



DÍOSPÓIREACHTAÍ PARLAIMINTE  
PARLIAMENTARY DEBATES

**SEANAD ÉIREANN**

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

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## SEANAD ÉIREANN

*Dé Máirt, 26 Feabhra 2019*

*Tuesday, 26 February 2019*

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

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*Machnamh agus Paidir.  
Reflection and Prayer.*

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

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

The need for the Minister for Health to provide an update on the publication of the report of the review of the system for setting nursing home prices under the nursing home support scheme.

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

The need for the Minister for Health to outline the measures being taken to address the shortage of general practitioners in counties Cavan and Monaghan.

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

The need for the Minister for Housing, Planning and Local Government to outline the role of local authorities in addressing public health and safety concerns arising from the dereliction of privately-owned buildings.

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

The need for the Minister for Health to provide an update on the development of a primary care centre in Ballaghaderreen, County Roscommon.

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

The need for the Minister for Justice and Equality to consider extending the eligibility for the special scheme for non-EEA nationals from 2005 to 2003.

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

The need for the Minister for Employment Affairs and Social Protection to make a state-

ment on whether the public services card should be an acceptable form of identification for opening a bank account.

The matters raised by the Senators are suitable for discussion and I have selected those raised by Senators Colm Burke, Gallagher and Lombard and they will be taken now.

Senator Boyhan has withdrawn his Commencement matter, which I had originally selected. The other Senators may give notice on another day of the matters that they wish to raise.

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

### **Nursing Homes Support Scheme Review**

**An Leas-Chathaoirleach:** I welcome the Minister of State at the Department of Health, Deputy Finian McGrath, who is here to respond to the first matter, which is from Senator Colm Burke.

**Senator Colm Burke:** I thank the Minister of State, Deputy Finian McGrath for coming to the House to deal with the issue pertaining to the nursing homes support scheme, known as the fair deal scheme. As I understand it, a review was to be carried out but the representative organisation, Nursing Homes Ireland, and all those involved in providing nurse home care under the fair deal scheme were led to believe that the review would be carried out as long ago as 2016. Nothing has occurred and a number of different dates were mentioned as to when the review be published but that has not happened.

The major challenge facing nursing homes is that their costs have risen. The cost of nursing staff and of care assistants has risen. A significant number of staff, who previously worked in the nursing home sector have been taken on by the HSE and nursing homes are finding it difficult to employ others to replace them because their charges are stuck at the same level as they were four or five years ago, whereas costs have continued to increase. A review was promised, dates were set out at an Oireachtas joint committee as to when the review would be published. This has not happened and at this stage clarification needs to be provided in order that the nursing homes can continue to provide the service to the approximately 23,500 people who are in private nursing homes under the fair deal scheme.

We have a growing elderly population and there will be more demands on the system and people are not encouraged to invest in this sector unless they know that what they will be paid for the service they provide corresponds to the rising costs of running these facilities.

I ask the Minister of State for clarification on this matter.

**Minister of State at the Department of Health (Deputy Finian McGrath):** I thank Senator Colm Burke for raising and highlighting this very important issue.

The nursing homes support scheme, commonly known as the fair deal scheme, is a system of financial support for those in need of long-term residential care. Participants contribute to the cost of their care according to their means while the State pays the balance of the cost.

Approximately 23,000 people are availing of long-term residential care through the scheme at any given time. The National Treatment Purchase Fund, NTPF, has been designated by the Minister for Health, pursuant to section 40 of the Nursing Homes Support Scheme Act 2009, as a body authorised to negotiate with proprietors of registered nursing homes to reach agreement on the maximum price that will be charged for the provision of long-term residential services to nursing home support scheme residents. As part of this function, the NTPF enters into approved nursing home agreements with registered private and voluntary nursing homes to record the maximum prices that have been negotiated. The NTPF takes the following guidelines into account in negotiating the prices: whether costs are reasonably and prudently incurred by the nursing home and evidence of value for money; prices previously charged; local market price; budgetary constraints and the obligation of the State to use available resources in the most beneficial, effective and efficient manner to improve, promote and protect the health and welfare of all of the public. The NTPF is independent in its functions in reaching maximum pricing agreements with proprietors of registered nursing homes.

