became a member of it-----

**Senator David Norris:** He is not a Senator any more.

**Deputy Charles Flanagan:** I am not sure that is the case. I am not sure that the Minister, Deputy Ross, referred to recent appointments made by the Government.

**Senator Michael McDowell:** He did. He said this Bill was the only way to stop, as he said - I will have to check it again-----

**Senator Martin Conway:** Do not misquote him.

**Senator Michael McDowell:** I would hate to misquote him. He said that by delaying the Bill, we were perpetuating political patronage and political favours.

**Senator David Norris:** It is perfectly clear.

**Senator Michael McDowell:** Either they have stopped or they have not. If political patronage and political favour giving are taking place-----

**Deputy Charles Flanagan:** I strongly reject that.

**Senator Michael McDowell:** I know; so do I.

**Senator David Norris:** We all do.

**Senator Michael McDowell:** However, there is the minor problem that in the Government there is a person who was party to Government decisions to make the 36 appointments to which I referred who says the only way to stop patronage and favour giving is to alter the way in which those people have been selected. We will not return to that matter again, but they are disgraceful remarks. He is either a member of a Government that acts as a single, collective authority or he is not. He should stop making remarks which cast a shadow over appointees under the present system because as far as I am concerned they have not been incidents of patronage or favours granted. I say that in a spirit of generosity and truthfulness.

**Deputy Charles Flanagan:** I am pleased the Senator said that.

**Senator Michael McDowell:** I have been emphasising it from the very beginning. I am the person who supports the present system which is working and which the Government is operating perfectly well. The Minister is the person who is trying to politicise the appointment of judges by handing the entire function over to a group of lay people. That is what is happening. We should remember that it was the Minister, Deputy Ross, who as a Deputy proposed that every appointment should be scrutinised by a Dáil committee and subject to its approval

and that a majority of the committee should be Opposition Members. He wanted to politicise the appointment of the Judiciary in that way and amend the Constitution to do it; therefore, the Minister should not give me a lecture about this. I stand over every appointment I made.

**Acting Chairman (Senator Catherine Noone):** I request that we, please, have all commentary in the House through the Chair.

**Senator David Norris:** I cannot hear what you are saying, Acting Chairman.

**Acting Chairman (Senator Catherine Noone):** That is because the Senator's colleagues are all talking together. I ask that we have commentary through the Chair and that no direct remarks be made.

**Senator Michael McDowell:** Through the Chair, I ask the Minister not to suggest I favour political patronage or have ever acted that way. I ask him to check the record when I had anything to do with judicial appointments when he will find that far from exercising political patronage-----

**Deputy Charles Flanagan:** I never made such a suggestion.

**Senator Michael McDowell:** -----the Governments in which I operated as Minister for Justice, Equality and Law Reform and advised as Attorney General were singularly politically blind in their appointments.

**Deputy Charles Flanagan:** For the purposes clarification, I do not take issue with that.

**Senator Martin Conway:** Through the Chair, I concur.

**Senator Michael McDowell:** I am pleased to hear it.

**Acting Chairman (Senator Catherine Noone):** Will the Senator speak to the amendment?

**Senator Michael McDowell:** The point I was trying to make-----

**Deputy Charles Flanagan:** The Senator is the one who introduced this aspect to the debate.

**Senator Michael McDowell:** I did not. I introduced the fact that there had been a list of 36 appointments.

**Acting Chairman (Senator Catherine Noone):** I ask Senators to, please, address the amendments and the Bill.

**Deputy Charles Flanagan:** The Senator is throwing hoops around his own comments.

**Senator Michael McDowell:** I wish to say for Senator Bacik's interests that when I did my tot of the 36 appointments, 16 were women, which is quite a lot. It is not 18-----

**Deputy Charles Flanagan:** It is very close.

**Senator Michael McDowell:** -----but it is as close as makes practically no difference. The Government has been exemplary in its approach to gender issues concerning judicial appointments without any assistance from the Judicial Appointments Commission Bill. One does not

need all of this stuff to make good appointments and appoint good women to the Judiciary.

We will go back to what Senator Bacik is proposing. What is in section 7(1) is a merit-based obligation and expressly provides that merit-based decisions must be cognisant of the desirability of gender balance. That is one thing but Senator Bacik is going one stage further and saying that in addition to this, if one gets three people of the same gender, women or men on a list, one must delete one of them and put somebody whom one did not consider as good as the three recommended in order to satisfy some other criteria. As I am against the proposition. I am against her amendment to section 40.

