



DÍOSPÓIREACHTAÍ PARLAIMINTE  
PARLIAMENTARY DEBATES

**SEANAD ÉIREANN**

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

Gnó an tSeanaid - Business of Seanad . . . . .	419
Nithe i dtosach suíonna - Commencement Matters. . . . .	421
Energy Regulation . . . . .	421
Services for People with Disabilities . . . . .	424
Legislative Reviews . . . . .	427
Human Rights . . . . .	429
An tOrd Gnó - Order of Business . . . . .	432
Housing Provision: Statements (Resumed) . . . . .	457
Message from Dáil . . . . .	464
Judicial Appointments Commission Bill 2017: Committee Stage (Resumed) . . . . .	464

## SEANAD ÉIREANN

*Dé Máirt, 5 Feabhra 2019*

*Tuesday, 5 February 2019*

Chuaigh an Leas-Cathaoirleach i gceannas ar 2.30 p.m.

---

*Machnamh agus Paidir.  
Reflection and Prayer.*

---

### Gnó an tSeanaid - Business of Seanad

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

The need for the Minister for Communications, Climate Action and Environment to review the legislation governing the energy regulator.

I have also received notice from Senator Pádraig Mac Lochlainn of the following matter:

The need for the Minister of State at the Department of Health with special responsibility for disability issues to ensure HSE service level agreements and fixed annual funding are provided for the iCARE and Bluestack Special Needs Foundation organisations in County Donegal in order that they can continue to provide a vital service for children and young people with disabilities in the county.

I have also received notice from Senator Ivana Bacik of the following matter:

The need for the Minister for Justice and Equality to provide an update on the progress made to date in the conduct of the three-year review of the operation of section 7A of the Criminal Law (Sexual Offences) Act 1993, as required under section 27 of the Criminal Law (Sexual Offences) Act 2017.

I have also received notice from Senator Rónán Mullen of the following matter:

The need for the Tánaiste and Minister for Foreign Affairs and Trade to provide an update on the ongoing political and humanitarian crisis in Venezuela.

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

The need for the Minister for Health to outline when the new model of care for the treatment of patients with lymphoedema will be finalised and whether the necessary resources

are being allocated for implementation of same.

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

The need for the Minister for Transport, Tourism and Sport to consider implementing a BusConnects plan for public transport in Limerick city.

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

The need for the Minister for Health provide an update on the employment starting date of a sarcoma specialist for St. Vincent's University Hospital.

I have also received notice from Senator Jennifer Murnane O'Connor of the following matter:

The need for the Minister for Health to make a statement on the high numbers on waiting lists for a public dental service assessment or treatment in community healthcare organisation, CHO, 5.

I have also received notice from Senator Aidan Davitt of the following matter:

The need for the Minister for Health to make a statement on the spiralling cost of the national children's hospital project and whether construction should be halted, pending completion of the cost review.

I have also received notice from Senator Victor Boyhan of the following matter:

The need for the Minister for Housing, Planning and Local Government to confirm the reserved functions of local authority elected members in relation to the three-year capital budget and to outline their powers to accept, amend or reject the draft capital budget at a plenary meeting of the full city or county council.

I have also received notice from Senator Lynn Ruane of the following matter:

The need for the Minister for Health to provide an update on the progress of the working group which is examining alternative approaches to personal possession of illegal drugs.

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

The need for the Minister for Education and Skills to outline why a national school (details supplied) in County Clare is unable to avail of broadband which is critical for the school, particularly for a visually impaired student who needs to access vital classroom equipment to overcome his disability.

I have also received notice from Senator Brian Ó Domhnaill of the following matter:

The need for the Minister for Communications, Climate Action and Environment to provide an overview of current Government policy on the post office network.

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

The need for the Minister for Justice and Equality to make a statement on the pipe bomb incident in Edenmore on Sunday night, which followed a gun attack in the same area over the Christmas period.

5 February 2019

The matters raised by Senators Michelle Mulherin, Pádraig Mac Lochlainn, Ivana Bacik, Rónán Mullen, Colm Burke, Maria Byrne, Máire Devine, Jennifer Murnane O'Connor, Aidan Davitt, Victor Boyhan, Lynn Ruane, Martin Conway and Brian Ó Domhnaill are suitable for discussion. I have selected the matters raised by Senators Michelle Mulherin, Pádraig Mac Lochlainn, Ivana Bacik and Rónán Mullen and they will be taken now. Senators Colm Burke, Maria Byrne, Máire Devine, Jennifer Murnane O'Connor, Aidan Davitt, Victor Boyhan, Lynn Ruane, Martin Conway and Brian Ó Domhnaill may give notice on another day of the matters they wish to raise. I regret that I have had to rule out of order the matter raised by Senator Aodhán Ó Ríordáin on the grounds that the Minister has no official responsibility in the matter.

## Nithe i dtosach suíonna - Commencement Matters

### Energy Regulation

**Senator Michelle Mulherin:** I welcome the Minister to the Chamber to discuss this very important issue. I am very concerned about the way the energy regulator is doing its business. It is not providing transparency in its decisions or reaching those decisions in a timely manner. A project which clearly illustrates the problems with the energy regulator is the proposed Mayo renewable energy project, a 45 MW high efficiency combined heat and power biomass fuelled plant to be built on the former Asahi site outside Ballina. The project lodged applications to the regulator for various consents and licences in June 2018. Previously, the project, under a different promoter, had been licensed in 2012 by the energy regulator. Unfortunately in 2016, even though the project was partially built, progress stalled due to financial difficulties. Progress stopped, but new promoters have now come on board. The project is worth €255 million, of which €95 million has been invested to date by the new promoters who have taken an equity stake of €95 million in the project. The promoters have taken on the task of revitalising and reviving the project. The planning permission has been extended by Mayo County Council and the promoters have received renewed consent from the Environmental Protection Agency, EPA, in respect of emissions. The promoters have received confirmation from ESB Networks that the grid offer remains in place and will be offered to the new company. However, the promoters have tried to deal with the energy regulator, now known as the Commission for Regulation of Utilities, but have run into a stone wall. Initially the energy regulator appointed consultants and the consultant did not want to give the project a high efficiency certificate, as had previously been given and subsequent to that the energy regulator has retained new consultants.

International consultants retained by the new promoters have certified that no material change has been made to the project since it was initially certified in 2012. Equally to my knowledge, there has been no change in legislation. I am very concerned that there will be a repeat of what happened when Apple proposed to build a data centre in Athenry.

The project is a golden opportunity for north Mayo and key to developing our national policy objectives, such as renewable heat and energy, to which I know the Minister is very committed. It is also tied in with the development of a data centre on the same site, which requires a renewable energy project to be co-located with it. This critical project has been stalled.

I believe that under the process being pursued by the Commission for Regulation of Utilities, the promoters should be entitled to know what the problem is and the reason for such delays when there has been no material change in the projects and why a second set of consultants had to be retained.

Second, in respect of the legislation covering the Commission for Regulation of Utilities, I believe there should be a time limit placed in legislation upon the regulator wherein it must give a decision. As the Minister knows, time is of the essence for the development of projects, promoters and investors do not wait around and will go somewhere else. This project is commercially sensitive to time delays.

With all the resources available to the energy regulator, why is it outsourcing the evaluation of the project to another set of consultants? All this is taking time, when we have a project that is time sensitive. As I have said, we have seen what happened in Athenry. The whole community was devastated by the outcome of the delay in giving a decision of consent to Apple and ultimately because it took so long to do so, Apple pulled out.

There are commercial realities. There are climate change objectives and objectives for the development of the site. This site is in a peripheral area where it is hard to attract investment and growth. This project offers a golden opportunity and I do not believe the energy regulator has dealt with these investors in a fair way. I do not believe it is fair from all the view points I have set out to the Minister and believe it should be prescribed in legislation that the regulator should make a decision within a certain period. When Deputy Bruton was Minister for Jobs, Enterprise and Innovation, one of the directives that came from his Department and the Taoiseach of the day was that all Government agencies dealing with commercial projects should deal with them in a time-sensitive way and this clearly has not happened in this case. The other three agencies have given consent, but the regulator has not. Is this rocket science? Why is there no transparency? Why should I and any ordinary person not know what is happening in respect of a project which is of such critical importance in the area?

I look forward to the Minister's response.

**Minister for Communications, Climate Action and Environment (Deputy Richard Bruton):** I thank the Senator for raising this matter.

I should outline very clearly that the Commission for Regulation of Utilities is an independent regulator. The Commission for Regulation of Utilities is independent of me as Minister and sets its own processes for application forms, application fees, processes it will go through, guidance it provides for applicants and so on. It also is fair to state it is a body that engages in very substantial public consultation whenever it produces documentation that is for the guidance of applicants. It published the documentation to which the Senator referred in March 2012. The latter remains the documentation to which applicants should refer.

Regarding the basis for the rulings of the regulator, it essentially interprets European legislation, as well as our national legislation. In this instance, it is establishing the heat efficiency of the particular plant. The European documentation sets out the issues that must be considered. I am sure the Senator and the applicant have already had regard to these issues. This is a complicated matter by any standard. The regulator must examine several issues in the context of an application, including electrical, thermal and overall efficiency, power-to-heat ratios, electricity from the high-efficiency combined heat and power and primary energy savings. It does so in

accordance with formula set out in the original directive and its annexes. The regulator has been transparent about the requirements. I cannot second-guess its assessment of an application such as this, no more than the Minister for Housing, Planning and Local Government can second-guess An Bord Pleanála when it independently assesses an application made to it.

The legislation clearly sets out that the regulator is not accountable to the Minister, but it provides for accountability to the Committee on Communications, Climate Action and Environment. The independent regulator is accountable to the Oireachtas, as ought to be the case. I cannot shed light on why nothing has changed in the view of the promoters but they have not been granted the approval which was previously given. That is entirely a matter for the Commission for Regulation of Utilities to assess. Unfortunately, I am not in a position to provide an insight as to what difficulties this application may be encountering other than to point the Senator and the applicants to the very detailed guidance on what needs to be submitted, the calculations conducted by the regulator and how it weighs applications. The very detailed source document specifies the terms within which it operates.

I understand the Senator's enthusiasm to have the plant approved. However, in order to access state aid or aid through the various refit programmes it must, in addition to acquiring planning permission and EPA approval, fulfil certain criteria which are set independently, policed by the EU and administered by the Commission for Regulation of Utilities. Obviously, it is an important element in any project that there be an independent process to vet approval in any case where benefit is being conferred. It is not a political decision, nor should it be. That is the position as I understand it. The company must complete whatever requests have been made of it by the Commission for Regulation of Utilities in order to facilitate a decision being made in a timely way.

**Senator Michelle Mulherin:** The fact is that if it were not for a financial difficulty encountered in 2016, the plant would be up and running. It had received all the necessary consents. The regulations which the Minister has to hand have not changed since 2012 and formed the basis upon which the regulator originally issued consents. There has been no material change in the application. Perhaps somebody made an error somewhere along the way. There are serious questions to be answered by the regulator in respect of this matter. I will be bringing it to the attention of the Joint Committee on Communications, Climate Action and Environment in order to get some answers. There is a lot at stake. We are talking about renewable heat and renewable electricity. This is a whole package and an awful lot of work has gone into it for the regulator to say it got it wrong in the first place. I do not accept that and common sense should prevail. There are clearly issues within the current process when the regulator had to get a second lot of consultants. Notwithstanding the complexities, things should be clear and transparent. They have to make sense to somebody, somewhere, and some empirical standard and test has to be applied. The consultants who previously dealt with this are now saying regulations have not changed and the general public will want to know why such a project, especially in north Mayo, cannot be got over the line. They will also want to know why a Government agency is delaying it in a way that is quite inexplicable.

If a clear explanation could be given by the Minister or the regulator, whose job it is to do so, I would at least have something to take back to people, but I have no answer at this point. The regulator appeared before the special climate action committee and he had nothing to offer on that occasion, but I will raise this issue again as it is very important for the north Mayo area.

**Deputy Richard Bruton:** The Senator knows as well as any of us that An Bord Pleanála

makes decisions and does not engage in a process of toing and froing with public representatives or others. It has planning guidelines and seeks to implement them in the fairest way possible. I cannot shed any light on what difficulties are arising. The EU code states that each generational unit shall be compared with the best available and economically justifiable technology for the separate production of heat and electricity on the market in the year of construction of the co-generation unit. That suggests a unit in construction in 2012, as against a unit in construction in 2018, will be compared to different economically justifiable and best available technology. A regulator continues to evolve against the rules which are set for it. It does not follow that if something was approved in 2012, it will be identical in 2013. In annexe 3, it states they are looking at a different test and at today's technology rather than that of 2012.

I do not know anything about the process, but it is not as clear cut as asking why the regulator is not repeating what it did before. It has to evaluate it because it would be giving out valuable public subsidies, supported by electricity users, and it is right that it be independently vetted. I have to defend the integrity of the CRU. It is a highly professional body and an OECD review in 2018 reported it as operating to the very highest standards. There is no question of doubt in the public mind about how the CRU does its work. It is accountable to the Oireachtas as set out in legislation.

### **Services for People with Disabilities**

**Senator Pádraig Mac Lochlainn:** The Minister will be familiar with this issue which affects a number of organisations in County Donegal. iCare which is based on the Inishowen Peninsula and works with more than 100 families of children and young people with autism provides an absolutely vital service not just for the Inishowen Peninsula but for the wider area of north Donegal. The Bluestack Special Needs Foundation based in Donegal town also provides a vital service for a large number of families in that area of south Donegal. They combined with the organisation Extern to apply for funding under the Ability programme last year. As the Minister of State will be aware, that programme has funding of €16 million and is co-financed by the Irish Government and the EU, delivering to 27 projects across the State. Major controversy arose last year when iCare, Bluestack Special Needs Foundation and Extern were refused funding. When we look at a map of the State, only one organisation north of the famous Galway to Dublin line, which was located in Roscommon, had received funding. Major controversy surrounded that because both iCare and the Bluestack Special Needs Foundation have existed for many years without any substantial State funding. iCare, based in the Inishowen Peninsula, my home area, has been in existence for 18 years. It has raised a great deal of money. The organisation involves families who are taking care of their loved ones with intellectual special needs and trying to fundraise massive amounts of money every year. There was an intervention for both organisations last year, which I welcome. At last they got some funding. Both of them were on the verge of collapse, which would have been a disaster.

As we are now into 2019, we need confirmation - I hope the Minister of State will provide it today - that there will be a service level agreement between both organisations and the HSE and fixed annual funding will be provided in order that they will know where they stand and that the families will know that they have a service and will not have to cope, from year to year, faced with massive demands of fundraising. Both organisations have achieved a great deal. They have great support in the community but, frankly, they have been taken for granted for far too long. If funding is not confirmed by the Minister of State today, urgent intervention is needed

to secure that funding as soon as possible.

As we are now into 2019, we need confirmation - I hope the Minister of State will provide it today - that there will be a service level agreement between both organisations and the HSE and that there will be fixed annual funding in order that they will know where they stand and that the families will know they have a service and will not have to cope, from year to year, with facing massive demands in terms of fundraising. Both organisations have achieved a great deal. They have great support in the community but they have been taken for granted for far too long. If such funding is not confirmed by the Minister of State today, there needs to be urgent intervention to secure that funding as soon as possible.

**Minister of State at the Department of Health (Deputy Finian McGrath):** I thank the Senator for raising this very important issue. I am well aware of his work and support for families of children and adults with disabilities in the Donegal area.

I thank him for raising the issue of funding for the iCare autism support group and the Bluestack Special Needs Foundation. As Senators may be aware, iCare provides a range of activities for children and young adults with autism spectrum disorder in the Inishowen area. The organisation also provides supports and services for siblings and parents of children and young adults with autism spectrum disorder.

I would also like to acknowledge the Bluestack Special Needs Foundation's extraordinary achievements since it was established in 2006. The foundation operates a range of educational, practical and emotional support programmes using a family support model and provides evening and weekend activities, as well as summer camps and a diverse range of activities. Through its funding activities, the foundation has made very significant donations to charities in the area for a number of years.

I understand the Bluestack foundation has in the past received modest funding through the national lottery. Following a request for urgent funding last year, of which I am aware, the HSE met representatives of the Bluestack foundation and some funding was awarded to assist the organisation. That intervention was made last year.

I understand both organisations have submitted funding applications to the HSE for 2019 and I can appreciate they are anxious to learn the outcome. The HSE's national service planning process for 2019 has now been agreed and budgets are being assigned to each community healthcare organisation, CHO. Once CHO area 1 receives its allocation, it will be in a position to consider the funding arrangements for individual services and organisations, and this will include those raised by the Senator.

As Senators may be aware, a number of important developments are under way regarding disability services in general and this includes autism services. In December 2018 the Minister, Deputy Harris, announced the publication of two reports on autism services. They included a research report on prevalence and a review of HSE autism services. The HSE review includes a range of recommendations aimed at improving services for children and adults with autism. The Minister has asked the HSE to proceed with implementing the recommendations and an autism plan will be published later this year. The actions will build on the substantial work already under way in improving autism services and the assessment process, in particular.

*3 o'clock*

The Government remains committed to providing service supports for people with disabilities which will empower them to live independent lives. These supports will provide greater independence for people in accessing the services they choose and enhance their ability to tailor the supports required to meet their needs and plan their lives. As part of this commitment, a radical programme of reform of disability services is under way. The implementation of the reforms will continue to have a practical and tangible impact on the lives of young people and their families. The work is ongoing, as is the investment and the reform. We need to focus on the organisations involved such as those to which Senator Mac Lochlainn refers.

**Senator Pádraig Mac Lochlainn:** I acknowledge the Minister of State's long campaign for families with loved ones with disabilities and persons with disabilities. As he has personal knowledge of being a carer, he will understand more than most just how frustrating the situation has been. I will again tell the story of iCare which I know so well because it is based in my home town of Buncrana. It has been in operation for 18 years and become bigger and bigger in terms of the services it delivers. Its work is groundbreaking in terms of autism support services. It works with the local school, Scoil Íosagáin, in Buncrana. iCare is a template for organisations across the State but, incredibly, it has achieved that with its own resources and those involved are weary. The HSE will announce its decision soon. I urge the Minister of State to ensure clarity is provided as soon as possible on the funding for 2019, with the Bluestack Special Needs Foundation. There is full, cross-party support in County Donegal for the services provided by the two organisations. We desperately want them to have State funding that will allow them to continue their important work. I urge the Minister of State to continue to monitor the position and to ensure funding is provided for this year. I thank the Minister of State for attending.

**Deputy Finian McGrath:** I thank the Senator for his comments on disability. I appreciate the work of iCare, the members of which I have met. I was involved with representatives of the Bluestack foundation last year when an issue arose at the time of the intervention. I recognise the dedication, commitment and autism support services in the Senator's community.

The HSE will continue to provide significant support services for children, young adults and their families in the north west. Alternative respite, in-home respite and community-based activity programmes are in place in the community healthcare organisation area benefiting 157 children and adults with some complex needs. I recognise the commitment of the groups raised by the Senator and firmly believe community and voluntary services such as those must be supported as much as possible. I accept the Senator's point that the services are essential. In this year's budget funding of €1.9 billion was allocated by the HSE for disability services in 2019. What that means essentially is that we will have 8,600 people in residential care, 27,000 people in day services, respite residential support for 182,500, personal assistance services of 1.63 million hours and home support services of 3.08 million hours. The good news for people living in institutions is that we will move 160 more people out of institutions into smaller community settings. We must invest and reform and listen to the needs of groups such as iCare and the Bluestack foundation. I am listening carefully to what the Senator says and will push very hard on those issues.

**Acting Chairman (Senator Michelle Mulherin):** There are two remaining matters. As a vote is being taken in the Dáil, however, we do not have Ministers available. I invite the Leader to speak.

**Senator Jerry Buttimer:** I apologise to the Members. The first I was aware of this was when I received a telephone call from the Seanad Office. I have never seen it happen during the

5 February 2019

Commencement debate previously. Given that there is a division in the Lower House, I propose that we check if a Minister is available to respond to the remaining matters.

### Legislative Reviews

**Senator Ivana Bacik:** I welcome the Minister of State, Deputy Stanton. I am delighted he is here to take this matter in which I know he has a strong interest. My Commencement matter is to ask the Minister for Justice and Equality to provide information on the progress made to date in conducting the three-year review of the operation of section 7A of the Criminal Law (Sexual Offences) Act 1993. In particular, I seek an outline of the progress made in providing the additional resources promised to support those seeking to exit prostitution and for research into the operation of section 7A.