The report of the nursing homes support scheme review, published in 2015, identified a number of issues for more detailed consideration, including a review of the pricing mechanism used by the NTPF with a view to ensuring value for money and economy, with the lowest possible administrative costs for clients and the State and administrative burden for providers. A second issue identified by the report was increasing the transparency of the pricing mechanism so that existing and potential investors could make as informed decisions as possible and a third was ensuring adequate residential capacity for those residents with more complex needs.

As the Senator himself has said, a steering group was established in 2016 to oversee and manage the pricing review. The steering group was chaired by the NTPF and included representatives of the Departments of Health and Public Expenditure and Reform. As part of its work on the review, the NTPF sought various inputs, including external expertise and stakeholder engagement, to inform the review. These inputs have been considered in great detail. It is recognised that any change to any part of the scheme must be considered in terms of short-term and long-term impact on the viability of the scheme and accessibility of long-term residential care in general. I am pleased to advise Senator Colm Burke that the review is expected to be completed very shortly.

**Senator Colm Burke:** I thank the Minister of State. My only concern is with the definition of “shortly”. This matter has been going on since 2016. There are complex issues involved. The problem we now have is that there are complex cases in the private nursing homes sector. These homes are not being funded to the same level as HSE-run facilities. To give the Minister of State an example, I know of two units of 100 beds each, both of which were built within the past ten years. One is run by the HSE and the other by the private sector. They are both HSE facilities. The unit run by the private sector is costing €900 per week per bed. The unit run by the HSE is costing €1,500 per week per bed. That is a difference of more than €600 per week. This is the problem I have with how funding is allocated. People may come in through the private sector without any major difficulties with regard to their care but as they age their care becomes more complex. The private sector, however, is not getting the same level of financial support to deal with those complex cases. That is an issue that needs to be reviewed.

The other matter that needs to be dealt with, which I know is slightly different, is the HSE not allowing dieticians to visit nursing homes. Great costs arise as a result of that. If dieticians from the HSE were visiting nursing homes monthly it would reduce the level of supplements being prescribed. These health supplements are being prescribed by dieticians employed by

their manufacturers. That is another issue which needs to be looked at.

**Deputy Finian McGrath:** Again I acknowledge the significant input and engagement from across the nursing homes sector that has informed the drafting of this report. This expertise has been considered in detail. I also ask nursing home proprietors to continue the constructive engagement they have had with the NTPF to date and I assure them that the report on the review of the system for setting nursing home prices under the nursing homes support scheme is of utmost importance to my Department. It is a mark of the success of the health system that life expectancy has increased and our population is ageing. However, we must continue to ensure that, as the health and social care needs of older people increase and they can no longer be supported to live in their own homes, they have access to nursing home places. The nursing home support scheme has supported tens of thousands of people to avail of long-term residential care since its introduction in 2009.

This review is important to the Department and it is expected to be completed shortly. Senator Colm Burke will understand how important it is that full consideration is given to the content of the review so the viability and accessibility of the scheme are assured. Of course I accept his argument regarding the two units, with one costing €1,500, the other costing €900 and the difference of €600 per week, as well as his points about the complex cases and the dieticians. I will convey those concerns to the Minister, Deputy Harris.

### **General Practitioner Services Provision**

**Senator Robbie Gallagher:** Cuirim fáilte roimh an Aire Stáit go dtí an Teach. I thank the Minister of State for taking time from his busy schedule to attend this debate. I wish to discuss the current crisis in general practitioner, GP, care throughout the country and particularly in rural counties such as Monaghan and Cavan. In County Monaghan I spoke to a young couple recently who have just returned home after working in Dublin. They told me they travelled to Monaghan town, where they hope to live, and knocked on every GP's door only to be told that every GP's list was full. They could not get access to a GP. When they went to Carrickmacross they got a similar message. Where are these young people to go for healthcare? The only option available to them is to stand in the queue in the accident and emergency department of the local hospital, which is in Cavan. That is a very sad state of affairs.

Unfortunately, this issue has been with us for some time. GPs have been banging this drum for a long time but the Government has not taken any notice. It has now reached a stage where people simply cannot get access to healthcare. When we get sick the first door we knock on is that of the local GP, but there is a serious problem when that knock cannot be answered. In addition to the shortage of GPs, there is a serious problem with the age profile of GPs. It is estimated that 17% of them are due to retire in the next five years. We are training approximately 180 GPs every year so that illustrates the nature and extent of the problem. Half of the doctors we are training, like many of our nurses and teachers, are jumping on an aeroplane as soon as they qualify and heading off to a foreign land where the terms and conditions of employment are much more attractive. It is a serious problem. I have spoken to some GPs and they told me they are being run into the ground. They are totally stressed out because they simply cannot cope with the numbers coming through their doors. Even when the doors are closed they are still in a serious position and cannot cope.