I fully accept that it is well intentioned but in my view it goes too far. It is unnecessary for the reasons I have mentioned, namely, that merit-based appointments now being made by the Government without any of this paraphernalia are reasonably gender balanced and, second, it requires a clear departure from merit-based decision-making to make a token obeisance to gender balancing the short list, even after the merit-based issues have been taken into account. I am in favour of merit-based appointments and taking into account the need for a gender balance but I am against the idea of having a 2:1 arrangement for short lists. I do not say that critically because I know Senator Bacik wants to rethink her amendments, but I am worried that if one has more than three on a short list one might not achieve much by having a proposition that at least one of them shall be a man or a woman. I am not clear that that is a very good idea. Section 7 is good enough as it is.

In terms of amendment No. 92, I do not agree that we should now tell the Cabinet how it should do its business. If it gets a short list of three ranked in order from one to three, I do not think we should say the Government should consider the matter on the basis of the ranking.

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

**Senator Michael McDowell:** The members of the Government are not idiots. If a short list of recommendations is made of candidates from one to three-----

**Senator Victor Boyhan:** Does the Minister agree with that?

**Deputy Charles Flanagan:** Senator McDowell has jumped through hoops here the past hour and eventually come up with the profound statement that he does not think the members of the Government are idiots.

**Senator Michael McDowell:** I am saying it is unnecessary.

**Acting Chairman (Senator Catherine Noone):** Can we stick to amendment No. 92?

**Senator Michael McDowell:** Through the Chair, I do not think it is necessary to tell the Cabinet, having received a list ranked in order of preference, that when they sit down to look at it they must consider the candidates in the same order.

**Senator David Norris:** Hear, hear. That is well said.

**Senator Michael McDowell:** I think they are capable of saying it.

**Acting Chairman (Senator Catherine Noone):** The Senator is supposed to be avoiding repetition.

**Senator Michael McDowell:** We are all elected under the PR system and understand what

one, two and three means.

**Senator David Norris:** Ho, ho.

**Acting Chairman (Senator Catherine Noone):** “Touché” is the word Senator Norris is looking for.

**Senator Michael McDowell:** I am not in favour of Senator Bacik’s amendments. I ask her to withdraw them in the fullness of time but it is important that we at least have an opportunity at this stage to express some preliminary opinions if the amendments are to stand.

**Senator Victor Boyhan:** We have had a good debate. What Senator Bacik is talking about is gender opportunity quotas, with which I agree. Sometimes it is about the language we use. I agree with Senator McDowell that it has to be an appointment on merit alone. I accept what Senator Bacik says about gender opportunity quotas because that is an important issue but ultimately section 7 refers to the appointment on merit and merit alone and that is important.

I wish to comment on what Senator McDowell said. I will not open up the debate about what is wrong with the current system but, as Senator McDowell alluded to, there were 34 appointments to the Judiciary: one appointment to the General Court of the EU; one appointment to the position of Chief Justice; one appointment to the Supreme Court; four appointments to the Court of Appeal; 12 appointments as judges of the High Court; nine appointments of judges to the Circuit Court; and six to the District Court. They are all judicial appointments or changes within the Judiciary as some of them, already being judges, moved positions. They are the facts, as printed off today. That is important. In addition, I note that the Minister’s Department ran another advertisement two weeks ago in all the national newspapers again seeking to recruit judges to the various courts and again under the current system. I am, therefore, somewhat amazed by all of the allegations of filibustering and inappropriateness and all of the terrible, objectionable comments being made by one Government Minister on the appointment of members of the Judiciary. As the Cabinet and the Government have seen fit to endorse 34 appointments, the system works well. Given this fact and the advertisement to which I referred, one must ask the question, what is the Government at? The current system works; the Minister knows that it works and no one is saying it does not.

Again, I make the point that we have been served with distinction by the Judiciary in all courts. I think all of us, without exception, can say that. They have a tremendous record in serving the State. That is an important point. I understand, however, the issue of gender opportunities and quotas. That should go through every walk of life when it comes to appointments. I am also conscious, however, that merit must be the ultimate prerequisite in appointment to the Judiciary.