The Minister of State is well aware of the context for this question. It is the passing into law in 2017 of Part 4 of the Criminal Law (Sexual Offences) Act, which created in section 7A of the 1993 Act a new offence of purchasing sexual services, thereby criminalising the buyers of sex, while also decriminalising individuals who sell sex. The primary objective, as the Minister of State is well aware, was to tackle the demand that led to sexual exploitation, predominantly of women and girls. The context was the 2013 recommendation of the justice committee, which was chaired by the Minister of State and on which I served, that a law be introduced here in line with the approach taken in Sweden and an increasing number of other countries worldwide which seek to tackle demand by criminalising the purchase of sex. In Ireland, we had seen a long campaign by the civil society alliance, Turn Off the Red Light, TORL, to which more than 70 groups were affiliated. The work of TORL fed into the committee's review but, as the Minister of State is aware, we also conducted extensive hearings.

The legislation was commenced on 28 March 2017 and I understand the three-year review is thus due in March 2020. There is some concern among civil society groups that worked with the Turn Off the Red Light campaign and are very supportive of the legislation about how the review required by section 25 of the 2017 Act will be rolled out. My objective today is to get some clarification as to how it is proposed the review will be conducted and to ask the Minister of State to outline whether the promised additional resources will be provided to support those seeking to exit prostitution. A review of the debates on this matter would show that even those who opposed the legislation supported the provision of resources to assist those who wish to exit prostitution. There was an expectation that projects such as the Women's Health Project and groups working closely with those seeking to exit prostitution such as Ruhama would be given resources to assist them in their important work. The Minister of State travelled with other members of the committee to Sweden on a fact-finding trip in 2012 when we saw the resources that are put in place in that country to support the implementation of its law.

I am also keen to find out what progress has been made in resourcing research into the operation of section 7A. We need to ensure the review will be evidence based and research will be conducted to provide facts on which the review will be based.

I would also like resourcing to be provided for a public awareness programme on the legislation and its purpose. The first conviction under Part 4 was reported on 21 January last. One assumes the reporting of that conviction will have knock-on and deterrent effects. We know from other research that knowledge that people are likely to be prosecuted acts as a deterrent and has a very welcome effect of suppressing demand. We know also that implementing new

criminal legislation creates challenges. While the reporting of cases such as the conviction secured in recent weeks will have an important chilling effect, we are all conscious that resourcing must be put in place for specialist Garda units assigned to the work of targeting sex buyers and the organisers of prostitution who feed on demand.

I have raised a number of issues. I know the Minister of State is personally concerned about this matter and welcome his attendance in the House to respond.

**Minister of State at the Department of Justice and Equality (Deputy David Stanton):** On behalf of the Minister for Justice and Equality, Deputy Charlie Flanagan, I thank the Senator for raising this important matter and offer the Minister's apologies for not being able to address it in person. It is hard to believe it is so many years since we addressed this. It was in 2012.

I remind the House of the provisions of the Criminal Law (Sexual Offences) Act 2017 that related to prostitution-related offences. Part 4 of the Act provides for two new offences: paying for sexual activity with a prostitute and paying for sexual activity with a trafficked person, with the latter offence carrying a penalty of up to five years' imprisonment or an unlimited fine, or both. The Act removes those who offer their services as a prostitute from the existing offence of soliciting for the purpose of prostitution. A key objective of Part 4 of the Act is to reduce demand for sexual services, as the Senator said. As regards actions on the ground, I believe the message is getting out to those who purchase sex.

In recent months a number of files have been sent to the office of the Director of Public Prosecutions, resulting in the much publicised first conviction for the purchase of sex earlier this month. Furthermore, the Department of Justice and Equality has advanced plans to conduct an awareness raising initiative later this year relating to the offence of purchasing sex.

As regards supporting persons who wish to exit prostitution, comprehensive measures are in place. The Department of Justice and Equality provides annual funding to Ruhama to ensure women who wish to exit prostitution receive the necessary support to develop the confidence and capacity to rebuild their lives. This funding was increased in 2017 and again in 2018. With regard to State support, the HSE's women's health service provides sexual health and outreach support for women affected by prostitution and trafficking for sexual exploitation. The service comprises a free comprehensive sexual health service, including full sexual health testing, treatment and contraception.

The Act was passed on 22 February 2017 and much of it, including the provisions I have described, were commenced on 27 March 2017. Part 4 of the Act specifies that, not later than three years after its commencement, a report will be prepared on the number of arrests and convictions in respect of the new offences, as well as an assessment of the impact of the section on those who provide sexual services for payment. Inputs to the report will come from a number of sources. The first will be from the monitoring of investigations, arrests and convictions by the Garda National Protective Services Bureau. Additional information will be provided by the HSE's women's health service and civil society organisations working in this field. Furthermore, this year the Department is funding a number of research projects that will measure the impact of the new legislation on the welfare of women engaged in prostitution, the outcomes of which will inform the report. I hope that answers the Senator's points.

**Senator Ivana Bacik:** I thank the Minister of State for the very full response. I very much welcome the plans of the Department of Justice and Equality to conduct an awareness raising

5 February 2019

initiative. It will have a large role to play in supporting the suppression of demand, as sought through the legislation.

I welcome the announcement that the funding for Ruhama was increased in 2017 and 2018. I note the Minister of State does not refer to any additional resources being provided for the HSE women's health service. I wonder whether resources to that important service will be increased also because the service does a great deal of work in supporting women and others involved in prostitution.

I note the Minister of State's point about the report. Section 27 of the Act states it shall include information on arrests, convictions and the impact of operation. Is it possible, however, that other material might be in the report? Will the Minister of State comment on this? Will he give more detail of the research projects the Department of Justice and Equality will be funding to measure the impact of the new legislation on the welfare of women engaged in prostitution? I would be interested to know the basis on which those resources are being allocated.

**Deputy David Stanton:** I thank the Senator for raising this matter and making those points. The Department of Justice and Equality is actively engaged in co-ordinating measures to reduce demand for the purchase of sexual services and in developing support strategies for persons seeking to exit prostitution. I recognise the important roles An Garda Síochána, the HSE, State agencies and the NGO sector play in supporting our national objectives in that regard. These organisations also play a strong role in the national strategy against human trafficking which has a strong sexual exploitation dimension.

The Minister believes Part 4 of the Criminal Law (Sexual Offences) Act 2017 has played an important role in this process and he is committed to the delivery of a comprehensive review of its operation. On behalf of the Minister, I assure the House that his Department will continue to support this important area through research, awareness-raising, NGO funding and co-ordination measures. I do not have any information to hand on the HSE women's health service. It is possibly best obtained from the Department of Health, rather than the Department of Justice and Equality.

As the plans and research come to hand, I will arrange for them to be communicated to the Senator. There are other inputs. I am aware that the Senator has a personal interest in this matter and will ensure she is kept informed in the best possible way as this develops.

## Human Rights

**Senator Rónán Mullen:** I welcome the Minister of State and thank him for attending to address this important topic. I am sure he will agree with me that the crisis unfolding in Venezuela in recent weeks has shocked many people with news reports of people rooting through bins to feed their children, a crisis in the availability, as well as a lack of, basic medical care and supplies, along with inflation of 1,000,000%. This is all in a country which has generated \$320 billion in oil revenue in the past ten years.

Last year's Venezuelan presidential election exposed and saw electoral fraud on a massive scale. This has been roundly condemned by the European Union and all international observers. We have seen serious human rights abuse reports, with 8,000 extrajudicial killings in the past three years by the state security services, while thousands more have been detained without

charge, trial or any due process. Many Venezuelans have been stranded abroad during the crisis, including many in Ireland, because their worsening situation has meant that they are unable to renew their travel documents.

I would be grateful if the Minister could outline what steps the Government is taking about this serious situation, particularly in conjunction with the European Union, to bring about an end to the crisis and an improvement in the lives of ordinary people in Venezuela. Is the Department of Foreign Affairs and Trade aware of Venezuelan citizens who may be stranded in Ireland and unable to return home?

Will the Minister of State agree with me that some political parties and Members of the Oireachtas have not covered themselves in glory on this issue? Many Members of this House spent much time raising human rights abuses in the context of the debate on the occupied territories Bill but have been curiously silent on this issue. The Minister of State will be aware that two senior members of Sinn Féin, including its general secretary, attended Mr. Maduro's inauguration recently. It was Sinn Féin's connected organisation, the IRA, which committed 1,800 extrajudicial killings on this island that are still not condemned outright. In one way, we cannot be surprised that it has no objection to 8,000 extrajudicial killings committed by the Venezuelan regime.

It is not just Sinn Féin of course. Over the weekend, I heard Deputy Paul Murphy of the so-called Socialist Party say the economic crisis in Venezuela was due to the fact that Mr. Maduro was not left-wing enough. Even the President has joined this bandwagon in the past, I am sorry to say. He praised the former Venezuelan President, Hugo Chávez, for achieving "a great deal in his term in office, particularly in the area of social development and poverty reduction." These policies are now the policies universally agreed to be the root cause of the current misery of the Venezuelan people. I do not say this to be nit-picking but because it is a serious subject. It highlights the bankrupt political ideology of many of the hard left. It does not seem to matter how many people suffer or die, so long as their left-wing experiment is protected at all costs.

I hope the Minister of State will agree with me that sentiments praising the Maduro regime do not represent the views of the Irish people. The Government has moved on this issue by recognising of the head of the Venezuelan National Assembly, Juan Guaidó. Will the Minister of State endorse the words of two Venezuelan nationals living in Ireland, Kley Salinas and Lili-ana Fernandez, who said in an interview at the weekend that "Your body is here in Ireland but your mind is in Venezuela", living in fear for those back home? We have to have in mind these days and show concern for the hundreds of Venezuelan nationals who have come to Ireland to live happy and productive lives but who are in great pain about the plight of their home country.

**Minister of State at the Department of Foreign Affairs and Trade (Deputy Ciarán Cannon):** The Government continues to be deeply concerned by the political, economic, social and humanitarian crisis in Venezuela. This crisis continues to have a grave impact on the Venezuelan people. It has resulted in mass migration, affecting countries in the region and overall regional stability.

Particularly distressing is the human impact of the crisis. The UN estimates over 3 million people, approximately one tenth of the entire Venezuelan population, have already left the country. The acute humanitarian needs in the country are well known, particularly shortages in access to medicines, significant increases in malaria, infant and maternal mortality, as well as acute malnutrition.

5 February 2019

On 10 January President Nicolás Maduro started a new mandate on the basis of non-democratic elections held in May 2018. Ireland was not represented at the inauguration and fully supported the related declaration by the EU High Representative and Vice-President of the Commission, Ms Federica Mogherini, which urged President Maduro to release all political prisoners, to uphold the rule of law, human rights and fundamental freedoms and to urgently address the needs of the population.

Ireland, alongside its EU partners, has repeatedly called on the Venezuelan Government to engage in dialogue with the opposition, respect the electoral calendar and fully restore the country's democratic institutions. It is regrettable that the Venezuelan Government has not heeded these calls for fresh presidential elections in accordance with internationally recognised democratic standards and the Venezuelan constitutional order.

Ireland fully supports the most recent EU 28 statement made by the High Representative and Vice President of the Commission, Ms Mogherini, on 26 January which reiterates that a peaceful and inclusive democratic solution is the only sustainable way out of the current crisis and reaffirms the full support of the EU to the democratically elected National Assembly. It stated that if no announcement regarding fresh elections were to be made in the intervening days, the EU would take further actions, including regarding the issue of recognition of the country's leadership. Ireland reaffirms its full support for the democratically elected National Assembly, the last remaining fully democratic institution in Venezuela, emphasising that its powers need to be restored and respected. Ireland supports the call made by the President of the National Assembly, Mr. Juan Guaidó, for free, fair and democratic elections.

Ireland is committed to finding ways to foster shared democratic solutions that can bring political stability and address the pressing needs of the Venezuelan people, including by increasing EU humanitarian support.

A credible, meaningful dialogue leading to an inclusive democratic solution is the most effective way of achieving a peaceful and sustainable resolution of the current crisis in Venezuela. Ireland also supports the remarks made by the High Representative and Vice-President of the Commission, Ms Mogherini, following the informal meeting of EU foreign Ministers in Bucharest on 31 January, including regarding further EU actions to increase humanitarian support and to consider additional targeted sanctions. Ms Mogherini also took the opportunity to announce the establishment by the EU of an international contact group for Venezuela. Ireland, while not seeking membership, welcomes its establishment and believes that the international contact group will be a useful vehicle for facilitating dialogue and working towards a democratic solution. I look forward to the report of the first meeting of that international contact group which is to be held in Montevideo this Thursday.

I welcome the high priority given to the issue by the EU and the regular consultations at the highest levels on developments on the ground. Ireland remains in close contact with our EU partners to consider our next steps for a co-ordinated EU action.

**Senator Rónán Mullen:** I thank the Minister of State for his reply. I reiterate something I said in this House last week. While I welcome the general thrust of the Government's approach to this issue, it would be good if we did not just wait for the EU line on these issues. It is important we give strong moral leadership as a small country that has been known to do that in the past and is recognised and respected for its neutrality. Other, larger countries have moved more quickly to make their positions on the matter clear and I would like to see Ireland taking a lead

and not just waiting for the EU line.

**Deputy Ciarán Cannon:** I thank the Senator. I reiterate that Ireland has continuously voiced its support for the National Assembly, of which Mr. Guaidó was elected President earlier this month, as well as urging Mr. Nicolás Maduro to fully respect and restore the independence and powers of the National Assembly. Ireland is committed to finding ways to foster shared democratic solutions that can bring political stability and address the pressing needs of the Venezuelan people, including by increasing EU humanitarian support.

We have always made the case and continue to do so that a credible, meaningful dialogue leading to an inclusive democratic solution is the most effective way of achieving a peaceful and sustainable resolution of the current crisis in Venezuela. Ireland supports urgent measures to address the humanitarian crisis and reiterates calls for humanitarian actors to be allowed to operate without interference to ensure that the utmost is done to mitigate against the grave effects of the crisis and alleviate the suffering of the Venezuelan people to the greatest extent possible.

Ongoing engagement with our EU partners is critical in trying to effect the kind of change necessary within Venezuela in the most sustainable manner. Our voice is amplified significantly by working in close concert with our EU partners and at the highest level on the issue. The days and weeks ahead are crucial for the people of Venezuela and Ireland will continue to maintain that very close and ongoing contact with our EU partners to repeatedly emphasise the right of the Venezuelan people to choose their future.

*Sitting suspended at 3.25 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, statements on housing provision, resumed, to be taken at 4.45 p.m. and conclude not later than 5.15 p.m.; and No. 2, Judicial Appointments Commission Bill 2017 - Committee Stage, resumed, to be taken at 5.15 p.m. and adjourned not later than 7.30 p.m., if not previously concluded. For the information of Members, the Minister for Housing, Planning and Local Government, Deputy Eoghan Murphy, will complete his reply to the debate on No. 1 which he did not have time to conclude last week.

**Senator Lorraine Clifford-Lee:** I wish to discuss the outrageous and spiralling cost of the new national children's hospital. I have been in north County Dublin for the past few days knocking on doors and talking to people and this was the only matter they wished to talk about. It is on everybody's lips. It is outrageous that we are still not getting the full story and the Government's credibility has been shattered by this. It is clear that its timelines are not adding up and we need to immediately know what happened. It is not good enough for the current Minister for Finance or the Minister for Health to tell us what is going on, this concerns successive Ministers. There are clearly some serious issues involved where costs were not tied down, the contract was not properly costed at the start and there are clear governance issues at play. The stories are not adding up and people are getting very angry. We need to know what is going on and to stop taking people for fools. They want to know what is going on. Nobody questions the need for this hospital. We all know it needs to happen as soon as possible, but we need to take

control of the costs. It is clear Fine Gael has mismanaged the largest capital project in the country, but it has a history of mismanaging large capital projects such as the fiasco with Irish Water and the broadband roll-out. There is now more mismanagement of the public purse and people are sick of it. They want to see their hard-earned taxes going to projects and not being wasted. We are now spending €500,000 on a review of something that should not have happened in the first place. We will apparently have this PwC report in March, but we need to see the terms of reference of this report immediately and get cross-House and cross-party agreement on them. Fianna Fáil wants the terms of reference to include identification of areas where savings can be made. The project is ongoing and nobody is calling for it to be stopped, but we need to identify areas within the project, as it stands, on which costs can be saved.

The Taoiseach and the Minister for Finance need to publish where they will cut the capital expenditure in health in the coming years to finance the spiralling costs of the national children's hospital. Projects throughout the country will have to be cut back or cancelled. Fine Gael is able to announce health projects, but we want to see immediate announcements of what projects it will cancel because it could not manage the public purse. Fine Gael likes to state it has great prudence and can be trusted with the public purse. Significant mismanagement has happened under Fine Gael in recent years and the public is outraged by it. I want a proper and sincere debate in this House about the outrageous situation with the national children's hospital.

**Senator Rose Conway-Walsh:** I send solidarity and our warm best wishes to the nurses out in the cold and the rain.

**Senator Paul Gavan:** Hear, hear.

**Senator Rose Conway-Walsh:** It is scandalous that they have to be out there rather than doing what they are trained to do. I look forward to joining them in the next couple of days. I also wish to speak about the national children's hospital and the overrun on it. It is not just about the national children's hospital. People are so angry because we have had it all before. This is like Fianna Fáil's personnel, payroll and related systems, PPARS, but much worse. Other projects such as the national broadband plan, the Carillion debacle and the JobPath debacle have seen millions wasted by vested interests and because the proper procurement procedures are not in place. It is time for the Minister to say exactly what he will do differently because the buck stops with him and how the procurement model will be changed. We can no longer afford to continue with the same procurement model that has been used.

I have raised the serious issues related to JobPath since I entered the House, the money paid to companies involved and the impact on existing local schemes. This is all connected to what is happening with the national children's hospital. Tonight, my party colleague, Deputy Brady, will table a motion in the Dáil to immediately stop the referrals to this scheme. Private companies have been made extremely wealthy by the multiple referrals they are given. We have never seen the contracts that have been given to those private companies to see what deal was made. Did people do their jobs properly? Did the Minister properly oversee those contracts? This scheme will cost almost €100 million, if not more. At the same time, the publicly funded local employment services could not buy a box of paper clips. More than 11,000 unemployed, vulnerable people were forced back onto it. They do the first round of JobPath and the private companies get paid for it. They are then told to come back after a few months and are put through the rigours again, for which there are further payments.

This has to stop. There are 1,900 vacancies in the community employment sector. Such

vacancies could offer jobseekers opportunities to take up locally-based and suitable employment that contributes to the community. Figures from November show that out of 190,000 people referred at that stage, just 9% of those who went to these private companies had secured employment which was sustained for one year. The cost to the taxpayer - the citizens of this country - is €3,718 per person. Providers also receive double payments where the same individuals are referred twice.

I want a full debate on JobPath. I want the cover-up to stop. A cover-up has been ongoing for years in respect of JobPath and there has been an absolute waste of money. The money in question could be given to nurses who are out in the rain today picketing.

**Senator Lynn Ruane:** I want to raise the issue of the report published last Tuesday by the Joint Committee on Education and Skills, of which I am a member. It is the product of a major body of work with academics, sexual health experts, teachers organisations, bodies representing students and school boards of management. We have made a number of wide-ranging recommendations on curriculum reform that will now be delivered to the Minister for Education and Skills and fed into the review being carried out by the National Council for Curriculum and Assessment, NCCA. Our recommendations have at all times been guided by best practice and domestic and international evidence and motivated by wanting to see young people happy, empowered and informed as they explore relationships and sexuality for the first time. It has been over 20 years since the social, personal and health education, SPHE, curriculum was last reviewed and we want to make sure our proposed reforms reflect the huge social and political changes in Ireland during that time, particularly the recent referendums on same-sex marriage and repeal of the eighth amendment.

The report and its recommendations are detailed and comprehensive. I would like to draw the attention of the House to some key changes we have proposed. We want relationships and sexuality education, RSE, and SPHE classes to start at a younger age in primary school and in a developmentally appropriate manner. The use of outside providers is the most common way RSE is delivered to students and we want such providers regulated by the HSE and the Department of Education and Skills. We want teachers to be able to be specialised in RSE. We want RSE to be taught as part of a whole-school approach, with extra resources given to school principals and boards to support it. In terms of the curriculum, we have recommended that LGBTQI education, consent, reproductive healthcare and pornography form part of any new curriculum. We have also called for the amendment of the Education Act 1998 to remove ethos as a barrier to delivering objective and factual sex education. This is a progressive report, proposing some big changes that will benefit students and young people. I would like the Leader to organise a debate in the Seanad on the report in the near future.