In summary, we need a health system in which people see the right healthcare provider at

the right time and in the right place. The cost of treating a patient in hospital for one night is €1,200. Treating the same patient in their own bed and home costs less than €100. This is a serious problem and must be addressed. It is particularly acute in places such as Monaghan, Cavan and rural areas. We are trying to attract our young people home and to invest in the local economy to create jobs, but there will be a big problem if those people cannot get access to GP care, the first point of access to healthcare when they get sick. I hope the Minister of State will have news of serious attempts by the Government to address this matter.

**Deputy Finian McGrath:** I thank Senator Gallagher for raising this important issue. I am aware he has a keen interest in healthcare and does a great deal of work in Monaghan and Cavan in respect of my portfolio, which is disabilities. I am very conscious of that and I commend him on it.

I would like to assure the House that the Government is committed to the continued development of GP capacity to ensure that patients throughout the country continue to have access to GP services and that general practice is sustainable in all areas into the future. I want to ensure that existing GP services are retained and that general practice remains an attractive career option for newly-qualified GPs. As of 31 December 2018, 2,491 GPs hold GMS contracts with the HSE and this is continuing to increase year on year. A further 430 GPs hold other contracts to provide services such as immunisation, Heartwatch, methadone and cancer screening. HSE community healthcare organisation area 1 has confirmed that there are currently 25 GMS GPs in Monaghan covering 27 GMS panels and there are 34 GMS GPs in Cavan covering 37 GMS panels. Two locum panels for Ballyjamesduff and Drumalee were advertised in the national newspapers last weekend, with a closing date for receipt of completed applications of 15 March 2019. The HSE primary care unit is also processing two open entry GPs for Cavan and is engaging with all GPs holding locum panels to discuss the future of these panels. All GMS panels are assigned to a GP and currently there are no panels without a GP. The HSE is not aware of any GMS patients without a GP in Cavan-Monaghan. There are nationally agreed processes in place that ensure that any person who cannot access a GMS GP will be assigned to a GP.

The Government is aware of workforce issues facing general practice - and I take on board the points raised by Senator Gallagher - including the influence of demographic factors, and has implemented a number of measures to improve recruitment and retention in general practice. These include changes to the entry provisions to the GMS scheme to accommodate more flexible shared GMS-GP contracts, and to the retirement provisions for GPs under the GMS scheme, allowing GPs to hold GMS contracts until their 72nd birthday, as well as the introduction of enhanced supports for rural GP practices. These steps should help to address the future demand for GPs by enticing GPs who may have ceased practicing for family or other reasons back into the workforce, facilitating GPs to work past the standard retirement age and encouraging more GPs to work in rural areas.

There has been a huge expansion in the number of places on GP training programmes in recent years. In 2009, there were 120 GP training places available, and in 2018, 193 places were filled, an increase of around 60% over this nine-year period. The objective is to continue to achieve annual increases in the number of training places available while ensuring that all the places are filled.

It is acknowledged that there are many challenges in general practice. I agree with Senator Gallagher's point on this issue. That is why the Government remains committed to engaging with GP representatives on the development of a package of measures and reforms to moder-

nise the current GMS contract.

Talks between the Department of Health, the HSE and the Irish Medical Organisation, IMO, as the established GP representative body, are continuing. Agreement on the delivery of these service improvements and contractual reforms has the potential to facilitate a substantial increase in the resourcing of general practice on a multi-annual basis.

**Senator Robbie Gallagher:** I thank the Minister of State for his comprehensive response to my query. I met a farmer recently who was discussing the lack of GPs and where the country was going. He said it was terrible to think that nowadays if he had a sick animal in one of the cattle sheds in the morning or one which got sick in the middle of the night he could ring a vet and one would be out within a couple of hours but if a mother or father had a sick child and was trying to get access to a GP in some cases the GPs' doors would be closed purely because of their workload. That illustrates in very simple terms the gravity of the situation. I note from the Minister of State's comments that talks are going on. GPs will say they have been going on too long. There is a crisis, particularly in the rural counties such as Monaghan and Cavan. It is past time that this issue was taken more seriously and that the Government addressed the situation. The Minister of State outlined that there will be efforts to put in place assistance in respect of the medical cards and that those people will be seen at some point. What about the people who are working and do not have a medical card? How are they meant to survive and where are they meant to go if their children are sick if there are no GPs available?