**Senator Ivana Bacik:** I thank my colleagues for having taken the time to consider these amendments in such detail. In my initial speech I acknowledged the increase in the number of women serving as judges. I gave my current count of approximately 37% of our Judiciary being female, which is a huge increase from the time when we did our study some years ago. It is certainly a very positive sign in my view and, I think, the view of most people - everyone, I hope. However, we want to ensure this gender balance is sustained. That is the approach we are taking in these amendments. Section 7 sets out this policy objective and we use the same language in amendments Nos. 87 and 93. Therefore, I do not think anyone can object to these amendments, given that they simply encapsulate the policy objective the Government has al-

ready stated in section 7 and in the same terms. Yes, we seek to go further in amendments Nos. 86 and 91 which, while still providing only for an opportunity quota, state in respect of each clause referring only to three applicants on a shortlist “at least one of whom must be of each gender”. I have already indicated that I wish to withdraw these amendments in any case to look at them again, in particular, at the grammatical issue Senator Norris raised. The amendments, however, simply strengthen the Government’s policy objective to have this additional provision included.

I have listened to what my colleagues have said about merit and that appointments must be merit-based. Of course, we all agree with that, but there is a large body of contested literature on what merit means, how we determine it and the criteria we use to adjudicate on it.

**Senator Michael McDowell:** I accept that.

**Senator Ivana Bacik:** I know that Senators McDowell and Boyhan will be aware of this. For a very long time women and other groups faced difficulties in that regard. Senator Norris referred to class bias in the system, which was absolutely a fair comment. Disadvantaged groups are so called because they face existing disadvantages and there is not an equal playing field. If a woman applies from a position of disadvantage to a position in which women are under-represented, she is at a disadvantage. There is not a level playing field to begin with and speaking about the Holy Grail of an objective system of merit neglects or overlooks this difficulty with the pre-existing disadvantages. We have written about this before in the case we made at the justice committee in 2009 for gender quotas in politics, which culminated in the 2012 legislation. In that we talked about the five c’s, that is, the disadvantages women face: lack of cash, confidence, childcare, culture and, of particular relevance in the case of politics, candidate selection procedures. The first four c’s also apply to disadvantaged women in terms of career progression in law. Again, this is documented in our study, in which we did qualitative and quantitative work on gender bias in the legal system - structural biases, not necessarily prejudice. That is why we need to be careful when we talk about merit. There is the literature to which I have referred and we are well aware that merit can be a very fluid concept. It is not a fixed or predetermined concept and we must take account of pre-existing disadvantage. It is in that spirit that we table the amendments.

I have very much supported the Minister’s Government in the affirmative action measures such as the women-only professorships the Minister of State, Deputy Mitchell O’Connor, has proposed. They are sensible ways in which to address an existing gender imbalance. Our amendments, taken as a package, seek to do the same thing for the Judiciary, that is, to ensure there is a sustained gender balance in the Judiciary and that this objective is front and centre throughout the legislation, not just in section 7. It is in that spirit that we table the amendments, but I will withdraw them at this stage. I do want the opportunity to debate this matter further on Report Stage because I am keen to ensure we have a wording on which I might get more support from colleagues on both sides. I will bring the amendments back on Report Stage but I am glad to have had the opportunity to debate them on this Stage.

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

**Deputy Charles Flanagan:** On the basis that the amendments are being withdrawn, no.

**Senator Ivana Bacik:** I would like the Minister to respond to amendment No. 92 and the ranking issue because it is somewhat discrete. Again, I will withdraw the amendment at this

stage and bring it back on Report Stage, but the Minister may have a view on the matter.

**Deputy Charles Flanagan:** I listened closely to what the Senator said. Having regard to the fact that she is withdrawing the amendment, I would be happy to engage further but I would prefer a situation in which the Government was free to exercise its constitutional prerogative on the issue. A Government will receive names in a certain order and I think this will result in an appropriate level of conversation and consideration on the part of the Government. In the circumstances I do not believe the amendment is necessary.

**Senator Ivana Bacik:** I will take the Minister's comments on board.

Amendment, by leave, withdrawn.

**Acting Chairman (Senator Catherine Noone):** Amendments Nos. 86a and 86b, on the first additional list of amendments dated 12 December 2018, are related and may be discussed together.

**Senator Michael McDowell:** I move amendment No. 86a:

In page 28, to delete lines 23 to 25.