On a related note, I ask the Government for an update on the plans to fully commence the Data Protection Act 2018, including the provisions on the micro-targeting of children which Senator Higgins and I worked to include in the legislation.

**Senator Ivana Bacik:** Like others, I raise the issue of the nurses strike and express support and solidarity with the 30,000 members of the INMO who are striking for the first time in 20 years. I join others in calling on the Government to engage urgently with the INMO to address, in particular, the very valid concerns it has raised about recruitment and retention of nurses and around patient safety in hospitals because of under-staffing as a result of the difficulties with recruitment and retention. As Deputies Howlin, Kelly and others have stated in the Dáil, this engagement can be carried out within the framework of the public service stability agreement,

5 February 2019

PSSA, particularly in the context of the issues related to recruitment and retention. It is worth noting the Opposition has been calling for a general review of changes in work practices and of additional duties now being taken on by nurses and that such a review should consider, therefore, the issues the INMO has been raising around the increased professionalisation of nursing. I should add I have been contacted, as I am sure Senators Norris and Ruane have, by Trinity nursing graduates who point out to us the huge transformation that has occurred in recent years within the nursing profession, with the increased professionalisation of nursing and the awarding of degrees. Furthermore, the huge expansion in postgraduate nursing studies has resulted in some incredible research coming out of third level institutions which has really changed the nature of the nursing profession. The Government has been strangely detached on this matter and needs to engage with the INMO, otherwise we will just see more and more hardship for patients whose procedures will be delayed.

I also wish to raise concern about the national children's hospital and the levels of awareness, in particular within the Government, of the cost overruns. We need urgent clarification from the Government on this issue. It raises the question down the road about the cost and the implementation of Sláintecare, which is a real elephant in the room. We see the issue of the national children's hospital and the difficulty bringing it forward in a responsible manner and in accordance with projected costs and then we look at the enormous cost potential of Sláintecare, yet there is a very significant political buy-in to Sláintecare and its proposals. We ask the Leader for clarification from the Government and the Minister for Health on this issue.

I also ask colleagues for support on the parental leave legislation which we will bring forward in the Labour Party's Private Members' time tomorrow. I thank all those colleagues who have assisted us in that regard. My Labour Party colleagues and I, and Senator Norris in the Seanad Technical Group, are putting forward the Bill on Committee Stage. We will table amendments and hope colleagues will support the amendments which are mostly technical simply to ensure the Bill will be straightforward and effective in implementation. We hope the Government will not oppose the Bill on Committee Stage.

**Senator David Norris:** We have had a lot of lobbying.

**Senator Ivana Bacik:** We have had a lot of lobbying and everyone will have received emails from parents. We have had good engagement with the Government and Deputy Shortall who initiated the Bill in the Dáil. As we really want to see the Bill pass Committee Stage tomorrow, I appeal to the Leader and his colleagues to ensure-----

**Senator Jerry Buttimer:** It must be getting near St. Valentine's Day.

**Senator Ivana Bacik:** Love will break out all over if the Government does not oppose parental leave. It will genuinely make a real difference to the many families who have contacted us and who are so anxious to see the Bill pass for the sake of their quality of life and that of their children.

I wish everyone a happy Markievicz Day. Countess Markievicz was born 151 years ago today. This is the last week of the exhibition about her life in the National Gallery of Ireland and I urge colleagues to go to see it, if they have not already done so.

**Senator Marie-Louise O'Donnell:** All that has been said about the €1.7 billion hospital has probably been said, except that when we say "€1.7 billion", we should really say "€1.7 thousand million"-----

**Senator David Norris:** And rising.

**Senator Marie-Louise O'Donnell:** -----in order that people can get into their heads the year of magical thinking in which we are all involved from a monetary point of view. I ask the Leader for an explanation of this, or perhaps the relevant Minister might come in and tell us about PwC. I would like to have outlined to me what its expertise is, since the first thing it did was to telephone England and find some other organisation that might be able to research what has happened here for €450,000. I just question its expertise. Why must it bring in someone from outside this island? There is nothing wrong with doing so, but we could have done that ourselves. That is the first thing. I want an explanation.

The second matter I wish to raise concerns the Minister for Justice and Equality, Deputy Flanagan. A very interesting thing happened on a certain road in Ireland recently. Two semi-detached houses were up for sale at reasonable prices. Families with two, three and four children came to view the houses and queued, but the houses were bought by Chinese people who were able not only to match the price but nearly to double it and pay in cash. In this country Chinese businessmen are given residency and the possibility of national passports - there is nothing wrong with that - for investments, be they in research, property or other fields. I would like some explanations for this. There is nothing wrong with people buying houses if they have a legal right to do so, but I think this activity is pushing up prices for all the wrong reasons. I know of two or three instances of students living in the houses which could be best bought by the Irish and be home to a family of five or six. I just want an explanation for this, what is happening about it and how many properties have been bought in this way. I am talking about residential properties. I am not talking about investments, research or high finance but about ordinary family houses. How many of them have been bought by non-nationals and how many people have been priced out of the market?

**Senator David Norris:** By Chinese businessmen.

**Senator Marie-Louise O'Donnell:** Yes, in this instance, under a particular scheme. I think other businessmen could avail of it too. I want to know what the story is in that regard.

I ask the Leader to provide an update on the Assisted Decision-Making (Capacity) Act 2015, in particular sections 3 and 8, which I do not want to see - I know that the Leader does not either - and want to remain on a top shelf. I would like a response from the Leader on the PwC review, the sale of houses to non-nationals who are making investments and the Assisted Decision-Making (Capacity) Act 2015. I would like that information, as otherwise I do not know what we are doing here, all on our telephones. Nobody is listening to anybody.

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

**Senator David Norris:** I am not on my telephone.

**Senator Marie-Louise O'Donnell:** I know.

**An Leas-Chathaoirleach:** I am sorry, Senator, but I have called-----

**Senator Marie-Louise O'Donnell:** I do not understand the effect we are supposed to be having in the Upper House.

**Senator Terry Leyden:** The Senator is very effective.

5 February 2019

**An Leas-Chathaoirleach:** I have thanked the Senator and called the next Senator.

**Senator Marie-Louise O'Donnell:** What is it? Will somebody tell us what it is because I do not know what it is?

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

**Senator David Norris:** It is like a telephone exchange.

**An Leas-Chathaoirleach:** Order, please. Senators are being very unruly.

**Senator Joe O'Reilly:** I ask the Leader to invite my fellow Ulster man, whom I am very happy to congratulate on his appointment, the Minister for Education and Skills, Deputy McHugh, to the House to discuss the CAO applications process. As everyone knows, the CAO is the mechanism by which we assess and allocate college places, based on a points system related to performances across academic subjects. I want to make a specific proposal and would like the Minister to come to the House to address it. I am proposing that 80 points - that figure is open to negotiation - of the now 630 points be taken away, with 50 of them committed to involvement in social work and social action and the remaining 30 committed to sports and cultural activities, to be monitored and assessed by a subgroup of teachers in the pastoral care sector of the school and to be part of the assessment of the child. This would create a social awareness in young people. It would create an interest in social action and social concern, which is crucial in young people. The cultural-sports dimension would reward children for participation in school musicals, the county minor teams and so on so that their sporting and cultural lives would develop. The question might be in some people's minds that this would compromise academia and reduce academic performance, but the contrary is the case as it would bring social concern, social awareness and social commitment, plus sporting and cultural development, into academia. Students would do a much better job and better understand their academic studies. Whether studying the humanities, the social sciences or science in general, they would do so with a consciousness that is very important. We need to have young people who understand their society and how it works. I am effectively asking the Leader to invite the Minister for Education and Skills to the House to begin the debate in this House - it should be in this House - on how the points system functions, what it assesses in young people, what type of young people it prioritises into courses and what we could do complement what is in place. I appeal to the Leader who is an educationist, to give this matter urgent priority.

**Senator Terry Leyden:** I support the comments made by Senator Clifford-Lee, the deputy leader of the Fianna Fáil group in the Seanad, on the national children's hospital which is being built on the St. James's Hospital site in Dublin. It is extraordinary that €1.7 billion is the proposed-----

**Senator Marie-Louise O'Donnell:** It is €1,700 million.

**Senator Terry Leyden:** I agree with the Senator's assessment. I worked with a firm of architects in Roscommon on the design-supervision of the building of schools and churches. We always knew the cost. Additional costs arise, but nothing like in this case. There are quantity surveyors, architects and engineers involved in the project. It is amazing how inept Ministers are in the Government. They are incapable of running Departments. The Minister for Housing, Planning and Local Government probably never built a house in his life.

**Senator David Norris:** Is the Senator expecting the Minister to go out and measure a site

and order bricks?

**Senator Terry Leyden:** I mean one must have a hands-on approach.

**An Leas-Chathaoirleach:** I do not want all of the quantity surveyors here speaking together.

**Senator David Norris:** I would like to know which Fianna Fáil Ministers measured corridors in hospitals.

**An Leas-Chathaoirleach:** Your turn will come, Senator Norris.

**Senator David Norris:** I beg your pardon, a Leas-Chathaoirligh.

**Senator Terry Leyden:** I will tell the Senators one thing-----

**Senator Kevin Humphreys:** The Senator has my attention.

**Senator Terry Leyden:** I will tell the Senators one thing-----

**An Leas-Chathaoirleach:** Senator Leyden has only two minutes and Senators are wasting his time.

**Senator Jerry Buttimer:** Does the Senator want to test it out with Taca? Does Senator Leyden remember that?

**Senator Terry Leyden:** When Minister-----

**Senator Jerry Buttimer:** Does the Senator remember Taca?

**An Leas-Chathaoirleach:** The Leader is wasting Senator Leyden's time.

**Senator David Norris:** Now look what Senator Leyden has started.

**Senator Jerry Buttimer:** Does the Senator remember Taca?

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

**Senator Terry Leyden:** When the late-----

**Senator Jerry Buttimer:** Does the Senator remember the Galway tent and the developers?

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

**Senator Terry Leyden:** When the late and great-----

**Senator Jerry Buttimer:** The Senator was probably in the tent with them.

**An Leas-Chathaoirleach:** The Leader will be responding.

**Senator Terry Leyden:** I ask the Leader not to distract me, please.

**Senator Lorraine Clifford-Lee:** Now all the developers are in with you lot and your private members' clubs go on.

**Senator Jerry Buttimer:** I will give the Senator an answer when I come back to this mat-

ter.

**Senator Terry Leyden:** When the late-----

**Senator Jennifer Murnane O'Connor:** Fianna Fáil cannot be blamed for everything.

**Senator Terry Leyden:** The Leas-Chathaoirleach has to protect me.

**An Leas-Chathaoirleach:** Yes. Senator Leyden to continue, without interruption.

**Senator Terry Leyden:** I thank the Leas-Chathaoirleach.

**Senator Jerry Buttimer:** Does the Senator remember Taca?

**An Leas-Chathaoirleach:** Senator Leyden is running out of time.

**Senator Terry Leyden:** I have injury time.

**An Leas-Chathaoirleach:** The Senator might have invited interruptions.

*(Interruptions).*

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

**Senator Terry Leyden:** When the late great Charles J. Haughey was Minister for Health-----

*(Interruptions).*

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

**Senator Terry Leyden:** -----he got the plans from Cork University Hospital and built Beaumont Hospital within time, within schedule and on price. Now that is what I call realistic management.

*(Interruptions).*

**Senator Terry Leyden:** As someone in the business myself and that type of business, I am appalled by the way-----

**Senator Jerry Buttimer:** What about the tribunals?

**Senator Terry Leyden:** Finally-----

**An Leas-Chathaoirleach:** Very quickly.

**Senator Terry Leyden:** -----in those circumstances there should be a health bond like we had for the hospitals' sweepstake. We could raise money from the public on a 20-year loan and build and complete the hospital because, as the Taoiseach said, unless a meteorite hits us and it might be a meteorite that hit the site at St. James's Hospital, this building is going to go ahead.

**Senator Kevin Humphreys:** The Senator should study the history behind the hospitals sweepstake.

**Senator Terry Leyden:** What is the Senator on about?

**An Leas-Chathaoirleach:** Senator Leyden, through the Chair, please.

**Senator Terry Leyden:** Senator Humphreys was a Minister of State in one of the Governments with Fine Gael.

**An Leas-Chathaoirleach:** I ask the Senator not to invite interruptions. His time is up.

**Senator Kevin Humphreys:** I was, but we made sure we did not waste the money-----

*(Interruptions).*

**Senator David Norris:** The Senator is in a place with the most corrupt-----

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

**Senator Terry Leyden:** Senator Humphreys is not in a great position.

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

**Senator Terry Leyden:** Senator Humphreys's party made a bags of the country-----

**An Leas-Chathaoirleach:** I am calling the next speaker.

**Senator Terry Leyden:** -----yourself and your-----

**Senator David Norris:** So did-----

**An Leas-Chathaoirleach:** I ask Senator Leyden to resume his seat, please.

**Senator Terry Leyden:** And former Tánaiste, Deputy Burton, who was the Minister for Social and Family Affairs.

**An Leas-Chathaoirleach:** I ask Senator Leyden to resume his seat, please. His time is up.

**Senator Terry Leyden:** These people are disgraceful.

**An Leas-Chathaoirleach:** I ask the Senator to resume his seat, please.

**Senator Maria Byrne:** On the national children's hospital, while we all await the full explanation of how the overrun occurred and what is involved, to which the Minister for Health has given a commitment, it is sad to see the scaremongering about other projects that has happened in the past few days. For example, at University Hospital Limerick we await 60 modular beds. Two members of the Labour Party were quoted in the *Limerick Leader* yesterday saying the project had not been signed off and was not going to happen, which is untrue because the capital plan has not been finally approved. The Minister for Health yesterday and again today has given an assurance about the 60 modular beds because there has been a lot of scaremongering.

**Senator Kevin Humphreys:** That is only if he is still there.

**Senator Maria Byrne:** Many people have contacted my office about the overcrowding at the hospital-----

**An Leas-Chathaoirleach:** I call those Senators seated on the backbenches to order.

**Senator Maria Byrne:** -----and query why these beds are not going ahead.

*(Interruptions).*

**An Leas-Chathaoirleach:** Please, Senator Leyden. The Senator has made his contribution.

**Senator Maria Byrne:** One Labour Party member and a former Deputy was quoted as saying it was due to the overrun at the national children's hospital.

**An Leas-Chathaoirleach:** Senator Leyden is speaking out of turn and the mics are picking him up.

**Senator Maria Byrne:** We cannot have scaremongering because it alarms people. The 60 modular beds are going ahead; I believe they are.

In terms of the overrun at the national children's hospital, we are all talking about the price and the whole lot, but the fact of the matter is that we need the hospital. As many as 450 children will be facilitated at the hospital. There is an overrun and, yes, we need to see the facts, but the message needs to be conveyed that the project is at long last going ahead, particularly as it has been spoken about since the 1960s.

**Senator Paul Gavan:** I, too, want to mention the nurses' dispute but from a particular angle. The mantra from the Minister is that we cannot breach the public service stability agreement. I do not accept that to deal with the nurses would do that by the way and a cursory look at page 10 of the agreement clearly shows that to be the case. I point out to the Leader of the Opposition that the Minister himself is in breach of the PSSA, specifically phases 1 and 2 of the support staff evaluation process as agreed under the terms of the PSSA which was completed on 4 October last year. Within the terms of this process any award made is meant to be implemented within six weeks.

*4 o'clock*

Despite correspondence from SIPTU, the HSE refused to engage in respect of a series of pay awards made via the job evaluation process. Specifically, 5,200 health care assistants are entitled, under this agreement, to a 5% to 7% increase in pay and 600 central sterile services department, CSSD, operations lab aids and theatre porters are due a 7% increase. What did the Minister do? He ignored the job evaluation process from the PSSA study and his Department refused to meet the union. The Department of Finance also refused to meet the union and the Estimates were drawn up without including these awards which were made under the PSSA. We have a Minister who is insisting that there be no breach of the PSSA and who is in breach of it. He has ignored calls by SIPTU to address this issue. What a bloody cheek. It is about time we had action.

Unfortunately, in the context of industrial relations, Fine Gael is a little like Theresa May when it comes Brexit - it does not have the first clue what it is doing. It is time to stop prevaricating and enter negotiations with the INMO.

**Senator Jerry Buttimer:** There must be a full moon tonight.

**Senator Paul Gavan:** Above all, it is time to pay the support staff what they are owed under the PSSA. The Minister is in breach of the agreement. As a union man, I would expect the Leader to condemn that and call for the moneys to be paid.

**Senator Jerry Buttimer:** I condemn populism.

**Senator Colm Burke:** I am very impressed by the presentations that have been made here on the national children's hospital by people who do not know what they are talking about. The project began in 2007, but the wrong site was identified because politics was played with it. The Mater Hospital site was chosen, but An Bord Pleanála refused to grant planning permission.

**Senator David Norris:** The decision should have been appealed.

**Senator Colm Burke:** The former leader of Fianna Fáil, Bertie Ahern, appeared on a radio programme on Sunday last and Conor Lenihan, a former Deputy, was also in the public domain claiming that the Government had changed the location of the hospital. That is not correct. An Bord Pleanála set out the reasons that the hospital could not be built on the Mater Hospital site. Let us get that clear.

**Senator Lorraine Clifford-Lee:** That is beside the point.

**Senator Colm Burke:** Let us get that clear.

**Senator Lorraine Clifford-Lee:** That really is beside the point. The Senator should stop trying to muddy the waters.

*(Interruptions).*

**An Leas-Chathaoirleach:** Please, Senators.

**Senator Jennifer Murnane O'Connor:** Fine Gael-----

**Senator Colm Burke:** I know that the Senators do not like to hear-----

**An Leas-Chathaoirleach:** Does Senator Clifford-Lee want me to-----

*(Interruptions).*

**An Leas-Chathaoirleach:** I will suspend the sitting-----

**Senator Colm Burke:** The Senators do not like to hear the truth.

**An Leas-Chathaoirleach:** Please, be respectful of the Chair.

**Senator Jennifer Murnane O'Connor:** We are being respectful, but-----

**An Leas-Chathaoirleach:** I do not want anybody interrupting-----

**Senator Lorraine Clifford-Lee:** Members of the public are outraged by Fine Gael and its attempts to deflect attention-----

**Senator Colm Burke:** The second issue-----

**Senator Lorraine Clifford-Lee:** People want to know what happened-----

**An Leas-Chathaoirleach:** The Senator has had her say. She should be silent and allow the speaker in possession to conclude.

**Senator Colm Burke:** The second issue is that the planning permission refusal happened in February 2012.

*(Interruptions).*

**An Leas-Chathaoirleach:** Order, please. The Senator will have her turn.

**Senator Colm Burke:** Planning permission was refused in February 2012. Planning permission for the new hospital was granted in April 2016. In that period, the plans were drawn up and the bill of quantities was sent to the builders to enable them to quote. However, the minute detail was not set out because it would have taken 12 months to facilitate this.

I wish to give Senators an idea of the scale of the hospital. There will be 6,151 rooms.

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

**Senator Colm Burke:** The hospital will be the length of Grafton Street.

**Senator Lorraine Clifford-Lee:** There was no governance and no oversight. There is no accountability.

**An Leas-Chathaoirleach:** We are not having any further contributions on this-----

**Senator Colm Burke:** As I said, the hospital will be the length of Grafton Street.

**Senator Lorraine Clifford-Lee:** That has nothing to do with the planning permission.

**An Leas-Chathaoirleach:** The Senator will have to submit a Commencement matter.

**Senator Lorraine Clifford-Lee:** He has to stop misleading the public-----

**An Leas-Chathaoirleach:** Never mind what he is saying. I did not interrupt Senator Clifford-Lee and do not want her to interrupt Senator Colm Burke.

**Senator Lorraine Clifford-Lee:** People are outraged.

**An Leas-Chathaoirleach:** I do not want Senators to interrupt one another. I want respect for the Chair. There is a speaker in possession.