**Deputy Finian McGrath:** I reiterate the Government's commitment to ensuring that patients throughout the country continue to have access to quality general practitioner services. The Department of Health, the HSE and the Irish College of General Practitioners are committed to working together to improve recruitment and retention in general practice over the coming years. I take the Senator's point and note his story about the local farmer being able to get a vet in a matter of hours. I also take his point on the progress of the talks. The goal of the current phase of the GP contract talks is to reform and modernise the existing General Medical Services, GMS, contract. This will be key to making general practice a more attractive career to young doctors.

In respect of GP services in counties Cavan and Monaghan, I assure the Senator that the HSE is taking all necessary steps to ensure that the current GMS vacancies are filled as soon as possible. In the meantime, local arrangements are in place to ensure services to this community are retained while the recruitment processes are under way. Of course, the Senator has a very valid point on the other issue of GPs in rural areas. I will bring these major concerns back to the Minister, Deputy Harris.

### **Derelict Sites**

**Senator Tim Lombard:** I welcome the Minister of State to the Chamber and ask him to outline the role local authorities play in addressing public health concerns arising from dereliction of privately owned buildings. Dereliction of urban areas is an issue we all need to address. The local authorities play a key role in this. Local government is a very important part of our community. It is in charge of roads, housing, business services and many other aspects of our society. When we have a dereliction or safety issue, it is important that local government acts appropriately and responsibly. Exactly 11 weeks ago, a building collapsed at about 2 a.m. in Oliver Plunkett Street, Bandon but nobody was hurt. That street is still closed off and there are

signs up on buildings across the way. Ratepayers and a hotel are affected. It has had a major effect on economic activity within Bandon town and the lack of action is being commented on. Do local authorities have the power to deal with such issues? Do they have the power to engage? Can they compulsorily purchase a property to ensure access is opened again? It is a bizarre situation. If a building in Grafton Street or Patrick Street in Cork fell tomorrow morning, I do not think we would be waiting for 11 weeks for a road to be opened. Clarity is required. These are ratepayers and businesses in a proud town that wants to see action. It wants to see reopened a street that is closed off. I seek clarity on what powers local authorities have and when do they use them. If the powers are not strong enough, perhaps we need to legislate to ensure local authorities can act swiftly and competently to avoid having a street closed for three months. It could be closed for another three months for all I know. I do not know when it is going to be opened. Here in Leinster House and in the Custom House in particular, people must use their initiative to instruct the local authorities to act swiftly.

This is a big issue at present. There are derelict sites in many cities and towns and dereliction is an unfortunate issue. We are in the middle of a housing crisis and to have these sites sitting idle is a crime.

*3 o'clock*

How do we get these sites back into circulation and make them produce for our society? I know of a street in Innishannon, County Cork, where there are 11 idle houses. That is totally inappropriate. We have to ensure that the powers of local authorities are strong enough to enable them to deliver vibrant, strong communities. Those communities will not emerge from derelict sites and buildings.

I am looking for clarity on this matter. Do the local authorities have the power to intervene? If not, will we give them such power and, if so, can we instruct the Custom House to get actively involved and ensure the dereliction problem in many towns and villages is dealt with to improve the quality of life of communities and wider society?

**Minister of State at the Department of Education and Skills (Deputy John Halligan):** I apologise on behalf of the Minister for Housing, Planning and Local Government, Deputy Eoghan Murphy, and thank Senator Lombard for raising this very important issue concerning local authorities and how to deal with public health issues associated with derelict buildings.

There are two legislative enactments that are particularly relevant in this area. The Derelict Sites Act 1990 requires every owner and occupier of land to take all reasonable steps to ensure their land does not become, or continue to be, a derelict site. In the Act, a derelict site is defined as meaning:

... any land which detracts, or is likely to detract, to a material degree from the amenity, character or appearance of land in the neighbourhood of the land in question because of—

(a) the existence on the land in question of structures which are in a ruinous, derelict or dangerous condition, or

(b) the neglected, unsightly or objectionable condition of the land or any structures on the land in question, or

(c) the presence, deposit or collection on the land in question of any litter, rubbish,

debris or waste, except where the presence, deposit or collection of such litter, rubbish, debris or waste results from the exercise of a right conferred by statute or by common law.