Amendment No. 86a, in my name and those of Senators Boyhan and Craughwell, proposes on page 28-----

**Senator David Norris:** This is such an important matter and there are only four of us here. It is very distressing.

**Acting Chairman (Senator Catherine Noone):** Is the Senator calling for a quorum?

**Senator David Norris:** I am.

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

**Senator Michael McDowell:** Amendment No. 86a reads: "In page 28, to delete lines 23 to 25." It refers to section 41(2) which reads: "Nothing in *subsection (2)* 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". Amendment No. 86a is connected to amendment No. 86b which makes it very clear that, instead of being in an obscure subsection, a new section should be inserted before section 41. Amendment No. 86b reads: "No provision of this Act affects in any way the function and duty of the Government, in advising the President on appointment to judicial office under Article 35 of the Constitution, to advise in accordance with its own judgment and preference the appointment of any person who is eligible to be appointed to such judicial office". To me, that is the important point. As I have pointed out on a couple of occasions in the course of this debate, the policy of this Bill is to make it extremely difficult for the Government to fail to appoint somebody nominated on a short list compiled by the judicial appointments commission. The means whereby this difficulty is sought to be created are manifold, but the most obvious ones are as follows. First, every current serving judge who is of the superior courts who is, by definition, capable of serving as a member of the Court of Appeal or the Supreme Court, if asked by the President of either of those courts, is required to submit his or her name for consideration and be shortlisted by the judicial appointments commission, no matter how often these vacancies arise. The Minister

has made it clear in voting down a previous amendment which I have tendered, that he intends that it will not be possible in future for members of the Judiciary to indicate their willingness to serve by a simple letter to the Secretary of the Government, which is the current practice, without any further requirement of recommendation. For instance, if the position of President of the Court of Appeal or the position of Chief Justice becomes available, instead of having all the Judiciary engage in a beauty contest by sending in applications to the judicial appointments commission, what happens at the moment is that they can simply indicate that they would be prepared to be appointed to the office by writing to the Secretary of the Government who is an independent officer of the State who, presumably, would notify the Government that he had received such a communication. That is dignified, reasonable and sensible. The Minister has indicated that that is to be prohibited under the canvassing rubric and under the other provisions of this Bill and is not to continue, which I think is a mistake.

I will only briefly refer to it but the second way in which the Government is to be prevented from appointing somebody other than a person recommended is to keep it in darkest ignorance as to what choices were made. I will make two observations about this. First, it is entitled to know who is available and willing to be appointed. To say the Government has a full constitutional prerogative to appoint anybody it wants, as section 40(3) suggests it might, while it is kept in a state of complete ignorance as to what the real potential field of appointees is actually constituted of is to render the exercise of that constitutional prerogative very difficult.

The third thing is that the Attorney General, by being appointed to the commission, taking part in its proceedings and knowing who applied and was not shortlisted, is placed in the most invidious position. The Cabinet may ask, "Is this the best we can do?" If that question is asked, the Attorney General must say he or she cannot answer that question, although he or she would like to be able to tell the Cabinet that there were other people who, in his or her judgment and perhaps in the judgment of the Cabinet if it was to hear about it, would be far better than the shortlisted people. That, unfortunately, is part of the new Bill, as the Minister has confirmed.

*9 o'clock*

The Minister has indicated that he is with me on the two amendments I have tabled. The Bill, as it stands, would make it extremely embarrassing for the Government to exercise its own prerogative by requiring it to fill out some kind of examination paper as to why it had departed from the recommendation it had received.

Lastly, there is the difficulty that it undermines the whole status of the judicial independence of the senior Judiciary to require them to constantly make applications to this judicial appointments commission for every vacancy that arises or every consequential vacancy that is created by the filling of a vacancy. The Minister has failed completely to tell us how they will be informed if they were shortlisted. He has also failed to tell us how it will be known that somebody was shortlisted but was unsuccessful at the Cabinet. If these things are to be kept in the dark, the Government is like the crew of a submarine, operating below the surface but without any effective periscope.

**Senator David Norris:** How is it going to give reasoned written explanations?

**Senator Michael McDowell:** That is a good point. It seems that the Minister is with me on that point and hopes to persuade the Dáil that it is mistaken in that provision.