**Senator Lorraine Clifford-Lee:** We cannot listen to this.

**An Leas-Chathaoirleach:** God almighty.

**Senator Colm Burke:** The cost of building a hotel bedroom is €120,000.

**Senator Máire Devine:** The Senator is way over time.

**An Leas-Chathaoirleach:** I will be the judge of that.

**Senator Colm Burke:** I know that I am over time but I want to get the truth out.

*(Interruptions).*

**Senator Colm Burke:** A new hospital being built in Ontario is costing €1.608 billion-----

**Senator Lorraine Clifford-Lee:** What projects will the Government be cutting out?

**An Leas-Chathaoirleach:** Please. I ask Senator Colm Burke not to respond to the comments of others.

**Senator Colm Burke:** The Senators should check the costings and stop trying to delay the project.

**Senator Lorraine Clifford-Lee:** We are not trying to delay it.

**Senator Colm Burke:** Fianna Fáil wasted five years on the Mater Hospital site. It wasted five years on the wrong site.

**Senator Lorraine Clifford-Lee:** Fine Gael cannot be trusted with the public-----

**Senator Colm Burke:** It was the wrong place and that Government took the wrong decision.

**Senator Lorraine Clifford-Lee:** Fine Gael does not know how to manage the public purse.

**An Leas-Chathaoirleach:** I call Senator Norris, but I do not want to hear anybody else while he is speaking.

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

**An Leas-Chathaoirleach:** Yes, but I do.

**Senator David Norris:** I fear the Leas-Chathaoirleach may have an apoplectic stroke.

**An Leas-Chathaoirleach:** The clock is running. The Senator has two minutes.

**Senator David Norris:** I refer to Shane O'Farrell, a wonderful young man who was knocked off his bicycle and killed by an eastern European drug addict. I have discussed the matter with the Leader who indicated that he might be prepared to give time to its discussion. In view of the dearth of legislation to deal with this area, I ask the Leader for an indication of when that debate might be facilitated.

**Senator Jerry Buttimer:** I will discuss that matter directly with the Senator.

**Senator David Norris:** I thank the Leader.

I also wish to raise the case of an architect of Filipino origin who is now an Irish citizen. While he lived in the Philippines, he was employed in an architectural practice ranked 63rd in the world. He was the major design architect for several international projects and has degrees in architecture coming out his ears. He graduated third out of 900 people in his postgraduate degree. However, the Royal Institute of the Architects of Ireland is refusing to enroll him. It will not let him in. He is better qualified than most of its members.

**An Leas-Chathaoirleach:** I hasten to add that that has nothing to do with the Order of Business. The Senator may carry on.

**Senator David Norris:** The Leas-Chathaoirleach is familiar with how Senators often behave on the Order of Business.

*(Interruptions).*

**An Leas-Chathaoirleach:** We have seen a lot of questionable behaviour.

**Senator Jerry Buttimer:** We saw it in the past ten minutes.

5 February 2019

**Senator David Norris:** There is nothing in the Order of Business about the nurses' strike.

**Senator Jerry Buttimer:** Well said.

**Senator David Norris:** I did not take a feather out of anybody for raising that issue.

*(Interruptions).*

**Senator David Norris:** All Members know that Senator Devine is a nurse.

**An Leas-Chathaoirleach:** We are here to discuss the proposals of the Leader for the business of the day.

**Senator David Norris:** I understand that under the Building Control Act 2007, the Minister for Housing, Planning and Local Government has the right to put a person on the register of the Royal Institute of the Architects of Ireland. I will provide the Leader with the information I have on this case. I ask him to raise with the Minister the possibility of placing the man on the register.

**Senator Robbie Gallagher:** I acknowledge and congratulate the teachers and students in secondary schools throughout counties Cavan and Monaghan who recently completed the Irish Heart Foundation CPR 4 Schools programme. All secondary schools in County Cavan have completed the programme, with 27 teachers across the county now qualified to teach CPR. The schools in County Monaghan are not far behind, with 83 secondary schools currently engaged in the programme. The Irish Heart Foundation, which I congratulate on its initiative, hopes to roll out the CPR 4 Schools programme to all secondary schools in the country. It is a very ambitious plan to save lives. Schools in counties Monaghan and Cavan are leading the way, on which I compliment them.

It should be noted that there are 5,000 cardiac arrests each year. A person qualified in CPR being close by when a person suffers a heart attack could be the difference between life and death. In any given year, there are approximately 365,000 students in secondary schools and there is the potential for all of those students to become competent in CPR, which could save lives.

While I commend the teachers and students for their passion and initiative, the programme shines a light on the Department of Education and Skills which is not doing its job in regard to CPR and first aid in general. That was one of the main reasons I introduced the First Aid and Mental Health in Schools (Existing Teachers) Bill 2018 and the First Aid and Mental Health in Schools (Initial Teacher Training) Bill 2018 a couple of weeks ago which, thankfully, received the unanimous support of all Senators. I thank them for their support. The Minister for Education and Skills, Deputy Bruton, needs to take the lead and ensure students and teachers are fully qualified in first aid. They can be taught nothing more important than how to save a life.

**Senator David Norris:** The Leas-Chathaoirleach may wish to inquire of Senator Gallagher, as he did of me, what relevance the issue raised has to the Order of Business.

**An Leas-Chathaoirleach:** Senator Norris has had his turn. I ask him to, please, be ruly.

*(Interruptions).*

**Senator David Norris:** That is fascinating and wonderful.

*(Interruptions).*

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

**Senator Fintan Warfield:** I raise an issue very relevant to the Order of Business and on which I call for the Minister for Health, Deputy Harris, to appear before the House. In *The Times*, Ireland edition, Ellen Coyne reports today that a number of anti-abortion activists have taken to writing to general practitioners, GPs, offering free ultrasounds conducted by a fake agency. It is made even more deceptive by a letter suggesting doctors could face legal action for “assaulting” women unless that GP had recorded evidence that the woman consented to a termination of pregnancy. This cohort of activists uses such names as The Women’s Centre, Good Counsel Network Ireland and Ultrasound Services WCN for the purposes of sounding legitimate. The bogus clinic previously came to our attention when an undercover video was posted of a woman receiving untruthful, unscientific advice, which was used to prevent her from having an abortion such as suggesting an abortion could cause cancer or that women who have abortions are vulnerable to committing child abuse.

Let us be under no illusions. Those who wish to deceive doctors and shame vulnerable women are not justified in what they are doing. We have had national conversations about this issue and had referenda on the subject. The public has given its answer as to whether abortion services should be available to women. We have had enough stories of shame and stigma and those who wish to return to that by protesting, offering GP services or posting confidential doctor and patient information online should reconsider their actions. Given that legislation has now been passed, I ask the Leader to ask the Minister for Health, Deputy Harris, to come to the House to discuss how we can best protect women in vulnerable situations.

**Senator Kevin Humphreys:** I acknowledge the efforts of the Leader to get the Minister for Health, Deputy Harris, to come to the House to deal with the question of Alzheimer’s disease and dementia. I appreciate the work he and his office have done on the issue, but, unfortunately, at this stage the Minister still has not indicated when he will attend the House. I have been patient on the issue, but I feel I have no alternative but to propose an amendment to the Order of Business tomorrow to call for the Minister for Health to attend to discuss the HSE plan for 2019 and the issue of not providing additional supports and services for families with members suffering from dementia and Alzheimer’s disease. I will do this reluctantly and hope the Leader will be able to contact me in the morning to indicate when the Minister will attend. If he does so, I will give a commitment not to try to amend the Order of Business.

**Senator Jennifer Murnane O’Connor:** I support my colleagues who have spoken about the cost of the national children’s hospital. It has been a talking point all weekend. A lot has been left untold and we are getting leaks of information here and there. There is no accountability.

**Senator Colm Burke:** All of the information is available. The Senator needs to stop giving out false information.

**An Leas-Chathaoirleach:** One at a time, please, Senator.

**Senator Jennifer Murnane O’Connor:** Nobody wants to take responsibility. There are capital projects in my area such as the Holy Angels school for children with disabilities which has been waiting for 40 years for funding to move its children out of prefabs. Will it get funding this year or will it be one of the projects that will be left again for another 20 years without

being undertaken?

**Senator Jerry Buttimer:** The Senator is scaremongering.

**Senator Jennifer Murnane O'Connor:** For three years there has been no overnight respite care service in Carlow. While we are told that the preparations for it are nearly finished, there are problems as to whether there will be bus services, how many nights it will be open or what will happen in the long term. What will be the effect of this? It is unacceptable that the Taoiseach and Ministers launch and relaunch projects all the time, but we do not know what will happen to these projects. I am calling on the Minister and the Taoiseach to come here to explain to us exactly what is going to happen with capital projects.

**Senator Paul Gavan:** On a point of order, could we have more confidence and supply from Fianna Fáil? They seem to have run out.

**An Leas-Chathaoirleach:** That is not a point of order.

**Senator David Norris:** It is Sinn Féin that is supporting the Government on the Judicial Appointments Commission Bill.

**An Leas-Chathaoirleach:** Order, please. I call Senator Devine.

*(Interruptions).*

**Senator Jerry Buttimer:** I saw what happened with Sinn Féin and the DUP.

**An Leas-Chathaoirleach:** The Leader will be able to respond to the Order of Business. Please allow Senator Devine to contribute, without interruption.

**Senator Máire Devine:** I will stand up when there is ciúnas. Ciúnas le do thoil. Senators are a little tetchy today, but that is understandable.

**Senator David Norris:** As Gaeilge le do thoil.

**Senator Máire Devine:** Dún do bhéal. Am I not allowed to say that?

**An Leas-Chathaoirleach:** The Senator should address her comments through the Chair.

**Senator Máire Devine:** Senators' tetchiness today is understandable-----

**Senator Jerry Buttimer:** The Senator is talking about herself now.

**Senator Máire Devine:** -----given that we have been listening in recent days to the outrageous, gobsmacking cost of the national children's hospital.

I was out with the nurses at St. James's Hospital this morning. As Senators will know, they are out in protest. This is the first of two days that nurses will be on strike this week and next week they will be joined by the Psychiatric Nurses Association for three days on strike. Almost 50,000 nurses are protesting on the picket lines. It did not dawn on us initially this morning, but as we looked around, we saw hundreds of nurses protesting on one side, while on the other side, we saw a massive crater in the ground where the national children's hospital is to be built. The irony of this juxtaposition of these two sights was not lost on us.

Nurses are demanding €250 million to achieve pay parity. Every year, €120 million is spent

on agency nurses alone. Someone has not done the maths on those figures and they have certainly not done the maths on the national children's hospital, the cost of which could run to €2 billion. The public cannot get to grips with this. Where were the checks in the procurement process? Who was looking after the public purse when it was being robbed and dipped into? The irony is not lost on nurses or members of the public. I support my colleague, even though the confidence and supply agreement needs an injection. What other capital projects will we lose because of this massive cost overrun? I advise Senator Colm Burke that no amount of spin about how beautiful the hospital will be will create a soft landing for people, given that the cost will run to €2 billion.

**An Leas-Chathaoirleach:** The Senator should address her comments through the Chair.

**Senator Colm Burke:** There is no spin, just facts.

**Senator Máire Devine:** No amount of soft spin will do it.

**Senator Colm Burke:** The Senator should check the facts.

**Senator Máire Devine:** I endorse the call for the Minister to come to the House to outline the further impact this project will have on the public purse and public health. Shame on the Government for what it has done.

**Senator Alice-Mary Higgins:** I will follow up on some of the comments made by my colleague, Senator Ruane. This is Safer Internet Day, among many other days. Almost one year ago, Senator Ruane and I successfully introduced an amendment to the Data Protection Bill, now the Data Protection Act, to prohibit the profiling of children under the age of 18 years and the use of such profiles for commercial purposes. I ask the Leader for an update on when the Minister plans to commence that aspect of the legislation. It is no longer a proposed amendment. I understand Deputy O'Callaghan put forward a variation of the proposal in the Dáil. Will the Minister commence that aspect of the legislation which protects children under the age of 18 years from commercial targeting, fast-track the alternative version put forward by Deputy O'Callaghan or take action of his own volition? It is not satisfactory that almost a year after the legislation was passed, we have not taken steps to protect younger people, which is vital, and ensure they are not targeted in a shocking way based on their vulnerabilities or insecurities. We hear much rhetoric about that-----

**Senator Marie-Louise O'Donnell:** There is loads of it here.

**Senator Alice-Mary Higgins:** -----but this concrete legislation is on the Statute Book. Let us make it happen.

I note that Internet safety is not simply about children. There is more to be done in terms of online regulation in that regard, including the safety of those who engage with public services. We achieved a fine with respect to public services. I am concerned by what appear to be data leaks about persons accessing services in hospitals. In that regard, I commend nurses for their work on patient safety.

**Senator Máire Devine:** Hear, hear.

**Senator Diarmuid Wilson:** I support Senator Clifford-Lee, my party's deputy leader in the Seanad, in her comments on the national children's hospital and the overrun. Statements on housing are listed on the Order of Business and it is appropriate that we should raise the

5 February 2019

housing of sick children and the building in which they will be housed. Senator Marie-Louise O'Donnell tabled a Private Members' motion in the previous Seanad, the aim of which was to try to prevent the Government from selling the national lottery licence. We were told at that stage that the cost of the hospital would be €450 million and that the sale of the national lottery licence would go more than half way towards providing funding for this much needed facility.

**Senator Marie-Louise O'Donnell:** That is true.

**Senator Diarmuid Wilson:** The amount involved became €930 million and has now risen to €1.7 billion. Following what was stated at a committee meeting last week, it appears that the final figure could be more than €2 billion. Senator Colm Burke pointed out the various stages of planning the hospital went through. The reality is that the decision of An Bord Pleanála regarding the Mater Hospital site could have been appealed but it was not and that was as a result of political reasons.

**Senator Colm Burke:** Where could the An Bord Pleanála decision be appealed to?

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

**Senator Colm Burke:** There is no appeal, except through the courts.

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

**Senator Colm Burke:** It was not for political reasons. Senator Wilson should get his facts right.

**An Leas-Chathaoirleach:** Senator Wilson should be allowed to speak, without interruption.

**Senator Diarmuid Wilson:** I refer to the decision to transfer the project to the St. James's Hospital site.

**Senator David Norris:** One can appeal against planning permissions.

**An Leas-Chathaoirleach:** I am making a ruling. Senator Wilson should be allowed to speak, without interruption.

**Senator Diarmuid Wilson:** The development costs of that site were outrageous.

**Senator Colm Burke:** The An Bord Pleanála decision would have had to be appealed through the courts.

**An Leas-Chathaoirleach:** I must inform Senator Colm Burke that the Leader will respond.

**Senator Diarmuid Wilson:** I agree with my party's deputy leader in the Seanad-----

**Senator Jerry Buttimer:** Of course, you do.

**Senator Diarmuid Wilson:** -----that it is time for the Minister for Health to come before the House to explain exactly what is going on. We do not need to pay €500,000 extra to PwC to tell us what we already know.

**Senator Marie-Louise O'Donnell:** Hear, hear.

**Senator Diarmuid Wilson:** A blunder has been made. People are running for cover and do not want to be blamed for the overrun.

**Senator David Norris:** PwC was one of the auditors of the Bank of Ireland and was discussed at the banking inquiry.

**Senator Diarmuid Wilson:** The Minister has overall responsibility for the Department and it is time he came to the House and took responsibility.

**Senator David Norris:** It is totally discredited.

**Senator Diarmuid Wilson:** I thank the Leas-Chathaoirleach for indulging me. In the context of housing, I also want to discuss the housing of members of the Defence Forces. This is an issue I have raised in the House on many occasions, including last week. A purpose-built, state-of-the-art Army barracks is lying idle in Cavan town at a time when the Department of Defence is looking at warehouses to put soldiers into.

**Senator Jennifer Murnane O'Connor:** Hear, hear. It is.

**Senator Diarmuid Wilson:** It is more waste of money. It is nonsense. It is time people stood up and took responsibility for the Departments they are being paid to run.

**Senator Jerry Buttimer:** I am happy that we are in populist hour in the House today. I thank the 18 Senators who made contributions.

**Senator Marie-Louise O'Donnell:** That is very disingenuous.

**An Leas-Chathaoirleach:** We will have no comments. The Leader should be allowed to speak, without interruption.

**Senator Jerry Buttimer:** It is not disingenuous but the complete truth.

**An Leas-Chathaoirleach:** The Leader should not respond to comments.

**Senator Marie-Louise O'Donnell:** On a point of order, it is disingenuous. We are not being populists; we are being realists. It is very unfair of the Leader; it is not like him.

**An Leas-Chathaoirleach:** With respect, that is not a point of order.

**Senator Marie-Louise O'Donnell:** It is.

**An Leas-Chathaoirleach:** It is not.

**Senator Marie-Louise O'Donnell:** It is.

**An Leas-Chathaoirleach:** I have ruled that it is not.

**Senator Marie-Louise O'Donnell:** I will tell you why it is a point of order.

**An Leas-Chathaoirleach:** I call on the Leader to respond. There should be no interruptions. Senator Marie-Louise O'Donnell is out of order.

**Senator Marie-Louise O'Donnell:** It is a point of order because it is an accusation.

**An Leas-Chathaoirleach:** The Senator is out of order. I call on the Leader to respond. He

5 February 2019

should try to speak through the Chair.

**Senator Jerry Buttimer:** I will. Nine Senators referred to the national children's hospital. Before coming to that matter, I wish, first, on her birthday, to pay tribute to Countess Markievicz and thank her for her courageous leadership.

**Senator David Norris:** She repented on her deathbed.

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

**Senator Jerry Buttimer:** Many others have repented as well, but, to be fair, they did not do what she did.

**Senator David Norris:** That is a bloody good thing.

**Senator Jerry Buttimer:** In terms of the national children's hospital, we are all disappointed and find the overrun unacceptable. The point with which perhaps my learned colleague and friend does not agree is that we have entered into the realm of hysteria and populism.

**Senator Marie-Louise O'Donnell:** I did not.

**Senator Jerry Buttimer:** I do not refer to you at all.

**An Leas-Chathaoirleach:** The Leader should speak through the Chair.

**Senator Jerry Buttimer:** Methinks Senator Marie-Louise O'Donnell protests too much.

**Senator Marie-Louise O'Donnell:** Be careful now.

**An Leas-Chathaoirleach:** I will not have interruptions from the Senator.

**Senator Marie-Louise O'Donnell:** I am not going to be accused like this, namely, by inference.

**An Leas-Chathaoirleach:** I am not going to have interruptions. Do not do it on my watch, please.

**Senator Marie-Louise O'Donnell:** It is not going to happen.

**An Leas-Chathaoirleach:** The Leader to continue, without interruption. I ask him to try not to invite interruptions from the other side of the House.

**Senator Jerry Buttimer:** Let us not enter into the realm of-----

*(Interruptions).*

**An Leas-Chathaoirleach:** Please, one voice at a time.

**Senator Máire Devine:** I am sorry, a Leas-Chathaoirligh.

**Senator Jerry Buttimer:** I have a good mind to say I accept the Order of Business and sit down-----

**Senator Máire Devine:** Yes.

**Senator David Norris:** Do. Bravo.

**An Leas-Chathaoirleach:** The Leader to continue, without interruption.

**Senator Jerry Buttimer:** -----but I want to make a few things quite clear. Irrespective of one's views on PwC, it has been asked to do a piece of work on which it will report back to the Government. The Senator might be cynical, throw her eyes to Heaven and do all that; that is fine, but the comments by some inside and outside this House lend themselves to scaremongering and hysteria. We had it in the House earlier in terms of projects in other parts of the country. Third, Senator Colm Burke gave a very good overview of where we were and how we got to the point of development of the project. I chaired the Joint Committee on Health and we were on the site on a number of occasions. When I hear members of the opposition, in particular Fianna Fáil, talking about the national children's hospital, I have to cast my mind back to when Bertie Ahern was the Taoiseach. He wanted to have it located in his constituency, but An Bord Pleanála overruled it. I say to Senator Wilson that the only place one can go after that is to the Supreme Court.

**Senator Diarmuid Wilson:** Alternative plans can be submitted.

**Senator Jerry Buttimer:** That is a fact. The Senator is a public representative and, to be fair to him, a man of integrity.

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

**Senator Jerry Buttimer:** He knows quite well-----

**Senator David Norris:** Not the Supreme Court; a judicial review.

**Senator Jerry Buttimer:** A judicial review, yes. That is what I meant to say. Senator Wilson knows quite well that the court is the only place one can go to.