To this end, local authorities have been given substantial powers under the Act in relation to any such sites. These powers include requiring owners or occupiers to take appropriate measures which, in the opinion of the local authority, are necessary to prevent the land in question from becoming or continuing to be a derelict site. This applies to the initial stages of dereliction. A local authority can also acquire derelict sites, either by agreement or compulsorily, and apply a derelict site levy on the registered owners of derelict sites which should be applied annually for as long as a site remains on the local authority derelict sites register.

Under the Act, local authorities are required to compile and maintain a register of derelict sites in their respective functional areas, which contains the name and address of each owner and occupier of any land which, in the opinion of the local authority, is a derelict site. A copy of the derelict sites register can be inspected at the offices of each local authority during office hours.

Section 59 of the Planning and Development (Amendment) Act 2018 made a significant change to the Derelict Sites Act 1990 to provide that the derelict sites levy will increase from 3% to 7% of the market valuation of relevant sites with effect from January 2020. This increase is intended to ensure that the measure can have more meaningful impact and incentivise owners to bring derelict sites back into productive use at an early stage. This is a very significant change. It does not take away from the Acts I have already mentioned, but rather added to them.

The second legislative enactment providing local authorities with powers to address public health and safety concerns associated with derelict structures is the Local Government (Sanitary Services) Act 1964. The Act is old but I believe it has been fairly effective. A dangerous structure is defined quite broadly as any building, wall or other structure of any kind that in the opinion of the local authority is likely to be dangerous to any person or property. Under the Act, local authorities are empowered: to give notice to an owner or an occupier of a dangerous structure to carry out such works, including the demolition of the structure or the clearing and levelling of the site, specified in the notice in order to prevent it from being a dangerous structure; to remove any debris and to erect a wall or barrier between any open area created by the works and any road, street or public place and to terminate or modify any use of the structure or part of the structure; and to enter land to undertake works that a local authority believes are necessary in order to prevent a structure from being a dangerous structure and to carry out the necessary works itself. It should be noted that where a local authority is obliged to undertake any works in relation to a dangerous structure, the local authority can seek to recover any costs or expenses incurred by it in undertaking such works from the owner of the property concerned.

The Act also imposes duties on the local authority to maintain a register containing the details of all orders made in relation to dangerous structures and the register must be available for public inspection. In the case of both the Derelict Sites Act and the Local Government (Sanitary Services) Act, failure to comply with a notice issued by a local authority is a prosecutable offence.

**Senator Tim Lombard:** I compliment the Minister of State on his response. In the three years I have been here, I have rarely received a response that pointed out the law dealing with the issue in question. I asked if the local authority had powers to deal with the issues and it is

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very clear from the Minister of State's response that the 1964 Act, which is very comprehensive, gives the local authority exceptional powers to levy the cost of this on the owner of the site and provides a mechanism to recover the costs, if required. We now need the local authority to show the will to do this. It has the power but, as I asked, why is it not using this power? That is the big issue. We have proved that it has the power under the 1964 Act so I ask the Minister of State to go back to the Minister, Deputy Eoghan Murphy, and ask him to engage directly with Cork County Council and ask it why it is not using the powers it has under the Act. It has the explicit power to get its money back for the works it undertakes but a street has been closed for nearly three months and could be closed for another six months. We need Cork County Council to move and to deliver on this. The Minister should get involved with this case to ensure the local authority delivers on its role as an important driver of local and community issues.

This is a very important issue locally and ratepayers will not be there in 12 months' time because of the powers under the 1964 Act not being invoked. We have the legislation, now we need goodwill and activity on the part of Cork County Council.

**Deputy John Halligan:** When I received this question I carried out an assessment of the situation. I was a councillor for a number of years, like the Senator, and I looked at the Derelict Sites Act 1990, as well as the Planning and Development (Amendment) Act 2018. With these Acts and the 1964 Act, it appears that local authorities have sufficient powers. The problem is that it is a matter for individual local authorities to determine the most appropriate use of what powers are available to them. I am not in position to say, but maybe an assessment should be done by the Department of how many times local authorities have used the Acts of 1964, 1990 or 2018 in respect of derelict sites and whether the Acts have had any impact.