The second amendment tabled by Senators Boyhan, Craughwell and I states no provision of

this Bill affects in any way “the function and the duty”, which is the important point. It is not simply an entitlement of the Government to appoint people it considers good-----

**Senator David Norris:** It is a responsibility.

**Senator Michael McDowell:** It is a responsibility and a duty. If the Government believes one person is better and more appropriate than another, it is under a constitutional duty to make the first person a judge-----

**Senator David Norris:** What about gender balance?

**Senator Michael McDowell:** The Government is entitled to balance the courts in terms of gender but if it believes that one person is more appropriate than another it is not just its entitlement to make an appointment along those lines, it is its duty to do so, full stop.

**Senator David Norris:** What about gender balance?

**Senator Michael McDowell:** The words “function and duty” are carefully chosen. The amendment goes on to provide that, in advising the President on appointment to judicial office under Article 35 of the Constitution, the Government will “advise in accordance with its own judgment”. That must be the case. It must be the Government’s judgment, based on its duty to do the right thing by the people and not to be shoehorned by a series of legislative obstacle courses and hedges into doing something with which it is not comfortable. The appointment of any person who is eligible to be appointed to judicial office must be done in accordance with the Government’s own judgment and preference. That formulation in our proposed new section spells out the constitutional provision or position, 100%, whereas the conflation of mistaken and chaotic procedures and provisions keeping the Government in the dark which this Bill now contains is designed to do the opposite. It is designed to get the Government to defer to the views of this commission because difficulties lie in the way of following its own instinct and judgment in accordance with its constitutional duty.

I do not believe the lines proposed to be deleted save the Bill from unconstitutionality because of the other measures in it, to which I have referred. I also do not believe it is right to ask sitting members of the Judiciary to spend half of their lives sending off applications to a group of people who cannot signify to the unsuccessful applicants what it was about their application that was unsatisfactory. In fact, that would be even worse. Even if there were to be some kind of feedback system for dissatisfied judges, in terms of the commission not liking their approach to A and B, for example, are such judges to change their tune in order to send in a more appealing form the next time, emphasising something about themselves or deleting some view that they may have conveyed, by innuendo, to their detriment on the previous occasion? That is all very wrong for serving members of the Judiciary because it compromises their independence.

When it comes to appointing judges, one might well say one is not going to appoint Ms or Mr. Justice So-and-So because when it comes to personal injuries damages, they behave like Santa Claus or the exact opposite, that they are so mean that one does not want them on the Bench. That is something that the Government might well decide but it is not a decision, under the criteria set out in the Bill, for the commission. The judicial policy of a judge is a matter of huge interest to the Government on occasion and, in particular, in the case of the Supreme Court. The general stance, outlook and predisposition of a judge on social and legal issues and jurisprudential matters may be of serious concern and are very serious and totally justified cri-

teria on which to judge an individual's suitability for appointment to the Supreme Court. A person could be highly intelligent but quite reactionary, for example. He or she may have served on the High Court for the past five or seven years and demonstrated that this is the kind of judge he or she is but the Government may decide, so be it, the judge is independent and as long as he or she is not behaving in a manner which would warrant his or her removal, it is stuck with that judge. That is what the independence of the Judiciary is all about. *Fiat iustitia ruat cælum.*

However, if it comes to an appointment to the Supreme Court, one can bet one's bottom dollar that any Government worth its salt would look at a person who, by virtue of his or her judicial record, has been of one predisposition or another and ask itself if he or she is the kind of person it needs on the Supreme Court. It might well be that the Government decides to put the legal contrarian onto the Supreme Court to balance up the attitude of other members but that is a decision for the Government to make. This is a hugely important criterion for an appointment to the Supreme Court but it is one which the commission envisioned by the Bill may not broach. The commission which has a lay majority cannot start evaluating judges by reference to their judicial record. If it is asked to make a short list of three for a vacancy in the Supreme Court, it cannot ask Mr. Justice Boyhan, for example, why he decided four cases in a particular way before shortlisting him. It cannot ask: "Why did you decide them in the way you did? We find that slightly perplexing." The Cabinet, behind closed doors, listening to the Attorney General and the Minister for Justice and Equality and making up its own mind collectively, can say; "To be honest, we prefer to appoint somebody else." That is perfectly right and, by the way, it has happened and I hope to God it will happen in the future. The Supreme Court is the interpretative court of the Constitution and this, by its very nature, affects the complexion of that court, its weight and balance and, to some extent, its direction. These are issues on which the Government is not merely accountable but has a duty to apply its own judgment and make the appointment, as appropriate. I am convinced, therefore, that the idea of putting a statutory body which cannot take those matters into account and will not be doing so in a position where it can provide a short list for the Government and keep it in the dark as to the people it excluded in composing that short list is a knife at the heart of constitutionality. It is wrong and wrong in principle.