**Senator Diarmuid Wilson:** We can alter the plans.

**Senator Jerry Buttimer:** I hear people speak about the leaking of information. The Joint Committee on Health, the Committee of Public Accounts, the finance committee today, the Dáil and this House have spent a countless number of hours discussing the national children's hospital. There has been no leaking or drip feeding of information.

**Senator Jennifer Murnane O'Connor:** That-----

**Senator Jerry Buttimer:** Senator Murnane O'Connor knows everything.

**Senator Jennifer Murnane O'Connor:** I wish I did.

**Senator Jerry Buttimer:** She does not want to hear anything other than her own point of view, which is fine. If I said black, she would say white. That is fine.

**An Leas-Chathaoirleach:** We will not get into that matter now.

**Senator Jennifer Murnane O'Connor:** I am sorry-----

**Senator Lorraine Clifford-Lee:** Why is the Leader not addressing the central issue?

**Senator Jerry Buttimer:** The Senators can accuse me of all things again if they want to.

5 February 2019

**An Leas-Chathaoirleach:** Will Senators on the Opposition benches, please, be quiet while the Leader-----

**Senator Lorraine Clifford-Lee:** No. The Leader needs to tell us why-----

**An Leas-Chathaoirleach:** No. If the Senator is trying to make a point of order, she is not.

**Senator Lorraine Clifford-Lee:** -----there was a representative from the HSE and the Department of Health-----

**An Leas-Chathaoirleach:** Is the Senator raising a point of order? She is not.

**Senator Lorraine Clifford-Lee:** -----on the board and they were not reporting back to the Minister. That is the question.

**An Leas-Chathaoirleach:** The Senator cannot correct the Leader when he is responding. She is out of order.

**Senator Lorraine Clifford-Lee:** He is misleading the people again.

**An Leas-Chathaoirleach:** I am trying to hear everybody.

**Senator Lorraine Clifford-Lee:** Can he answer that question?

**An Leas-Chathaoirleach:** I cannot have the Senator telling me or the House something about someone.

**Senator Lorraine Clifford-Lee:** Can he answer that question?

**An Leas-Chathaoirleach:** No. The Senator cannot do it. She is out of order.

**Senator Jennifer Murnane O'Connor:** We are not out of order.

**An Leas-Chathaoirleach:** I decide what is in order. The Leader is responding to comments that have been made-----

**Senator Lorraine Clifford-Lee:** He is not responding-----

**An Leas-Chathaoirleach:** Perhaps in responding-----

**Senator Jennifer Murnane O'Connor:** He said we were scaremongering. We are not. He is confusing people.

**An Leas-Chathaoirleach:** -----the Leader might pass on from certain subjects because as he says, they are being unruly.

**Senator Jerry Buttimer:** I understand. To be fair to the Cathaoirleach and all of us in this House, we are rightly disappointed and find the overrun unacceptable, but when I hear members of the Opposition talking about prudence in financial management, I have to cast my mind back to personnel, payroll and related systems, PPARS, the sale of Telecom which delayed the broadband process and the economic collapse which occurred on their watch.

**Senator Jennifer Murnane O'Connor:** There are 10,000 people homeless.

**Senator Jerry Buttimer:** The Senator's leader was in government.

**Senator Jennifer Murnane O'Connor:** What about Irish Water, rural Ireland-----

**An Leas-Chathaoirleach:** We are not here for a rí rá.

**Senator Jerry Buttimer:** We had a 16% unemployment level. Nobody would give us money.

**An Leas-Chathaoirleach:** Listen. You do not understand the Order of Business. We listen to one another respectfully and keep quiet. Each Senator has-----

**Senator Jennifer Murnane O'Connor:** The Leader is not responding.

**An Leas-Chathaoirleach:** It does not matter. Each Senator has had his or her turn.

**Senator Lorraine Clifford-Lee:** He is not responding.

**An Leas-Chathaoirleach:** He responds in his own way, which every Leader of the House going back centuries was entitled to do.

**Senator Lorraine Clifford-Lee:** He is a bluffer.

**Senator David Norris:** How many centuries has the House been here?

**An Leas-Chathaoirleach:** I should have said-----

**Senator David Norris:** I did not know it was such a wonderfully historical building. Three centuries of Seanad Éireann. They should print a stamp.

**An Leas-Chathaoirleach:** Perhaps I should have said decades. This is the second century.

**Senator Marie-Louise O'Donnell:** We are living in "Jurassic Park".

**Senator Jerry Buttimer:** Let us get real. The Government had three choices to make: to pause the project; to retender; or to agree to proceed and continue with probity, which is what we have done. We all accept on this side that the cost is too high and unacceptable. Then again, as Senator Colm Burke rightly said, let us paint a picture that is true about the new national children's hospital. As the Minister said last night on television, there will be politicians queueing up to go to the official opening with their chests out, saying they were supporting it.

**Senator Máire Devine:** That has nothing to do with it. We are being blackmailed. The public is being blackmailed.

**An Leas-Chathaoirleach:** That is totally disingenuous. I cannot control any of the Senators' individual contributions.

**Senator Máire Devine:** I am sorry.

**Senator Jerry Buttimer:** Five Senators raised the issue of the nurses dispute. I will make the same point I made last week and the whole time. All of us value, respect and admire the work being done in hospitals and the healthcare system by nurses. Not one person I know of wants to see any person, be it a nurse, teacher, porter or bus driver, on strike. Today there is a pathway to reopen the talks between all sides. I hope those concerned can re-engage and have meaningful dialogue. Despite the one-dimensional view of Senator Gavan on the public sector pay agreement, we cannot have a free-for-all on public sector pay.

5 February 2019

**Senator Paul Gavan:** The Minister is in breach.

**Senator Jerry Buttimer:** One cannot have a free-for-all. That might be the model Sinn Féin might like to have and subscribe to, but one cannot have a free-for-all. There is one public sector pay deal. There is a knock-on effect if it is breached for one union.

**Senator David Norris:** And the other unions are just queuing up-----

**Senator Jerry Buttimer:** Correct. The Government, as the Taoiseach and the Minister for Health have outlined, is open to meeting. I invite and encourage all concerned to sit around the table and engage.

Senator Conway-Walsh raised the issue of JobPath. It is worth noting that there are 41,000 people employed full time and 5,000 part time. The level of complaint about JobPath is around 0.41%. If the acknowledged costs are what the Senator says they are, work needs to be done on them. If what she is saying is correct, it beggars belief, but I am not sure it is correct.

I join Senators Ruane and Higgins in referring to Internet Safety Day and the report published last week on sex education. I commend all involved in the Oireachtas education committee. It is important that the curriculum be reformed in the development of sex education for young people. I hope we can continue the ongoing work. To be fair, it was initiated by Ruairí Quinn and continued by the former Minister, Deputy Bruton, and the current Minister, Deputy McHugh. I hope the development can happen.

With reference to the Data Protection Act, I do not have a commencement date for Senators Higgins and Ruane, but I am sure we can liaise with the Department on the issue.

Senator Bacik raised the issue of the Parental Leave (Amendment) Bill. It will be before the House tomorrow and it is best to leave it until tomorrow.

**Senator Ivana Bacik:** I believe an answer of “Yes” or “No” was sought.

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

**Senator Ivana Bacik:** I have noted that the Leader has not responded, in fact.

**An Leas-Chathaoirleach:** I cannot control how anyone contributes.

**Senator Jerry Buttimer:** Senator Marie-Louise O’Donnell raised the issue of housing. We had the Minister for Housing, Planning and Local Government in the House last week for a housing debate. He will be in today to conclude his remarks. My advice to the Senator on the point she raised on housing is to put a Commencement matter before the House.

On the Assisted Human Reproduction Bill, my information is that the heads were approved on 3 October. The Senator raised the issue last week and I share her views. There was pre-legislative scrutiny on 19 December and 17 January and it is continuing. Work is being done on the Bill that is not as easy as it first appeared. That is the information I have, but I will endeavour to obtain more for the Senator.

With reference to Parts 2 and 3 of the Children and Family Relationships Act, work is still ongoing. The Act will be commenced as soon as possible. All of us share the views expressed by the Senator on both matters.

Senator O'Reilly made one of the best contributions to the Order of Business when he spoke about reform of the Central Applications Office, CAO, process. There is complete merit in what he suggested in that regard. Having spent 20 years in the classroom, I saw the benefit of a non-traditional leaving certificate pathway for young people to college. I know of some young people who have done the leaving certificate applied and gone to college through it. Senator O'Reilly's idea about the allocation of points for social work and social action, as well as participating in sports and cultural activities, is pursued in other jurisdictions and has its merits. It deserves to be heard and debated. I commend the Senator in that regard.

We will endeavour to find time for a debate on the Shane O'Farrell case. On Senator Norris' point about an architect, again I suggest he request that it be taken as a Commencement matter to give it a public airing.

**Senator David Norris:** In the meantime, will the Leader raise it with the Minister?

**Senator Jerry Buttimer:** If the Senator gives me the details I will.

**Senator David Norris:** I will. I thank the Leader.

**Senator Jerry Buttimer:** Senator Gallagher raised the issue of CPR training in secondary schools in counties Cavan and Monaghan. It is an important issue which needs to be addressed urgently. We have seen defibrillators put in place in rural and urban settings. We need to set up a process whereby we can train more people, especially young people, in CPR. I commend all those involved.

Senator Warfield raised the issue highlighted in *The Times*, Ireland edition, about anti-abortion protests. It is important that we have respectful implementation of the new law of the land. That requires respect for different viewpoints. It is disappointing that the types of activity referred to are being carried out. I know that there will be a debate during the week in the Oireachtas on these types of protest. I do not believe anybody should be allowed to protest at a maternity hospital or a doctor's surgery. The dignity and privacy of citizens going about their business, for whatever reason, should be respected. Women who might be in a difficult or vulnerable position should not have to endure such barrages of protest. I will try to have the Minister to come to the House to discuss the matter.

As I said last week, I thank Senator Humphreys for his patience on his request that the Minister for Health attend the House to discuss the question of Alzheimer's disease and dementia. I also apologise to him. He has been exceptionally fair on this matter. We have endeavoured to have a debate on it. I hope the Minister met the Senator. I will endeavour to have tomorrow a date for such a debate. If I do not, the Senator will be quite right to propose an amendment to the Order of Business on the matter.

Senator Wilson raised a matter about the Defence Forces. We will have that debate in due course.

Order of Business agreed to.

*Sitting suspended at 4.40 p.m. and resumed at 4.45 p.m.*

## Housing Provision: Statements (Resumed)

**Acting Chairman (Senator Diarmuid Wilson):** This is a continuation of the response by the Minister for Housing, Planning and Local Government to statements on housing on 30 January.

**Minister for Housing, Planning and Local Government (Deputy Eoghan Murphy):** I thank the Acting Chairman for giving me the opportunity to come back and finish off addressing some of the questions raised when I appeared in the House last week because we ran out of time and I wanted to respond to everyone's contribution. I had time in my initial response to respond to some of the questions asked and made a note of ones that were not answered; therefore, I will work backwards through the Senators in the order in which they asked questions to make sure I get to everyone in the time available.

Senator Mullen asked about statistics and the difference between Government statistics and others. It is very important to say that for many of the things we count or many of the different pieces of information we put out, we are gathering statistics from local authorities or other areas and compiling them for publication. That is done at official level. Figures for emergency accommodation every month come from the different regions which collect the information from local authorities. The Dublin Regional Homeless Executive is involved in compiling them. We have said data collection needs to be improved because it is not capturing enough information. When the Dublin Regional Homeless Executive did a deeper dive last year and produced a report over two quarters, it was able to tell us a lot more information. It is the type of information we should always be gathering. That work to capture more data for the monthly reports is now happening.

Senator Mullen asked about a particular Dublin City Council site and housing body. He said there had been a delay. I am not sure what the specific site is. The Senator can provide me with information. We have a delivery office in the Department of Housing, Planning and Local Government. Where there are delays and snags or problems that require people to sensibly put their heads together, it does that. As we all know, things can sometimes crop up which can lead to long delays if they are not resolved quickly. The housing delivery office works with the local authorities. I have asked colleagues in this House and elected representatives in local authorities to bring areas where they think there are unnecessary delays directly to my attention in order that I can chase them up in the Custom House.

Senator Mullen also asked about voids. He mentioned a figure of 4,000. We have remediated 8,000 to 9,000 vacant social housing homes that were empty and needed significant repair in the last four to five years. We are coming towards the end of that programme. These are social housing homes that were vacant and required as much as €30,000 in investment to get them back into use and letting. I hope we will have the numbers for 2018 next week. We will see that approximately 500 to 600 voids were remediated over the course of 2018. We would have done much more than that, but we agreed that we would not count above what was included in the targeted amount. A lot is happening in that area.

I am supportive of pre-fabrication, modular and rapid technologies. It is also important, as we bring in new housing, that we have to bring in all of the facilities required. While there are efficiencies and gains to be made with the new technologies, one still needs to go through planning and procurement and to put in footpaths, electricity and water services. We want to and are doing it, as is the private sector, but it has other time and investment requirements that

traditional house-building also has.

Senator Kieran O'Donnell made a point about recognising that a Government that is led by Fine Gael, Independents and the Independent Alliance was building social housing homes, as did previous Governments. People hark back to different times in Irish history where it is assumed that we were building more social housing homes. While that might be correct for individual years, I read an interesting piece by Karl Dieter over the weekend in which he wrote about the 1950s being the most successful decade for the building of social housing in the State's history. The average output per year in the 1950s was 6,000 social housing homes. We will build more than that this year. We have brought that responsibility back to the heart of government and local authorities. Delivery is ramping up and I hope I will have confirmation of the 2018 figures next week. They will show that one in four to one in five of new homes being built in the country is a social housing home. That has not happened for a long time and it is welcome.

Senator Kieran O'Donnell was also right to talk about how we needed to make sure we built mixed tenure estates. We want our housing policy to help to build, unite and support communities, rather than dividing them. That means having mixed tenure, whether in apartment or housing developments. He also asked about whether empirical work had been done on the viability of house-building. It has been done with regard to the building of semi-detached or terraced homes and apartments. When producing these viability reports, one builds in margins in certain areas as contingencies against risk. There has to be a profit margin because it has to be affordable for the builder to develop it. Depending on the project, there will be a greater or lesser gain, depending on how risk was programmed into different elements of the build. It is also true that land costs could be a significant contributory factor. Land costs in the State plummeted after the financial collapse but began to increase rapidly again from 2015 onwards. It will depend on when many builders bought the land.

The Rebuilding Ireland home loan scheme has been a success. We have seen this in the level of drawdowns. It has been operating for almost a year and as of December, approximately half of the allocation for three years had been drawn down. It has been successful.

Senator Kieran O'Donnell made a point about some local authorities building in the wrong locations and said there was inadequate due diligence. If that is the case and if he has examples, it is difficult to square it with people stating we need to cut red tape in the Custom House and strip out some of the oversight that occurs. The Senator makes an important point. However, we in government and as Members of the Oireachtas have to make sure that, as we rebuild the housing sector and get local authorities back into building, we build the right homes in the right places and that we do not relax things so much that we end up making mistakes like we did in the past, leading to ghost housing estates or developments like Priory Hall in the future. While we have cut red tape and streamlined things in the Department and are looking to make a few more changes in that area, we have to be careful that we do not go too far.

Senator Norris described the role of the Minister for Housing, Planning and Local Government as a poisoned chalice. I do not agree. Of course, it is a challenge. It is perhaps the most important domestic challenge we face but it is one we can resolve and are resolving. Within the plans we have, some things will work well initially and others will not and will need to be reformed and monitored to see that they are working. Overall, at a high level, when we look at what we are trying to achieve, which is basically to increase the supply of homes as quickly and sustainably as possible. That is happening.. Even in the supplements of the newspapers, we can

see that it is happening. Of course, we need to do more but the fundamental supply problem is being corrected and we need to drive that further.

Senator Norris is correct to state this problem cannot be solved overnight. When we are talking about building any house or housing scheme, it will take a time to move from the initial idea to planning, design, procurement, building and occupancy. We are not just talking about a few schemes but about thousands upon thousands of new homes. We are also talking about rebuilding those elements of the housing system that are broken, whether in regard to the skilled labourers needed, the architects whose profession got hammered or those who emigrated. In addition, we did not initially have the finances which had to be restored. New procurement and planning procedures have been put in place, including the fast-track process. We are doing all of these things and increasing our resources in each part of the housing sector, while at the same time starting to build. It is happening, but it takes time.

I also agree with Senator Norris that we cannot return to the sprawling housing estates of three-bedroom semi-detached homes. Let us take the example of Crumlin, a great area and a very desirable location, but the density is far too low in terms of what should have been built there. Good planning should take advantage of the infrastructure in the city and also have regard to issues such as climate change and the environment that are very important for us and future generations. We have to make sure we do not make those mistakes with density into the future. When we talk about building, we must look for infill development or increasing densities where we can, particularly along transport corridors, and that means more apartment building.

Senator Norris also referred to the numbers in emergency accommodation and the masaging of the figures. I have to disagree with him absolutely. We are talking about people in emergency accommodation. What was discovered by the Dublin Region Homeless Executive when it was doing its work in conjunction with my Department was that some people had been categorised as being in emergency accommodation when they were not. They are people who had been in their own homes and who had been at risk of moving into emergency accommodation, but, because of the financial support they received from local authorities, they never had to leave their own home, never presented to move into emergency accommodation and never became homeless, yet they were counted as being in emergency accommodation. That miscategorisation issue was accepted by the Oireachtas when we discussed it at the Oireachtas committee, although some have since gone back on it for political reasons.

It is very important that we understand who is in emergency accommodation, not just because of the numbers involved but because we need to know why they are in emergency accommodation and how we can get them out of it in a sustainable way. That is where the Department and the local authorities are focused, namely, on understanding who is in it and how we can help them to move out of emergency accommodation into sustainable homes. It is very important that we can do this work and that we have an accurate understanding of the enormous scale of the challenge. We will continue to work with local authorities to address all of the issues we can, but, of course, concomitant with that is the delivery of new homes which is happening and, in addition, the delivery of a family hub programme, whereby we can have safe, secure supports for families until we can get them into their new homes. The figures show that, on average, families are spending less than six months in a family hub, which is very important for them.

Senator Buttimer was right to refer to focusing on affordability. It is incredibly important that the State be directly involved in building social housing homes, but it must be noted that

the majority of people do not qualify for social housing.

*5 o'clock*

It is true to say the vast majority, with just a little bit of help, could make that money go a long way. That is the reason we put together the help-to-buy scheme, to help people put together a deposit because they were finding it difficult. That is the reason we have the Rebuilding Ireland home loans, namely, to give people affordable mortgages where they were not able to borrow from the banks because the rates offered by the banks would not allow that. This fixed-rate product over the lifetime of the loan, linked with affordability, rather than loan to income, had been very successful in that regard in helping people to get affordable mortgages.

We have the rent pressure zones which are rent caps and they have been shown to be working, although we need to do more work to make them work better. We also have the serviced sites fund, which is an affordability package to help local authorities to deliver affordable homes on their own land. All those things will help with affordability, as will the delivery of new homes. Recent evidence has begun to show us that the increasing supply is having a moderating impact on house price inflation.

I believe the Central Bank mortgage rules are prudent and should remain because it is important that we do not return to practices of the past. We have made a number of changes to address the cost of building homes and making it more viable but we will not be stepping into areas that were shown to be mistakes in the past such as using tax incentives to promote a particular type of building in a particular area. That did not work. It hollowed out the tax base and was very risky and as a result our stock of public debt ballooned. It did not balloon because we took on bank debt. Bank debt is only about a quarter of the stock of debt we took on. We took on a significant stock of debt because we had to continue to fund public pay, public pensions and the various social services support, but because the taxes had dropped so dramatically, because there were unsustainable tax changes such as the ones I mentioned, that is where the real exposure came and the significant risk to the economy. That burden that was taken on by taxpayers, by all of us. We will not be returning to that old thinking of the past.

I agree with what was said about the need for more private homes in Cork. We set up a task force in Cork to look at a range of issues and that has been very successful in driving delivery. We are going to replicate that approach in other parts of the country where it is needed.

I was asked whether the Rebuilding Ireland home loan approval is even throughout the country. There was some reportage on it which said there was a lack of consistency across the country. I do not think it was comparing like with like in terms of time horizons but if Members are concerned, we carried out a review of the Rebuilding Ireland home loan to make sure it is being applied consistently across the country, which is very important. On a number of occasions we have worked with the Housing Agency and some of the key local authorities to make sure that the staff involved in the scheme have the training and know exactly how the loan is to be applied.