In 2020 there will be an increase in the levy on market valuations from 3% to 7% but the Senator is right that sufficient powers exist for local authorities in the three Acts referred to. It is a question of whether they use those powers and how often they do so. I am only speaking on behalf of the Minister but I read the legislation this morning. What is probably necessary and what would be a useful exercise is carrying out an assessment of local authorities to assess how many derelict sites there are and identify how many times under any of the Acts the owners or occupiers have been contacted. What the Senator said is right. If he sends me the details of the particular case with which he is dealing, I guarantee that they will be passed on to the Minister.

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

*Sitting suspended at 3.10 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, Judicial Appointments Commission Bill 2017 - Committee Stage, resumed, to be taken at 4.45 p.m. and adjourned at 7 p.m., if not previously concluded.

With your indulgence, a Chathaoirligh, I welcome to the Visitors Gallery the friends and guests of Senator Ardagh, the leader of Fianna Fáil in the House.

**Senator Catherine Ardagh:** I welcome the members of the public from Dublin South-

Central and hope they will have a lovely day. It is great to see them in the Visitors Gallery.

I express my disgust and disappointment at the Government's delay in dealing with very high insurance premiums, not just for car users but also for business owners for public liability insurance. One of the reasons for the high premiums is the enormous payouts in personal injury cases. Under the Judicial Council Bill which was passed on Second Stage in this House in 2017, there were to be judicial guidelines on payments in personal injury cases. We are told that there is a delay in taking the legislation on Committee Stage because the Judicial Appointments Commission Bill is still going through the House. I do not agree with this. There is no reason whatsoever that we cannot bring the Judicial Council Bill to the House. In the meantime, the Minister has asked the Judiciary and the Chief Justice to set up a non-statutory committee to deal with guidelines for personal injury payments. However, we should all agree that putting these guidelines on a statutory footing is the best and firmest way to proceed. Today, therefore, I give notice to the House that I will propose to amend the Order of Business next week to allow for the Judicial Council Bill to be brought to Committee Stage. I am giving one week's notice in order that the House will have an opportunity to submit amendments to the Bill, and it is for this reason I raise the matter today.

The second matter I wish to raise concerns an online issue affecting children called the Momo challenge. This is when children are on social media outlets and some sort of virus or worm called the Momo challenge appears and asks them to carry out various dangerous tasks, including self-harm. The Garda has appealed for children and vulnerable people online to be supervised. I once again call on the Government to establish an office of digital safety commissioner. A digital safety commissioner could be ahead of the curve in educating parents and children in order that these phenomena - I do not know whether one would call them online viruses - do not affect children and that our children are protected and kept safe while online and parents are educated.

The third matter I wish to raise concerns a report on the rezoning of industrial estates in Dublin that was commissioned by Dublin City Council. The proposed sites are, on the north side, Oscar Traynor Road and the Malahide Road and, in my own constituency, Kylemore Road, Park West and Inchicore Railway Works. This is a great idea and is to be welcomed. Many of these industrial estates are served by the Luas and there are great transport links. It is time the Government ensured an increased supply of housing. This is one measure which I have called for in recent years, and I am glad to see it being given some very serious thought by the council.

**Senator Gerard P. Craughwell:** The Momo issue to which my colleague has just referred relates to children's access to digital technology. The Leader will recall that I introduced a Bill here some time ago attempting to limit children's access to digital technology, particularly in school, without permission. We must step up to the plate here and parents must start taking responsibility. When one hands a mobile telephone device or a digital device to one's child in an unsupervised capacity, one is handing them a lethal weapon. If they do not have access to this mobile technology, they will not be subjected to Momo or anything similar. The research from the school in Kerry that banned mobile phones shows just how children have responded. They have started to make friends and to engage with one another on a different level. There would not be any Momos if we properly controlled access to phones, but Government alone cannot do this. Parents must take responsibility for what they give their children and for the consequences thereof. The Leader will recall that when I first dealt with this issue I mentioned in my contribution the suicide of two twins, 13 year old girls, as a result of being subjected to cyberbullying.

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I compliment the Defence Forces on the support they have provided to the families of those members serving in Mali at present. As we know, things have got fairly hot in Mali, and it is excellent the way the Chief of Staff and his press officers have ensured that families are kept up to date and reassured that their loved ones are safe and well.