The Minister may think the existing subsection in section 41 preserves that right of the Government but it is hedged around all sorts of other statutory obstacle to make it difficult for it to exercise its own constitutional function in judging the merits and demerits of all who are eligible for a position. He may think it may save the day but my guess is that if this matter comes to be seen in its entirety, especially in the context that every senior judicial appointment and consequential vacancy appointment has to be the subject of this procedure, it is deeply suspect from a constitutional point of view.

I notice that a very strange situation is later provided for. I do not want to be disorderly or stray into subsequent sections too deeply but it is relevant to the consideration of this point. One of the weirdest aspects is that if the commission decides it does not want to make a recommendation at all, a process of readvertising the position has to be engaged in as a mandatory step. It is not that the Government at that stage is free to ignore the situation; it must cause the commission to readvertise a vacancy for which it has made no recommendation.

I hope that in making these comments, even at this late stage, I can convince the Minister that the Bill needs the proposed revision of section 41 to be inserted and the deletion of section 40(3) which is a tattered, fraying, shrivelled fig leaf that does not preserve the constitutionality of this legislation.

**Deputy Charles Flanagan:** Amendments Nos. 86a and 86b are twins. I am not satisfied, nor have I been convinced, that the deletion of section 40(3) improves the situation in any way. I remind Senators that the subsection was included by way of ministerial amendment on Report Stage in the Dáil. It was brought forward to reflect a measure of concern on the matter of the constitutional function, as has been addressed by the Senator for some time now.

The insertion of the subsection underscores, if not copper-fastens, the position in law. I reflected on and sought advice on the matter and believe it is important that it specifically be inserted. Notwithstanding what the Senator said, I maintain that the order of preference, as mentioned earlier and by Senators throughout this debate, would not limit the advice the Government will ultimately convey to the President under the Constitution and it is important that we specifically state that in the legislation. I am happy, notwithstanding anything I have heard, to maintain my position that any ranking or order of merit of persons who may be recommended for appointment to office and which may be submitted to the Government may interfere with and unlawfully fetter the discretion of the Government, as the Executive, to appoint a qualified person. I do not accept that the order of preference, the ranking or the recommendation could in any way be construed as being binding on a Government in a way that is contrary to the Constitution. We have had this time and again during the debate, namely, the anxiety on the part of Government to ensure that in no way is the constitutional position interfered with adversely.

I reiterate that I continue to listen carefully to the concerns of Senators. Despite what Senator Norris might think, I have listened carefully to the points he and others have made-----

**Senator David Norris:** I never said the Minister did not.

**Deputy Charles Flanagan:** -----notwithstanding a very large degree of repetition not only this evening but in the past 74 or 75 hours of this debate. I do not want to minimise any of these concerns. They are, in short, the constraints on what an Attorney General might say or do and the concerns about what the Government may be told or knows, or is not told, in certain circumstances, or what it may not know, given the various interactions of key provisions of the legislation. There are the concerns we have discussed on other amendments about serving senior judges being required in any way to enter what is a selection process and having this expressed in the Bill. Of course, I am concerned to ensure nothing in the Bill in any way interferes with the constitutional position.

Let me say yet again that I am amenable to addressing the concerns that have been raised in the House, if that is the objective of amendment No. 86b, which I feel it is. I will come back on Report Stage to deal with some of the concerns. I cannot commit to dealing with all of the concerns, particularly those expressed. However, in short, I have listened carefully, particularly about the role, words and deeds of the Attorney General and what the Attorney General may or may not say and can or cannot do. I will come back to that issue on Report Stage in a way that, I hope, will allow us to progress the Bill.