Senator Lawlor referred to the increase in social housing in Kildare since 2011. It is important to note that according to some of the latest figures I have seen, there has been an eight fold increase in new social housing homes being built since the year before Rebuilding Ireland was launched. That is not a coincidence. It is because of Rebuilding Ireland and the policies in it that we have seen that dramatic increase in social housing supply. He asked about the Land

5 February 2019

Development Agency. Its intention is to lodge its first planning applications this year. The first board meeting was held on Monday of last week. There is a great team involved in the board and the organisation. The agency continues to hire staff. It has its first eight sites and it is moving on those as quickly as it can. What we have seen recently is some very important reportage on the reason we need the Land Development Agency and why it should always have been there. It will do very important work, long after we all have left both this House and the Dáil.

Home Building Finance Ireland is open. The website is in place. A total of €750 million is available for lending. It wants to begin lending in the first quarter. It is primarily looking at starter homes and small and medium sized builders. The capital is available and more capital can be made available. We want to make sure we are communicating to people that they can borrow. A roadshow is about to get under way, working with the Construction Industry Federation and another organisation, the name of which I cannot recall. Given that we have been putting the plans in place for Home Building Finance Ireland, a lot of people know that it is there and are ready and waiting to put their applications in, so we hope it will start lending in this first quarter.

I have talked about the Rebuilding Ireland home loan. We are looking at a possible second tranche at the moment with the Minister for Public Expenditure and Reform. Local infrastructure housing activation fund, LIHAF, funding is ring-fenced. Some sites are very complex because they involve a number of landowners and a number of different types of infrastructure to unlock the housing. Other sites are more straightforward, such as some of the sites in Fingal, where the Donabate distributor road is already under construction. LIHAF, funding is ring-fenced to be drawn down as it is needed. That €200 million commitment is safe. It is possible for someone who is divorced or separated to apply for the Rebuilding Ireland home loan, even though he or she may have owned a home previously. If there are difficulties in terms of interpretation of the application form, Members should please bring them to my attention.

We need more modular homes, more timber-frame homes. Frameworks are in place for prefabricated technology to be used. I am going to speak at a thought leadership seminar on that after this session as to how we can get people to do more in terms of using prefabrication. It is important to note, however, that it is only one part of the process. It is a good part because it involves new efficient technology that should be used, but one still needs to have planning, do procurement, build the roads and the infrastructure and everything else. While it is an efficiency, and it is of great benefit to those who are building but also those who will live in the new homes and it will cut timelines and cut costs, other things need to happen as well in tandem with that.

In regard to listed buildings, heights and the notion of overlooking, one of the things I wanted to make sure that we were doing in removing the height caps that we have in towns and cities throughout the country is that it could not then be undermined by, for example, the degree to which a new building might overlook a historic building. It is important that we keep in mind our heritage, in particular, the built heritage and history in cities, but other modern cities have managed to bring in tall buildings and protect their heritage. We can do it too. Many of the bad planning decisions that were made in the past in cities were not necessarily made in relation to height but other factors that meant whole buildings were torn down that should not have been torn down or the building of a particular type where the design rather than the height was inappropriate for the context or setting into which it was going. That has changed. Some of the building that has happened around Leinster House has been built bearing in mind its local environment and it has sat very well into the streetscape, in order that we can have modern

new buildings that are exciting, visually appropriate and tall without having a negative impact on historic settings. We are talking about lifting the height caps, not so that we can necessarily go to the moon but to make sure we build an appropriate shoulder height and maximising the type of densities that we want to achieve where the existing infrastructure and places to work and live are already there.

Senator Humphreys talked about the investment in housing and he made some points about an increased investment in the build-to-rent sector. We can have a detailed discussion on that issue. Build to rent is going to be an important part of the rental market in the future. It will be important in terms of more apartments being built. We developed build-to-rent guidelines for the first time to encourage more investment in the build-to-rent sector and we are seeing that happen. We want larger, more professional landlords because we need a better balance in the landlord sector. We are still too reliant on small and accidental landlords for the provision of much of our rental stock. It is very important in parts of the country where one only needs a smaller amount of rental provision that there will be smaller individual landlords with one or two properties but in other parts of the country one needs the bigger investors coming in and that is the reason there are better regulations for it. It is important that we have that kind of investment where people are investing for a rent roll rather than capital appreciation, where people are happy to look for modest increases in rent over a period because they are looking for a steady and sustainable return on investment rather than investing in a property, hoping it might skyrocket in price over a five or ten year period and then get out and get that capital appreciation. That is the type of reform we have seen in the rental sector, which we are trying to drive with new guidelines and regulations.

More people will be renting. It is not just a function of the fact that house prices have gone back up again to a point where they are out of the reach of many. It is because people are staying in college later. They are meeting their partners later. They are starting families later. They are moving jobs more frequently and they are moving in and out of the country. Some people will want to maintain the flexibility that renting gives, even as their lives change. The key responsibility for us as a Government is to make sure renting is affordable and can be safe, secure and sustainable for them. That speaks to the changes that we are trying to bring forward in the rent Bill and changes that will come in the rent Bill after that.

We also need cost rental. I was at the St. Michael's Estate where we want to do the first cost rental properties at scale. Other countries have cost rentals as part of the rental landscape of the order of 20% to 25% of the stock of what is being rented. If we are honest about it, it will take us a long time to get there, but we need to make sure we can do it at scale and that is what the St. Michael's project is about. We will do it at scale first and then replicate it. Once we have proven that concept, we can then roll it out to other areas. That will suit young couples, young workers and the elderly. We know cost rental can get longer term leases that are secure, and that also provide security on rent payments that are below the market rent, linked with a nominal increase, that is nothing like even the 4% we have in rent pressure zones.

Regarding short-term letting or home-sharing, Senator Humphreys asked whether the changes had been published. We have sent the proposed changes to the Oireachtas joint committee and it has already examined them in a private session. I will bring in a very simple change to primary legislation and hope to do that soon. We will then lay the regulations, when finalised, before the House. That change came into effect on 1 January this year.

On the proposed development at Poolbeg, that matter is still with An Bord Pleanála but I

5 February 2019

hope it will have been dealt with soon. I am reticent to talk about it publicly while it is still before An Bord Pleanála but the commitments that have been made on that front must be honoured.

Senator Mulherin asked about the important issue of mica and pyrite. This issue has been raised by a number of colleagues from different parties and particular counties. Thanks to the work of Senator Mulherin and others, agreement was reached at budget time between my Department and the Minister for Public Expenditure and Reform to introduce a scheme. The scheme was approved by Government we will put it in place this year. We have been doing considerable work with officials in the background to work out the details. The scheme is basically ready and it is now a question of aligning the funding for it in order that people can start to make applications. I will publish more details when I have them. We hope to bring the scheme before the Cabinet again very shortly.

A housing summit in the next two weeks will discuss the targets we set for 2018 and what was delivered against them. In terms of the social housing needs assessment, the number of people waiting for social housing has dropped in recent years because of the increased social housing supports and solutions that have been put in place. Security of tenure is an important issue and changes are coming in that respect.

I spoke recently about the repair and lease scheme. We had to make changes to the scheme because it was not working in the way we had initially hoped. As a result of the reforms that have been made, the scheme is working better, although more could be done with it. In some cases, local authorities found that applicants to the repair and lease scheme were better suited to the buy and renew scheme and they were transferred into the latter scheme. While the repair and lease scheme is working, the vacancy level was not as high as we initially anticipated because the figures from the Central Statistics Office included homes for sale, homes in between lettings and holiday homes. As we drill down into each local authority area, we see the true level of vacancy.

I spoke to Senator McFadden in the Chamber last week about the vacancy level in County Westmeath. The vacancy team in the Westmeath local authority area has started work and we have vacancy action plans for each local authority area. I would be happy to discuss with any Senator the local authority plan in his or her area and what has been achieved in terms of compulsory purchase orders issued or homes identified to bring into the social housing net. The key point is that such homes are in the right area, namely, villages and town centres where we also want regeneration.

Senator Boyhan asked about the Shanganagh Castle site. To update him briefly, my Department has been meeting officials from Dún Laoghaire-Rathdown County Council on a regular basis about this proposal. We also meet them every month to discuss housing delivery in general at which time we raise this issue because we know how important it is for the area. The council is also working with the National Development Finance Agency with regard to funding options. Five meetings took place between February and September 2018 on this particular proposal and the funding potential. The council has been briefed on the different models that could be progressed. A workshop was held for elected members in the Dún Laoghaire area committee on 5 November 2018. My understanding is that an application will be made to the serviced sites fund, which is now open and available. However, no formal application in respect of the site has been submitted to me. I believe I have answered all the questions I did not reach last week.

I am grateful to have the opportunity to come to the House for statements and questions. I have now had the chance to reply on two occasions. I am always available to come to the House to discuss housing, as we have done frequently in the Seanad recently. As housing is such an important domestic issue, I will make myself available when I can.

**Acting Chairman (Senator Diarmuid Wilson):** I thank the Minister for his comprehensive reply to the statements.

### **Message from Dáil**

**Acting Chairman (Senator Diarmuid Wilson):** Dáil Éireann has passed the Data Sharing and Governance Bill 2018, considered by virtue of Article 20.2.2° of the Constitution as a Bill initiated in Dáil Éireann, to which the agreement of Seanad Éireann is desired

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

#### NEW SECTIONS

Debate resumed on amendment No. 86c:

In page 28, between lines 25 and 26, to insert the following:

#### **“Communication with person eligible for appointment to judicial office**

**41.** No provision of this Act affects, limits or inhibits the right of the Government, or of the Minister or the Attorney General acting on the authority of the Government, to communicate with a person eligible for appointment to any judicial office with a view to establishing whether that person is willing to accept an appointment to such judicial office by the President acting on the advice of the Government.”.

- (Senator Michael McDowell)

**Acting Chairman (Senator Diarmuid Wilson):** A few contributors have spoken to the amendment. I remind Members that amendments Nos. 86c, 86d and 86e are related and are being discussed together. Senator McDowell is in possession.

**Senator Michael McDowell:** I welcome the Minister back to the House. Amendment No. 86c was under discussion when the debate was adjourned on the last occasion. It provides that no provision of the Bill “limits or inhibits the right of the Government, or of the Minister or the Attorney General acting on the authority of the Government, to communicate with a person eligible for appointment to any judicial office with a view to establishing whether that person is willing to accept an appointment to such judicial office by the President acting on the advice of the Government”.

We spoke on the last occasion at some length about whether this was, to use a phrase to which I object, “reverse canvassing”. I inquire of the Minister whether he thinks that any

provision of the Bill will inhibit the Minister for Justice and Equality or the Attorney General acting on behalf of the Government to communicate with the person with a view to establishing whether that person is willing to accept an appointment to judicial office by the President acting on the advice of the Government. Is he willing to accept that amendment and, if not, will he tell us why?

**Senator David Norris:** I have never heard of this business of reverse canvassing. Will the Minister confirm that this is a peculiar coinage of his own? If not, could he give us a standard dictionary definition of it because if the Minister does not accept this amendment, it seems it is one of the areas where this Bill may be impugned for a lack of constitutionality? I would be glad if President Michael D. Higgins saw fit to return this Bill to the Supreme Court to adjudicate on its constitutionality. The nonsense that we cannot communicate with people, all these secrets and everything else is political correctness gone mad.

This is a slight diversion but I want to draw attention to it. I refer to all the stuff one has to have and all the nonsense and officialdom. I have had an account in the Bank of Ireland head office for 72 years, since I was two. I wanted to change one account from a deposit account to an account with a cheque book. They wrote back to me asking for my passport and a utility bill. I do not know if they wanted my fingerprints, but it is absolute nonsense. We should put a stop to bureaucracy as much as we can.

On the free flow of information, I have made this point before but I will make it again because I insist on it. If we are looking for good decisions in government, it is our responsibility as legislators to allow for the provision of the greatest possible volume of information and the freest possible flow of information between the Government and people who want to put themselves forward for judicial appointment. I believe - I will come back to this issue again - the phrase “reverse canvassing” is a piece of mischievous idiocy on the part of the Minister. I think he is gulling and tempting us with reverse canvassing but perhaps he will tell us if this is a felicitous invention of his own or has it ever occurred anywhere in the known or unknown universes before he emitted the phrase in Seanad Éireann.

**Minister for Justice and Equality (Deputy Charles Flanagan):** No. In short, I am not minded to accept any amendment that would in any way circumvent the judicial appointments commission. That is the import of amendment No. 86c. I can say the same about amendment Nos. 86a to 86e, inclusive. I am not in favour of the approach taken in the amendment. I do not believe we should have the type of channel, be it a front channel or a back channel, envisaged in the amendment. I do not believe it is appropriate that representations or communications in the form of representations might be made, whether it is canvassing, reverse canvassing or otherwise. It is important that the provisions applicable to this commission be honoured throughout the Bill. That is the big change from the current process where members of the Judiciary who wish to be considered do so in a way that is outside the appointments process. One of the main policy planks of this new Bill is to ensure a measure of transparency, that is, by ensuring that everyone who wishes to be considered for appointment to the court would do so through the channel that is the format expressed in the Bill. I am not minded to go outside that process, be it a word in the ear, a tap on the shoulder or an informal communications channel. I am not minded, therefore, to accept the amendment.

**Senator David Norris:** Is “reverse canvassing” the Minister’s coinage?

**Senator Michael McDowell:** I welcome the Minister’s clarity on this issue, except I ask

him to clarify one further point. Is it his view that such an approach will be excluded by this legislation if it is passed in its present form?

**Deputy Charles Flanagan:** I do not see provision in the Bill for such a form of communication. I do not see it as being desirable and, therefore, I am not minded to accept the amendment.

**Senator Michael McDowell:** That is a slightly different answer to the question I put. Does the Minister believe such communication will be excluded if this Bill is enacted in its present form?

**Deputy Charles Flanagan:** It would certainly be undesirable.

**Senator Michael McDowell:** We are dealing with a fairly basic constitutional principle and just to say it is undesirable while denying this House the right to make an amendment to make it clear that it is possible seems to be attempting to use this legislation to frighten any future Government away from exercising its constitutional prerogatives. Why is it undesirable? Supposing a Cabinet looks at a shortlist of three for some position in the courts and it decides that it is not happy with those three, what is it to do? If the Minister is saying that the Attorney General cannot ask anybody else if they are willing to take the job and that nobody else can indicate that they would be willing to take the job - I do not like the word; I prefer "position" - , although he says he is preserving the Government's constitutional prerogative, he is no longer providing a means whereby it can be exercised. If the constitutionality of this Bill was being considered, a court would have to interpret it in a manner which is consistent with the Constitution. If the court came to the view that there had to be a channel of communication between the Government and candidates for the Judiciary where it rejected the short list, is the purpose of the Bill to close off those channels of communication or is it not?

**Senator David Norris:** I will make a couple of points. First, I do not agree with my distinguished colleague, Senator McDowell, in objecting to the word "job". Being a judge is a job. They get paid for it and they do it. It is a job. Let us not be snobbish about it. We do not all live in Rathmines. Second, the Minister has described this as undesirable. In what way is it undesirable? Can he give reasons for considering this process to be undesirable?

Many years ago - it must be over 50 years ago - a job came up in the English department in Trinity College Dublin. Some 47 people applied for it and I was given the wink. I had not been considering applying for it; I did not think I would get it. I did apply for it and I got it. It was amazing, particularly since the leading candidate delighted me because they asked him what he thought about Anglo-Irish literature and he said he would prefer not to think about it at all. That was the end of him and I got the job. I am very grateful for this idea of being able to let somebody know about a job because there might be a very good candidate who had not thought of it, was away on holidays or whatever else.

On the idea of letting somebody know that the Government regards them as suitably qualified and a proper person, the Minister is talking about openness and transparency. Surely to God that is openness and transparency. There is no intention of concealing this. If the Minister would prefer, we could insert an additional form of words in the amendment saying this correspondence had to be published in *Iris Oifigiúil* in order that the public would know about it. I have no problem with the public knowing but I certainly believe a member of the Judiciary should be allowed to know that the Government would look favourably on his or her candidacy.

I am struck by the logic and justness of Senator McDowell's argument that if there are only three candidates - there is a limit of three on these shortlists - and if all three are regarded by the Government as not completely suitable, what is it to do? It could issue advice to all of those involved or make a special broadcast on Raidió Éireann to the effect that there is a judicial appointment coming up but that the three boys who are in for it are all useless and that it would therefore like to solicit applications from others. What is proposed seems to be a nonsense. Senator McDowell is well advised in what he says regarding the constitutionality of it. This is, to quote a favourite phrase from my late brother, the rock on which the legislation might perish. Perhaps the Government thinks that would be quite a good idea. Perhaps it secretly approves of the work that Senator McDowell and I, among others, have done in laying the foundation for a review of this legislation regarding its constitutionality.

**Deputy Charles Flanagan:** I do not accept the view that aspects of this Bill impinge adversely on the constitutional right of the Government to determine the names for appointment.

**Senator David Norris:** The Government is not doing it.

**Deputy Charles Flanagan:** There may well be circumstances, for example, where the Government could ask the commission to revisit, to readvertise or to rehear. There may be circumstances, under the provisions of the Bill, where the names submitted by the commission will not be accepted. I do not envisage that to be the order of the day but there may well be exceptional circumstances which would and should allow for the Government to form a clear view that none of the names submitted reach an acceptable threshold for the Government. I do not expect that it would happen but the constitutional requirement is such that the Government can exercise or form such a view at any stage. In order to facilitate a revisiting or rehearing, there may be circumstances in which it is conceivable that somebody might be asked if he or she is interested in a particular position.

**Senator David Norris:** Asked by whom?

**Deputy Charles Flanagan:** The Attorney General, for example, in many of his or her dealings-----

**Senator David Norris:** Therefore, the Attorney General could advise on an application but the Government cannot.

**Acting Chairman (Senator Diarmuid Wilson):** Senator Norris, please allow the Minister to speak without interruption. The Senator will have an opportunity to respond when the Minister has concluded.

**Deputy Charles Flanagan:** The Attorney General is the legal adviser to the Government, as the Senator is aware. The discretion on the part of the Government to accept or reject the recommendation of the commission under the Constitution still very much stands.

**Senator Michael McDowell:** The problem with all of this is that we are faced with a situation where the Government is entitled to reject the three names recommended to it in respect, for example, of the appointment of an ordinary member of the Supreme Court. What is it to do when that happens? I do not see written into this Bill the phrase, "Sorry, try again". I do not see provision for an indication to the commission that the Government is unhappy with the three people nominated and that it requires the commission to readvertise the position or to look again at candidates 4, 5 and 6 to see if any of them might be suitable. With the greatest

respect, I do not think that any of that is possible under the Bill. I do not think the Government is entitled to state that candidates 1, 2 and 3 on the list are not of interest to it for appointment to the Supreme Court and to ask the commission to look again at the remainder. I do not think there is any provision for interaction between the commission and the Government along those lines, which is a very serious problem. The Government is faced with three names which it has rejected or with which it is not happy, deeming the individuals involved not to be the best. It does not propose to appoint any of them to the Supreme Court but what it is to do then? Is it to communicate with the commission and ask it to look at candidates 4, 5 and 6? Is it to ask the commission to give it another three names until it is happy? The answer is no, because that would fly in the face of that the Minister says is the policy of this legislation. Is the commission to readvertise the post, throw all of the cards up in the air and see how they fall a second time? Perhaps more people will apply second time around but the commission might have no idea who the Government thought was better than those recommended and who would be acceptable to it.

This is very much the central problem with this legislation. If the Government has a prerogative to reject the three names suggested, there is absolutely no guidance or provision in the legislation for telling the commission to come up with other names. If the Government, in those circumstances, tried to remedy the situation by asking the Attorney General if there is anyone better that he or she thinks the Government should appoint and whether that person is available, the Minister is saying that this, at a minimum, is undesirable. He called this reverse canvassing and it seems to be something which he is not prepared to accept can happen because he keeps rejecting amendments to permit it to happen. What are we to make of this legislation? As stated, if legislation is put to the test, the test that the courts apply is whether there is a reasonable constitutional construction which would save the Bill. The courts do not determine whether the provision means either A or B. If, on the face of it, the legislation looks like it means A but B is also a reasonable interpretation of it and if B is the constitutional interpretation of it, then under the double construction rule, the courts save the legislation and say that it means B. I am merely asking why, in those circumstances, the Minister is incapable of accepting any amendment which would allow the Government to exercise its discretion and to take the initiative in certain circumstances to identify a person it considers suitable and to determine whether that person is ready and willing to serve as, for example, an ordinary member of the Supreme Court. I cannot see why this legislation would not make such provision, except for two possible reasons. Either the Minister is unwilling to accept an amendment to that effect because it might look like a formal escape route for the Government from the judicial appointments commission process or, alternatively, this is a political decision on the part of the Government to keep up the pretence that the Government will, in effect, never appoint somebody who is not on the judicial appointments commission short list. Those two possibilities are equally reprehensible.

In the dying minutes of the debate on the previous occasion, I asked the Minister to state clearly whether the Attorney General would be entitled to inform the Government as to whether there were others seeking judicial appointment who were not shortlisted. At an earlier stage in the debate the Minister intimated that he was minded to reconsider whether there could be an effective prohibition on the Attorney General making that information available to the Government. He stated towards the end of proceedings on the last occasion this was discussed. He said:

I thought I had made that clear. A reading of sections 27 and 28 makes it clear that members of the commission shall be bound by confidentiality. A member of the commission is

the Attorney General. Therefore, the Attorney General will be bound by a similar stricture.

I need not remind the Minister or the House that the stricture in question is not merely a duty of confidentiality as one could be held criminally liable for its breach. We have come to a sorry pass. The Minister may be proceeding with this as a bluff. I do not impute that he or the Department is doing so in bad faith. The programme for Government proposed that the shortlist would contain the least number of persons consistent with the Constitution and, in any event, no more than three. The purpose and dynamic of the Bill is to restrict the Government's latitude-----

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

**Senator Michael McDowell:** -----remove its discretion to the greatest extent possible and, through these statutory provisions, corner it into accepting the proposals of the commission in the form of a shortlisted candidate.

I must express my deep disappointment that the amendments are not being accepted because it betokens a concerted onslaught on the true constitutional position. The true constitutional position is that the Government alone makes these decisions. It may take advice from an expert body established by the Oireachtas but it cannot be corralled into a corner such that it must accept the advice of an institution established by legislation. If that is the true constitutional position, why is there such a reluctance to accept it and to give the Government some means of getting around the circumstances which could quite easily crop up in the application of this legislation? If the Government is not happy with any of three nominees shortlisted for a vacancy as an ordinary member of the Supreme Court, how could it be wrong for it to make inquiries regarding other people it believes would be preferable? The suggestion that the Bill provides that the Government could somehow ask the commission to reconsider its shortlist is simply not accurate. That is not provided in the Bill and it will not be in the Act if the Bill is passed. There is no provision whereby the Government can indicate it is not happy with the three nominees and require the commission to come up other nominees.

Curiously, the reverse is provided for in the Bill. Provision is made further on in the Bill for the commission to readvertise the position in a circumstance where it can only provide one or two nominees, or cannot provide any. That gives the commission the power to declare it is not happy with the quality of the candidates. However, the Bill does not provide an equivalent power to the Government. There is something wrong there. Surely, if the Government disagrees with the shortlist it must be entitled to remedy the situation and disregard the advice with which it disagrees. That is dealt with by amendment No. 86d.

Amendment No. 86e, which I have not yet addressed, provides: "Nothing in this Act affects, limits or inhibits the function of the Attorney General under Article 30 of the Constitution to freely advise the members of the Government at a meeting thereof in relation to the suitability for appointment to any judicial office of any person whether or not such person has been recommended by the Commission to the Government in respect of any judicial appointment". If it cannot be accepted that the amendment accords with the policy behind the legislation, I am truly worried. How could one find objectionable the statement that nothing in the Bill affects, limits or inhibits the function of the Attorney General - the adviser of the Government in legal matters and on the law - under Article 30 of the Constitution to freely advise the members of the Government at a meeting thereof in regard to the suitability for appointment to judicial office of any person whether or not such person has been recommended by the commission to the

Government in respect of any judicial appointment? It is extraordinary that it is suggested that that is somehow objectionable and cannot be accepted. If it cannot be accepted, that is because the Government wishes to create a false impression that the Attorney General may not offer such advice and that the Bill would affect the right to do so. I ask the Minister to explain why he deems amendment No. 86e unacceptable.

**Senator David Norris:** The more I look at this legislation, the more I think of *Alice in Wonderland* and *Alice Through the Looking Glass* because it is patently absurd. It envisages a situation whereby the commission has knowledge which the Government is prevented from accessing. To pile nonsense on top of nonsense, an *ex officio* member of the Government, the Attorney General-----

**Senator Michael McDowell:** The Attorney General is not a member of the Government but, rather, an adviser to the Government.

**Senator David Norris:** Does the Attorney General not sit at the Cabinet table?

**Senator Michael McDowell:** The Attorney General sits at the Cabinet table.

**Senator David Norris:** I thank Senator McDowell for the correction. It is utterly ludicrous that a person who is not a member of the Government but is an *ex officio* functionary of the State and sits at Cabinet meetings side by side with the Taoiseach and the Minister for Foreign Affairs and Trade and so on may not provide the Cabinet with this information. I am glad that I am not the Attorney General as I would find it very difficult to keep my mouth shut in such a situation. In fact, I would not be able to do so. On this idea of-----

**Deputy Charles Flanagan:** The Senator would be led in handcuffs from the Cabinet table, in accordance with the prediction of Senator McDowell.

**Senator David Norris:** I would be led away in handcuffs? That would be splendid. I would top the poll in the Trinity constituency again. Arrested by the Government - my God, that would give them something to think about.

**Acting Chairman (Senator Diarmuid Wilson):** I ask the Senator to, please, speak to the Bill and the amendments under discussion.

**Senator David Norris:** Yes. I could not agree more with the Acting Chairman. I wonder if I could have a quorum.

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

**Acting Chairman (Senator Diarmuid Wilson):** Senator Norris was in possession. He should resume his seat.

**Senator David Norris:** I was just mentioning the fact referred to by Senator McDowell.

**Senator Anthony Lawlor:** Have a seat.

**Senator David Norris:** How terribly kind. I thank the Senator. Reference was made to four, five and six names on the long list. However, there might not be that number. There might be only three. There is no suggestion that there must be four, five or six.

**Senator Michael McDowell:** Three is the maximum.

**Senator David Norris:** Three is the maximum. Therefore, there is nothing to suggest whatever that there could be four, five or six on the long list. Supposing the commission were sufficiently bloody-minded, there would be nothing in the Bill, I believe, to stop it from putting the same three names back again. The Government could ask for three names but there is nothing to say they should not be the same names again, particularly if the commission fully and strongly believes they were by far the best candidates for the job.

I may have misinterpreted what the Minister said but I understood him to say that, regardless of anything else, the Attorney General could let a prospective candidate know the position is vacant. I am not sure whether I heard him correctly. That is what he seemed to say. Perhaps I will check the record and see whether my recollection is right. Is it the case that the Attorney General could let a prospective candidate know? The Minister might say it is not. He has implied, with regard to the Government contacting somebody, that there seems to be a revolution. It is just gas-bagging. If the Government is allowed to contact a potential candidate, in what sense is it any more desirable for the Attorney General to do exactly the same thing, presumably on behalf of the Government?

I presume there is provision in the legislation for re-advertising. Perhaps the Minister might point out exactly where. I seem to have shadowy memories of it. I refer to where three people have already been named.

**Deputy Charles Flanagan:** I do not have much to add to what we have been saying in recent weeks. It seems Senator McDowell is very much exercised about two matters. The first concerns maintaining the constitutional integrity of the Government's position, which is important. I have listened carefully for a number of weeks to what the Senator has had to say and I am satisfied that there is no infringement or restriction on what is a constitutional requirement of the Government to be free to make a choice. I do not see where such a restriction might be evident in the legislation.

The second point concerns the role and function of the Attorney General being a member of the commission and also sitting in, as that officeholder does, at Cabinet meetings. I have pointed out previously that the Attorney General, like other commission members, is bound by statute, or by the terms of the legislation. The role of the Attorney General, as a commission member, continues to apply in the context of the consideration by the Government of the recommended names. My advice still is that the Attorney General would not be at liberty to say a candidate who is not recommended by the commission is, in the opinion of his office, more appropriate and suitable and, therefore, a better candidate for consideration. This, however, has no implications for the exercise by the Government of its constitutional power to advise the President on appointments. At the Cabinet, the Attorney General will still have an advisory role under the Constitution. I do not see inconsistency in that. Under the Constitution, the Government can, of course, decide whether to opt for a commission recommendation. Alternatively, it can decide to accept names but perhaps not in the order recommended. I am satisfied, therefore, as to the role of the Attorney General in the process. If, like Senator McDowell, Senators continue to be concerned about the maintenance of constitutional integrity on the part of the Government to ensure it exercises free will in forwarding the name to the President, I can, if it would help to reassure them, come back with a form of wording on Report Stage, but I have built in such a provision.

*6 o'clock*

I reject assertions that the enactment of this Bill, leaving aside amendments Nos. 86c, 86d and 86e, will in some way unduly restrict the Government in a way that conflicts with its constitutional role and function.

**Senator David Norris:** I would like to tease out the astonishing absurdity of this situation. The Minister has said that in a situation where the Government found the first three names unsatisfactory, it could ask for another three and if it found them unsatisfactory, it could ask for another three and so on until the end of the list was reached.

**Senator Michael McDowell:** There is no long list.

**Senator David Norris:** How does the Senator know that?

**Senator Michael McDowell:** Under the Bill, there is no long list.

**Senator David Norris:** There might be.

**Acting Chairman (Senator Diarmuid Wilson):** I ask Senator Norris to make his contribution, following which I will call Senator McDowell and he can point out where Senator Norris is wrong.

**Senator David Norris:** Senator McDowell can think what he likes. I think there is a long list. Like Humpty Dumpty, what I think goes. Words mean what I mean them to mean, no more and no less. The Government could indicate it is not satisfied with the three names provided and ask the commission to produce another three and so on until the end of the list has been reached. There is nothing to prevent a speeding up this process, instead of having a slow motion revelation of the long list. I remind the House that Senator McDowell has also used the phrase "long list". It may be possible that the Senator was saying that there is no such thing as a long list, but I do remember his lips forming the words "long list".

There is another absurdity in that an unelected officer of State, namely, the Attorney General, has greater power than the Government. Surely, that is unconstitutional. I would have thought the Government should be the supreme authority in law-making and appointment-making in this country. Nobody else has that power. The Government is supposed to be the supreme authority, yet an unelected official of the State has greater knowledge and greater power than the Government. Surely, that is an anomaly that ought to be examined.

**Senator Michael McDowell:** The reason I say there is no such thing as a long list is currently, the JAAB advises the Government of the people who applied, and of the people it considers suitable for an appointment. Sitting judges do not come into the equation. What is proposed under the Bill is that the only communication that the newly formed judicial appointments commission gives to the Government is, what I call, the short list. The fact that I use the term "short list" does not imply that there is somewhere a long list.

**Senator David Norris:** Logically, it does.

**Senator Michael McDowell:** Senator Norris may think that is logic but----

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

**Acting Chairman (Senator Diarmuid Wilson):** Senator McDowell to continue, without

interruption.

**Senator David Norris:** The Senator is demanding the interruption.

**Senator Michael McDowell:** If Senator Norris was shortlisted for that job in Trinity College Dublin, it would not have implied that there was a long list. The commission will advise the Government of the three people they consider suitable-----

**Senator David Norris:** Nonsense. I refer the Senator to the Man Booker Prize long list and short list.

**Acting Chairman (Senator Diarmuid Wilson):** Senator McDowell to continue, without interruption.

**Senator David Norris:** If it mentions a short list, that implies the existence of a long list.

**Senator Michael McDowell:** It might in logic but this Bill has little to do with logic.

**Senator David Norris:** I agree on that point.

**Senator Michael McDowell:** Under the Bill, as drafted, if the Government rejects the three names sent forward to it, there is no provision for it to communicate that back to the commission and to ask it to compile a different list, by adding or subtracting somebody or coming up with three different names. There is no provision for that to happen. I ask the Minister to confirm that I am right in saying that there is no provision for the Government to communicate to the commission that it is not satisfied with the three names put forward and asking for it to put forward other names. If I am right, the problem I am talking about is all the more obvious. In the circumstance that the Government rejects the three proffered names ranked in the order of the commission, what is the Government practically to do? Surely, it should be able to communicate, through the Attorney General or the Minister for Justice and Equality, with a person that it would like to appoint and ask if he or she is willing to take up the position. The Minister has gone so far as to say that is undesirable, but he has not said it is excluded under the Bill. Even if it were only undesirable and the policy of this Bill was to make it undesirable, we are left in the situation that, effectively, that the Government is the original submarine without a periscope in that it is told it has constitutional prerogatives and freedoms but it is given no means to ascertain how it might exercise them. I take it that I am correct that there is no provision for the Government to go back to the commission. If I am wrong, I would like to be referred to the provision in the Bill that provides that the Government could ask the commission to put forward other names because it is not satisfied with the names provided.

We are debating three amendments together and I would like now to speak to amendment No. 86e which states:

Nothing in this Act affects, limits or inhibits the function of the Attorney General under Article 30 of the Constitution to freely advise the members of the Government at a meeting thereof in relation to the suitability for appointment to any judicial office of any person whether or not such person has been recommended by the Commission to the Government in respect of any judicial appointment.

I cannot see what is objective about this proposal. If it is objectionable, it can only be that it runs against the spirit of the Bill, or the letter of the Bill. It seems there is no earthly reason the amendment should not be accepted.

**Senator David Norris:** Except that it would undermine the commission.

**Senator Michael McDowell:** It would give the Government some basic information and advice and makes explicit provision for where it was unhappy with the commission's recommendations. That is all it has been designed to do. If it is rejected, it is clear what the Government is trying to do with this legislation. It is trying to say to future Governments that they may never exercise their own constitutional prerogative and discretion, except with the greatest difficulty and playing a game of blind man's buff as to the factual situation that faces it.

I am happy that the Minister has confirmed that the Attorney General will not be able to disclose the unsuccessful candidates to the Government because I believe that would be unconstitutional but I am not happy that he is signalling that any step taken by the Government to establish a person who has not been shortlisted for it is undesirable. I do not know why that should be the case. Persons who are eligible for a judicial appointment and express an interest are entitled at some stage to have the Government made aware that they are constantly being rejected. As the Bill operates, or is intended to operate, the Government will never know that Mr. Justice or Ms Justice Bloggs has applied constantly for the past five years and will never see the shortlist. It will be left in the exact same position of wondering whether Mr. Justice or Ms Justice Bloggs is interested in the appointment or not. We will not know, and the Minister has crafted this legislation to ensure we never know because the only way Ms Justice or Mr. Justice Bloggs can show an interest is to apply to the commission, and the Government will not be entitled to know that fact.

I am not accusing the Minister or his officials of this, but there is a certain intellectual arrogance that this commission should know better than the Government and will probably make wiser choices than the Government as to who should be appointed. That lies at the back of this proposal. The Minister, Deputy Ross, has constantly said he wants to take the decision away from the Government and away from the hands of politicians. Surely it must be wrong, however, that an eminent member of the Judiciary could be applying for five or seven years for appointments within the Judiciary and the Government could never know that and never know that that person was being excluded from the shortlists it is receiving. That is what the Minister is deliberately putting in place and there is no escaping this. He cannot fudge this one. What possible good is served by providing that someone who is ploughing away in the courts, doing his or her job as a judge and impressing the public never features on a short list?

Another feature of this legislation that worries me is that the Government will be faced with the same short list again and again. I ask the House to imagine the following scenario, which is within the contemplation of this legislation. If the Government receives a short list ordered according to the commission's preference and it goes for the commission's third preference, it is by definition saying it is not attracted to appointing No. 1 or No. 2 in preference to No. 3. If it does appoint No. 3, however, No. 1 or No. 2 may be thrown at it again and again on shortlists, and at the expense of people whom the Government might be much happier to appoint, and the Government is kept in ignorance of this fact. Let us be logical about this for a second. If the commission were to recommend three candidates, A, B and C, in the order No. 1, No. 2 and No. 3, and C were appointed, would it exclude A and B at its next sitting or when the next vacancy in judicial appointments arises? Would this be fair? Given that the Government did not seem to be interested in A and B the last time, would the commission decide not to repeat the recommendation? That is one scenario. Another is that, given that the Government went for No. 3 on the previous occasion and that, logically, the commission thought A and B were better candidates, it would short-list A and B and put it back to the Government yet again.

**Senator David Norris:** The commission might put forward only two names, A and B.

**Senator Michael McDowell:** No. It must put forward three under the provisions of the Bill.

**Senator David Norris:** I thought three was the maximum.

**Senator Michael McDowell:** I am sorry. The commission must put forward three unless it thinks no one else is suitable. The point I am making is that we are creating a complete curtain of ignorance behind which the Government is to operate. We are creating a situation whereby if the judicial appointments commission's first and second preference - it alone will know this - have been overlooked in favour of its third preference, it will have to decide the next time around, given that the Government was not particularly interested in the candidates the last time, whether to just drop A and B in future or whether to stick with A and B and add D to the list and see what the Government decides. If D gets-----

**Senator David Norris:** What about C?

**Senator Michael McDowell:** C has already got the job in this scenario. If D is added to the list and is appointed, does the commission get the message that A and B are not going to get the job? Is that the way this is proposed to work? Does the message finally sink home in the office of the judicial appointments commission that as A and B really are not favoured by the Government, it should not bother short-listing them any more? The Government has twice ignored them and gone for the third person on the list. Will this actually improve the quality of the Judiciary? I do not think it will.

I do not want to be prolix. The three amendments we are dealing with are efforts to create some means for the Government to operate in the circumstance in which it does not agree with and is unhappy with the short list and some means for the Government to know what the real situation is in the judicial appointments commission. The Government will wonder why a certain perfectly good judge has never featured in a shortlist coming to it. It will not be able to ask anyone about the matter. Let us be clear about that. That is what the Bill states. One may not ask the commission why so and so is not getting appointed because the only person who will be available to answer that question is the Attorney General, who is bound by confidentiality as to why this perfectly eminent judge just never seems to make the grade and be put on a short list. This is a seriously defective proposal. When discussing a later amendment we will come to the whole business of whether people who never make it, first, will really be told they are not making it and, second, will be given what the Minister referred to, which I do not think is provided anywhere in the Bill, that is, feedback as to why they did make it, yet the Attorney General will not be given the right to tell the Government the feedback on such a person. I do not accept any of this. It is all deeply misconceived and will just produce a worse Judiciary.

Senator Norris thought I was a bit elitist in saying this is not just a job. One member of the Judiciary actually said it is only a job, and that member of the Judiciary was politely corrected by the Court of Appeal. It is a constitutional office. This is not just filling a job-----

**Senator David Norris:** It is also a job.

**Senator Michael McDowell:** There is job of work to be done, but it is more than that. It is a constitutional office and one cannot just apply ordinary employment criteria to it because of this. One cannot ask the Government to regard it as equivalent to the appointment of some-

one as manager of Aer Lingus or something like that. It is not like that. One cannot say there should be a level playing pitch or there should be transparency. One cannot say we can farm out a preliminary evaluation of these people to experts. That is not possible in the case of a constitutional law, nor is it desirable, and it is going to produce worse judges.

That is what I have to say about the amendments and I will not delay the House any further. I am deeply disappointed, at one level, that the Minister will not accept the amendments but I am encouraged, at another level, because it shows that what is happening is an unconstitutional onslaught on the Executive's function.

**Senator David Norris:** I wish to make a short point. Senator McDowell appeared to imply that I am against elitism, but nothing could be further from the truth.

**Senator Catherine Noone:** I was thinking the same thing as Senator Norris.

**Senator David Norris:** I am fully in favour of elitism because elite simply means the best. Why on earth should we not have the best? I want the best in the Judiciary and in government. We have the best in the Trinity constituency but I cannot speak for everybody else. I have nothing whatsoever against the elite. There is a popular, or populist, political correctness whereby somebody cannot say they are in favour of an elite. I have no problem with a dustman being Taoiseach if he shows the qualities for being Taoiseach, but if he does not, and he is just an ordinary gobdaw, why would I want him as Taoiseach of the country? Of course, we should have elite and the best people in the top jobs. I am strongly in favour of the elite.