**Senator Michael McDowell:** I welcome any indication of flexibility on the issues that have been raised. The Minister should remember something. He has pointed out that this has been a long debate and that these matters have been raised before. Like me or any other Senator, he has been in a position to table additional amendments to cater for these issues in order that we might discuss them on Committee Stage. He has preferred to follow a different rubric, namely, to keep his powder entirely dry, just listen to the debate and not deal with these issues - if he does have concerns about them - until Report Stage. I fully know and accept that it is

open to the House to recommit any substantial amendment on Report Stage. One of the disadvantages of Report Stage is that if that is not done, the debate is effectively guillotined to one contribution of a limited kind from each speaker. As a result, the dialogue that would be necessary to consider some of these issues is simply not going to happen in the way it should unless the Bill is recommitted in respect of the relevant amendments on Report Stage. I do not want to anticipate the individual instances in which that may be appropriate or inappropriate. It would be a lot more satisfactory to someone in my situation if I received a clear indication of what the Minister means by the language he just used. If he has concerns about the role of the Attorney General, can he share them with us? I am blue in the face banging on about them and now we have a situation where the Minister has gone on record and stated he appears to understand my concerns to some extent and that he is thinking about addressing them. Surely, particularly as the debate has gone on and on, we should hear now about these proposals to amend the legislation to deal with these matters.

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

**Senator Michael McDowell:** Why should everything be kept opaque? What really worries me is that although the Minister might be disposed to making amendments to deal with some of the issues I have raised, the first debate is going to take place in the august Cabinet room where, thus far, there is at least one person who appears to believe the points being made along these lines are being made in bad faith and solely for the purpose of perpetuating cronyism, etc. I really would like to deal with the specifics to which the Minister referred. I would like to know if he accepts that there is a problem with criminalising the Attorney General if he or she reveals the identities of unsuccessful applicants. Is that what I am to interpret from what he said? Is that the advice he is receiving? If that is the case, fine. However, as the Minister pointed out, it is taking a very long time for that to be admitted.

**Deputy Charles Flanagan:** Let me be clear. I spoke earlier in response to the Leas-Chathaoirleach's invitation in order to be helpful. What has happened now is that Senator McDowell has gone far beyond what I said. I recognised that there were concerns and listened to what Senators outlined as their concerns. I am reflecting on them. I have not stated there is a problem. I have not stated I share Senators' concerns. What I am anxious to do is bring forward legislation that can have the assent of the majority of this House having regard to the concerns of Senators. I am not going to change the Bill to accord with the points Senator McDowell has been making for the past number of weeks. I have listened carefully to the concerns and will reflect on them. I have been doing so during the course of the debate. I have not received any advice to the effect that there is a problem. What I am doing is merely acknowledging concerns. I will seek - as is the norm - a period of reflection prior to Report Stage. That is why we have particular Stages. I am not conceding that there is a difficulty. It would be unfair of Senators to suggest I have done so.

**Senator Michael McDowell:** Perhaps I misinterpreted what the Minister read from the typescript in his possession. I thought he was signalling an openness to revisit some of the issues he had previously indicated that he was unwilling to examine. I may have been wrong to see flexibility in that regard. Maybe I am just witnessing a desire to appear to be reasonable-----

**Senator David Norris:** The Minister's fluidity.

**Senator Michael McDowell:** -----that is unaccompanied by any evidence that there will be reasonableness. I am of the view-----

**Deputy Charles Flanagan:** I will grant one point to Senator McDowell. This is the first occasion on which I have acknowledged the existence of the concerns which he has repeatedly conveyed about the role, function and status of the Attorney General. I have listened for months to his concerns. I acknowledge that and I am reflecting in order to see if I can in some way move matters forward, with a view to receiving the assent of the House on that issue.

**Senator Michael McDowell:** I am not going to look a gift horse in the mouth. I welcome that. The Attorney General is just one matter. If the Attorney General is to be made free to provide the Government with details of the entire list of runners in the case, with a view to giving advice as to whether, over a number of short lists which the Government may receive, say, for the High Court or the Court of Appeal, there was a worry or dissatisfaction on the part of the Attorney General with the outcome of decisions made by the commission, some balance would be restored because the Government would have a clearer view of the issues with which it was being asked to deal. I would welcome the restoration of a degree of balance in that regard. There are other issues I have raised and we will see about them also. The Minister has stated he understands the point I am making and that he is open to considering it. That is one thing but he is very quick to indicate that he does not see that it is wrong to say he perceives a problem with the current consequences of criminalising the Attorney General. I would prefer him to be slightly more concrete and upfront and state that, on reflection, the-----

**An Leas-Chathaoirleach:** I am sorry to interrupt the Senator but I must ask him to report progress.

Progress reported; Committee to sit again.

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

**Senator Gabrielle McFadden:** Maidin amárach ar 10.30.

The Seanad adjourned at 9.30 p.m. until 10.30 a.m. on Wednesday, 23 January 2019.