**Deputy Charles Flanagan:** I do not wish to contribute further to what has been a rather circular argument for a number of weeks but I want to acknowledge the importance of the points raised by Senator McDowell, with particular reference to the constitutionality or otherwise of this part of the Bill. I again point to section 40(3) which specifically states that nothing in the section shall be construed as limiting the advice the Government may give to the President on the appointment by the President, under Article 35 of the Constitution, of somebody to the position of judge. That is sacrosanct throughout this Bill. Of course, I would be unwilling to accept any aspect of the Bill that might give rise even to uncertainty in that regard. I have listened very carefully to the points raised by Senator McDowell and welcome the points he raises. I wish to reassure him that, ultimately, the discretion on the part of the Government is uninhibited by the Bill. That is as it should be.

**Senator David Norris:** That is nonsense.

**Deputy Charles Flanagan:** The Government can accept a recommendation and convey that to the Head of State or it can be at liberty to reject any or all of the names.

I note the point raised by Senator McDowell as to what happens in the event of all the names being rejected. It will then be a matter for the commission to take stock and seek further expressions of interest, if that is what it wishes to do. The commission will, in essence, be independent of the Government. I do not want to build in something at this stage which will have the effect of potentially undermining the three-name recommendation. It will only be in exceptional circumstances that the recommendation of the commission will not be accepted by the Government and I point to the history of the Judicial Appointments Advisory Board, JAAB, in that regard. I cannot think of any case where the Government decided to ignore, in its entirety, the recommended list of names from the JAAB.

Of course, I acknowledge the expertise of Senator McDowell, as a former Attorney General, but I am speaking as a Member of Parliament of many years' standing, a member of Government for a number of years and a Minister for Justice and Equality in recent times. I do not think there is evidence to show that, over the years, the Government has acted in that manner. While, of course, the constitutional prerogative of the Government is retained in its entirety, I would expect serious consideration to be given to the recommended names in accordance with the law. That is where I differ from Senator McDowell and I see a deep-seated hostility and antipathy from him towards a commission that has a non-legal involvement. He adverted to a situation where a judicial wizard would be left languishing on the Bench for many years-----

**Senator David Norris:** In Hogwarts.

**Deputy Charles Flanagan:** -----ignored by the commission, and that this would amount to a gross dereliction of duty on the part of the commission for failing to recommend this legal wizard in position number one. Frankly, I do not foresee circumstances in which that will arise because I again point out the changes that were made in the Bill after the Dáil debate to the effect that the presidents of the court will be sitting on the commission. These are the people best placed to recognise a legal whizz-kid among them and ensure their influence is brought to bear in the preparation of the list for the Government, which is what the commission is all about. I reject the notion that, because of the composition of this commission, talent of an extraordinary type can be blackballed by the non-legal members of the commission. I fail to see how that could happen, having regard to the composition of the commission, including such eminent legal experts as the presidents of the court. We are being treated to a red herring. That said, I take very seriously the earlier points raised in respect of the constitutionality of the legislation and the maintenance and preservation of the discretion for the Government to recommend for appointment somebody from the middle of the list, the top of the list, number three on the list, or from outside the list if it so chooses. That will arise only in the most exceptional of circumstances and I point to the operation of the Judicial Appointments Advisory Board for the past 20 years to support that argument.

**Senator Michael McDowell:** The lay majority of the commission is not the determining factor in my mind. I would still have this objection if there were 100 judges and no lay people on the commission. I do not believe it is the function of the Judiciary to tell the Government who is best and who is not for any position. The Constitution vests that function in the Executive, the members of Government, and nobody else. I fear excessive influence of the Judiciary in formulating short lists as much as I fear the influence of strangers from the outside if the Government is to be coerced, in effect, to choose a candidate from that short list. It does not matter to me who does the choosing. The principle is the same: the Executive under the Constitution is given this function and it cannot be taken away from it.

I am not kowtowing to the members of the Judiciary or licking them in any shape or form. I would worry if their influence was increased significantly in that respect. I do not think they should choose themselves or that they should be a self-selecting elite and I want to make that very clear. I would be much happier to have some practising lawyers introduced in greater numbers than-----

**Deputy Charles Flanagan:** They will be on the commission too.

**Senator Michael McDowell:** A few of them, a tiny minority of the commission. In any event, that is my personal view. Just so the Minister is not under any illusion, I am not in fa-

vour of a self-perpetuating judicial elite and would not be happy if the Minister reduced the number of lay people to three or two and said that was okay. It is the rest of this Bill that I am deeply unhappy with from a constitutional perspective in that the Executive's function is being effectively transferred to a judicial appointments commission, and even though the fig-leaf to which the Minister refers is left there, every possible impediment is put before the Executive in exercising its independent choice by making it almost impossible to find out who is available, who has applied and all of that.

The Minister has said he hopes it will only be in exceptional circumstances that the recommendation of the commission in regard to judicial appointments will not be followed. What the Minister forgot, when he challenged us to say from past experience what the problem was, is that it has never, ever been the case that the Executive's right to appoint or to recommend for appointment a member of the Judiciary has been in any shape or form the subject of any participation by JAAB. That is the point the Minister is forgetting. This is the first time the members of the Judiciary themselves are being told they must apply to this commission. In the past the Government could say there is a vacancy in the Supreme Court and it would like to look first to the Judiciary to fill that position, it is not involving JAAB in the process at all and does not propose to do so. It proposes to nominate a judge of the Court of Appeal or the High Court to fill that vacancy. That is the current position and it has never been the occasion of cronyism.

The Supreme Court has served the country extremely well. On a point where I have some experience, although I do not profess to be infallible on the matter, the Government of the day, in deciding who it wants to be on the Supreme Court, is making a policy decision about the future direction of that court. One cannot simply say there is a person who is brilliant on trademark law or international law and, on some kind of calculus that might or might not impress other judges, the judicial appointments commission or anybody else, say that person on merit deserves to be in the Supreme Court. One cannot do that. One cannot say someone is a brilliant lawyer with a brilliant mind that can solve the most incredible legal conundrums with great facility and that is the person who on merit should be on the Supreme Court. If the Government comes to the view that Ms Justice so-and-so or Mr. Justice so-and-so is a brainbox and has been there for donkey's years, the Government still has to decide whether that person's appointment to the Supreme Court directs the Supreme Court in the policy direction of that Government with regard to how the Supreme Court should look. It is a political decision with small "p" and with no party attached to it, as it has been in the past. I participated in it and believe the Minister has participated in it. There is no question of saying one is appointing this person simply because he or she is intellectually capable or objectively fits criteria which are set out in a statute. It is the Executive's function to make these decisions and to apply its political judgment with a very small "p" to such appointments.

Nobody should be under any illusion but that that is the case. That is the right of the Executive and is why the Constitution gives this function to the Executive. Therefore, when the Minister says I am worried about a lay majority, he is wrong. I am not worried about the lay majority on this occasion; I am worried about saying to sitting members of the High Court and Court of Appeal that, except in exceptional circumstances, in order to be appointed to the Supreme Court, they must be shortlisted by some group outside government. That is my objection. It is a rooted, radical objection to what is happening here. I believe the Government is entitled to say, for example, there are 12 people who it considers likely candidates for the vacancy in the Supreme Court which has just emerged, but its judgment is that Ms Justice so-and-so or Mr. Justice so-and-so is the person it wants to appoint. It does not need them to start filling

out forms describing where they went to school or to prove they are representative of society as a whole. It does not care about his or her gender, in particular. It has different criteria, for example, it is concerned that the court is taking a conservative or a liberal direction.

It was widely thought - I think I am on safe ground on this point - that some decades ago the contenders for the position of Chief Justice were too activist as members of the Supreme Court and it was generally thought that William O'Brien Fitzgerald was selected to move the Supreme Court in a slightly more conservative direction. That was what was thought at the time. There were eminent jurists on the Supreme Court and the Government at that time, apparently, believed it wanted a more conservative direction to the Supreme Court and that was its choice. It has nothing whatsoever to do with the judicial appointments commission which has no right to tell the Government, "By the way, it should be Mr. Justice Bloggs or Ms Justice Bloggs."

**Senator David Norris:** Did he turn out to be conservative?

**Senator Michael McDowell:** He was more conservative than some of the people who were seen as the front runners, very definitely. I say that with the greatest of respect to him and his memory, but I know, as I have spoken to some of the people in government at the time, he was selected because of a concern that the Supreme Court was becoming hyperactive. Whether that was a justified concern is a totally different matter, but that was the Government's choice and it was nothing to do with some other group of people.

When looking at a decision of this kind, how can this commission evaluate whether the Government should appoint a liberal or a conservative to the Supreme Court? If it comes up with three liberals, say, or three people of one social outlook and the Government states it is not keen on it and would like to rebalance the Supreme Court in favour of a different approach, that is the Government's prerogative alone. It has nothing to do with whether there is a lay majority on the commission. It would apply equally if it was a self-selecting judicial college and I would have exactly the same objection. The real question is who the Constitution states makes the choice and whether this Bill now circumscribes the way the choice is made.

The Minister states it is undesirable for the Government to make approaches to anyone. From where he does he get that idea? What is undesirable about a Government making an approach to somebody and asking if he or she is interested in being appointed to a vacancy in the Supreme Court? There is nothing undesirable about that but this is the result of the convoluted thought process at which we have arrived today. It has gone on for a long time and it has made perfect sense because it is a necessary outworking of the Government's discretion to find out whether that discretion can reasonably be exercised in one direction or another, or towards one candidate or another. For the Minister to state it is undesirable for the Attorney General or the Minister for Justice and Equality to ask an individual, on behalf of the Government, whether he or she is interested in being appointed is absolutely misconceived. It is totally desirable for a Government to be able to do that if it so desires.

I am not suggesting anything radical but this option is open to the Government; it has been frequently exercised and has led to good, rather than bad, appointments. If the Government's prerogative is preserved, as the Minister insists, it must have the necessary liberty to make inquiries and approaches in order to discover who is interested and what is going on in the judicial appointments commission, rather than be required to take its three recommendations on faith and without any knowledge as to how they were arrived at or who may have been overlooked for the short list.

This has nothing to do with the lay majority and I would be just as horrified if the Minister proposed that it should be an entirely judicial body. I would be just as horrified if the Government was left equally tethered by the legislation. This legislation constrains the Government, for the first time, in the context of whom it can appoint to vacancies in the Court of Appeal and the Supreme Court when it wants to appoint a judge. If it wants to appoint a serving judge, it should be free to do so. It should be free to know whether particular people were seeking that appointment and whether they would accept it. There is no logical reason to justify the rejection of the amendments that have been tabled other than on the basis of hostility to the Government doing it. It is fanciful for the Minister to state that it would only be in exceptional circumstances that one of three people, nominated by the judicial appointments commission, would not be favoured by the Government for appointment to the Supreme Court. There could be many serving members of the bench whom the Government would want but who are not on any list.

**Senator David Norris:** I am glad that Senator McDowell has clarified matters because the Minister appears to have suggested the Senator was in favour of some kind of Masonic elite within the legal profession. Senator McDowell has made it clear that this is not the case and it shows how risky it is for anyone, the Minister included, to try to characterise the mindset of a speaker without sufficient evidence.

The Minister also spoke about exceptional circumstances and I completely agree with him on that point. He is right but it is the function of Seanad Éireann to tease out all the hypothetical situations that are possible and close loopholes. That is precisely what we are doing. The exceptional circumstances to which we referred can be held to apply in certain situations.

I may be misinterpreting the Minister but he never replies when I ask him if I am. Either he thinks I misinterpret him all the time or I am completely right and it is better for him to keep shtum. I understood the Minister to say the commission could seek further expressions of interest if the three original nominees were rejected by the Government.

**Deputy Charles Flanagan:** The Government can, ultimately, recommend-----

**Senator Michael McDowell:** It cannot.

**Senator David Norris:** I thank “Minister McDowell” for his reply. I am most grateful to him. This is, however, a sub-point and it does not matter.

In response to Senator McDowell, the Minister referred to section 40(3) which states nothing in subsection (2) shall be construed as limiting the advice the Government may give to the President regarding the appointment by the President of a person to be a judge under Article 35 of the Constitution . I presume that refers, specifically and directly, only to subsection (2) but at the same time there is a very clear implication as a matter of policy that limiting the advice the Government may give to the President is a bad thing to do and should not be contemplated. The Government has included subsection (3) in order to ensure the advice it can give the President is not limited. It can be taken as a general principle that the Government believes the advice it can give should not be limited. Then, however, it goes on to clearly limit it. It will limit the knowledge the Government has and the knock-on effect of this will be to automatically limit the advice it gives to the President. It is violating the principle enunciated in section 40(3) that limiting advice is a bad idea and should be stopped. That is why subsection (3) is included. This incoherent Bill flies in the face of its own principles and effectively asks, “What about it?”

I do not understand this and shall certainly vote against it.

**Deputy Charles Flanagan:** Ultimately, the Government can, in the circumstances, recommend whom it wants for appointment whom it wants. It could be somebody from a list or an individual who is not on a list. It can also send a list back to the commission.

**Senator Michael McDowell:** It cannot. That is not provided for in the Bill.

**Deputy Charles Flanagan:** I fundamentally disagree with Senator McDowell who wishes to perpetuate the tap-on-the-shoulder system which is far from transparent. It has given rise to the need for a legislative change in other jurisdictions and was behind this reform process in 2014, when a consultation process was undertaken. We are moving to regularise the system relating to the appointment of judges. It happens to be a fundamental tenet of this new Bill which Senator McDowell readily accepts, that we are bringing sitting judges of the courts into the process. They will be required, for the first time, to make an application to enter into the process and to engage with an independent appointments commission. That is entirely reasonable and adds to the type of transparency that is necessary in a modern public service. It also accords with what is happening in other jurisdictions, particularly the common law jurisdictions and most especially, as I have said on several occasions, in Scotland, England and Wales where we have not seen the type of trenchant opposition to change that has been spearheaded here for the past number of months by Senator McDowell. He appears to wish to hold on to a system which is far less transparent than under the current proposals, where nobody really knows what happens. As Senator McDowell himself says, drawing on his own experience, there is much tapping on the shoulder and requesting people to make certain overtures to the Attorney General or the Government, or both, in a way that could well be described as canvassing. It is time we moved on to a more modern arrangement for the appointment of judges.

As I said, I do not subscribe to the view that the commission will be anti-lawyer or anti-judge in the manner in which Senator McDowell fears in the context of non-legal representation on the commission. I do not see it like that. These will be people of considerable expertise who will need to accord with the various terms and conditions that we have placed in aspects of this legislation. I am unwilling, therefore, to accept amendments Nos. 86c, 86d and 86e because I do not wish to interfere in any way with the central tenet of the reformist nature of this legislation.

**Senator Michael McDowell:** I wish to make a number of brief comments in response to the Minister.

**Acting Chairman (Senator Gerry Horkan):** Go ahead.

**Senator Michael McDowell:** He used the word “regularise” as if to say what has happened in the past is somehow irregular and I object to that proposition. There is nothing regularising about the Bill. In my view, it is the Bill which is irregular. The Minister is not regularising the appointment of judges by putting this system in place.

The Minister went on to claim that this will be far more transparent. How will it be transparent? How will anybody who has been rejected know why he or she was rejected? How will the Government know why people who appear to be eligible are not getting shortlisted? How can that happen if the Attorney General cannot even comment on who has failed to be shortlisted on a number of occasions? It simply is not transparent. There is nothing transparent about it at all. In fact, it is all circumscribed with confidentiality and criminal sanctions for telling us the

reasons behind what went on.

It is now being suggested sitting judges should go through this procedure in every case but has anybody sought the views of the Judiciary on it? I have not seen it expressed that sitting judges should be vetted by a body for appointment to the Supreme Court. If judges have expressed that view, all I can say is the Constitution states differently.

**Deputy Charles Flanagan:** I will withdraw the word “regularise” if it implies an irregularity regarding the current method. I do not mean that it is irregular but it is informal. I will substitute “formalise” for “regularise” if Senator McDowell is of the view that I am in some way disparaging of the current methods. It is important to formalise the process and that is what we are doing. I do not intend to accept these amendments because they go against the spirit of formalising the new structures. That is important. It is also appropriate that sitting members of the Judiciary are encompassed under the new legislation precisely because the nature of the informality could well give rise to a perception that matters are less than transparent.

At an earlier stage I made reference to the fact that there was a large measure of consultation and that judges themselves participated in the process. I would be happy to drop a note to Senator McDowell on that matter. I do not have the immediate reference but not only was there consultation but a submission was received, the detail of which I would be happy to convey to the Senator.

**Senator Michael McDowell:** The Minister has twice implied that if the three names sent forward are not accepted by the Government somehow the thing goes back over the net into the commission’s court. However, there is not one sentence, clause or word in this Bill, as I read it, which provides for that situation. There is not and the reason for it, if the Minister thinks about it, is that it would be remarkable if the commission was told to have another go and that the Government was not very keen on the first three names. The implication-----

**Senator David Norris:** Is that the commission is useless.

**Senator Michael McDowell:** -----is that the Government is going to start playing tennis with the commission. It is going to send the ball back over the net and tell it to have another go to see if it can come up with a better short list. I do not see that in the Bill.

**Acting Chairman (Senator Gerry Horkan):** I wish to remind Members that we are discussing amendments Nos. 86c, 86d, and 86e together. If Members wish to speak to amendments Nos. 86d and 86e and have not done so already, this is their last chance. Otherwise, I will put the question if nobody has anything further to say.

Amendment put.

The Committee divided by electronic means.

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

Amendment again put:

The Committee divided: Tá, 11; Níl, 20.	
Tá	Níl

Bacik, Ivana.	Burke, Colm.
Boyhan, Victor.	Burke, Paddy.
Clifford-Lee, Lorraine.	Butler, Ray.
Gallagher, Robbie.	Buttimer, Jerry.
Horkan, Gerry.	Byrne, Maria.
Humphreys, Kevin.	Coffey, Paudie.
Marshall, Ian.	Conway-Walsh, Rose.
McDowell, Michael.	Conway, Martin.
Murnane O'Connor, Jennifer.	Devine, Máire.
Norris, David.	Gavan, Paul.
Wilson, Diarmuid.	Hopkins, Maura.
	Lawlor, Anthony.
	Mac Lochlainn, Pádraig.
	Mulherin, Michelle.
	Noone, Catherine.
	O'Donnell, Kieran.
	O'Reilly, Joe.
	Reilly, James.
	Richmond, Neale.
	Warfield, Fintan.

Tellers: Tá, Senators Victor Boyhan and Michael McDowell; Níl, Senators Paddy Burke and Martin Conway.

Amendment declared lost.

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

In page 28, between lines 25 and 26, to insert the following:

**“Disclosure of identity of persons eligible for appointment to judicial office**

**41.** Notwithstanding the provisions of *sections 27 and 28*, nothing in this Act renders it unlawful for the Attorney General to inform members of the Government of the identity of persons who are eligible for appointment to any judicial office and who have indicated a willingness to be appointed to such office by the President on the advice of the Government, including persons who have applied to the Commission for recommendation for appointment but who have not been recommended by the Commission for such appointment.”.

Amendment put:

The Committee divided: Tá, 11; Níl, 20.	
Tá	Níl
Bacik, Ivana.	Burke, Colm.
Boyhan, Victor.	Burke, Paddy.
Clifford-Lee, Lorraine.	Butler, Ray.
Gallagher, Robbie.	Buttimer, Jerry.

*Seanad Éireann*

Horkan, Gerry.	Byrne, Maria.
Humphreys, Kevin.	Coffey, Paudie.
Marshall, Ian.	Conway-Walsh, Rose.
McDowell, Michael.	Conway, Martin.
Murnane O'Connor, Jennifer.	Devine, Máire.
Norris, David.	Gavan, Paul.
Wilson, Diarmuid.	Hopkins, Maura.
	Lawlor, Anthony.
	Mac Lochlainn, Pádraig.
	Mulherin, Michelle.
	Noone, Catherine.
	O'Donnell, Kieran.
	O'Reilly, Joe.
	Reilly, James.
	Richmond, Neale.
	Warfield, Fintan.

Tellers: Tá, Senators Victor Boyhan and Michael McDowell; Níl, Senators Paddy Burke and Martin Conway.

Amendment declared lost.

Progress reported; Committee to sit again.

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

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

The Seanad adjourned at 7.30 p.m. until 10.30 a.m. on Wednesday, 6 February 2019.