Finally, I refer to the issue of labour law. We were talking about bullying in the workplace and the like. The Labour Relations Commission was designed to allow people to go to it without legal representation but, alas and alack, most people finish up facing a barrister or two across the table or possibly a solicitor, a barrister and a number of HR experts, unless people can bring in legal advice. Most workers cannot afford legal advice, so the Free Legal Advice Centres, FLAC, must be empowered to provide the advice they need. Either that or we ban legal representation. Personally, I would prefer the latter and let people go in *mano a mano* to fight their cases. If the employer is going to bring in legal big guns, the employee has to be in the same position. At his leisure, could the Leader arrange for a debate on this matter with the Minister responsible for employment?

**Senator Rose Conway-Walsh:** I welcome the approval of Translarna, which the Cathaoirleach will know I have often discussed in the House in connection with Lewis Harte-Walsh and other boys with Duchenne muscular dystrophy, DMD. Over the weekend, Lewis's mum, Ann Marie, described it as like winning the lottery, only better. That is good for Lewis and those other boys, but there should not be a lottery situation.

The fight continues for Spinraza for children with spinal muscular atrophy. The arguments continue based on price alone. I plead with the HSE, Biogen and the Ministers, Deputies Donohoe and Harris, to concentrate negotiations over the next 30 days and find a solution that allows Spinraza to be approved. These children and their families have been dragged through a long bureaucratic nightmare of "will it or won't it be approved". That has to stop. The inhumanity of withholding this drug is devastating as parents watch their children literally shutting down. The State has been generous to these pharmaceutical companies and the pharmaceutical industry. It is now time for them to return some of that generosity earnestly and urgently.

For the Government's part, it is unthinkable that these children would be sacrificed at the altar of the overrun at the national children's hospital.

**Senator Jerry Buttimer:** That is beneath the Senator.

**Senator Rose Conway-Walsh:** No. We are really talking about-----

**Senator Jerry Buttimer:** Stop it.

**Senator Rose Conway-Walsh:** Has the Leader met any of these children?

**Senator Jerry Buttimer:** I have. I am a former Chair of the health committee.

**An Cathaoirleach:** Allow Senator Conway-Walsh to continue. The Leader will have ample time to respond. The Senator should not get distracted.

**Senator Rose Conway-Walsh:** I will not be distracted by the Leader. The children's families are wondering. Money can be found for so many different things, so why must they have to watch their children shut down in this manner? There will be another opportunity to meet these families on Thursday when they come to protest outside Leinster House. I urge everyone, including parents with perfectly healthy children, to come along and support them in their fight

for Spinraza.

I wish to refer to last night's "Claire Byrne Live" special on Clodagh Hawe and her sons, Liam, Niall and Ryan, who were killed by her husband and their father, Alan Hawe, in August 2016. I am certain that everyone across the House supports the call for an inquiry that will tell her family the truth. For me, it was the ultimate manifestation of the power and control that prevail in domestic violence situations. I call again for the House to support an all-island strategy on domestic violence. We must work together across the island to make homes safer for women, children and men. I welcome the legislation that was enacted late last year, but we need to do much more.

**Senator John Dolan:** I bring the House's attention to a report that was the subject of a Private Members' motion in the Dáil last Thursday, entitled "Accessibility of Public Transport for People with Disabilities". It is a fine piece of work that took the committee some time last year under the Chairmanship of Deputy O'Dowd. The committee reported in November. The motion was unanimously agreed by the Lower House. In fairness, the Minister for Transport, Tourism and Sport, Deputy Ross, has agreed to appear before that committee every six months. He will do so on 22 April this year to respond to the 16 recommendations. I am pleased this is happening. During the debate last Thursday, a young lady, Victoria Matthews, was mentioned by a Deputy. She has written to me as follows:

Dear Senator Dolan,

I am writing to you in regard to the Report above that is to be discussed in the Dáil tomorrow. I am a wheelchair user from Ballyshannon, Co. Donegal. I have applied to do a degree in Applied Sports with Business in Sligo IT. Bus Éireann customer service has told Sligo IT that it has no accessibility on the route between Ballyshannon and Sligo.

I hope you can speak on my behalf on this matter. I survive on disability allowance and do not have a car. I rely on the good will of family members to take me shopping, to the doctors, to physiotherapy etc., as do lots of other people in my situation.

Under the Equality Acts 2000-2004, I should not be discriminated against, I should be able to use public transport to meet my needs, in this case I would like an accessible bus to be put on Route 480 Ballyshannon to Sligo.

I have started a petition to achieve this and am trying to highlight the need for accessible transport nationwide [Over 2,000 people have already signed it].

It is unfair that people with disabilities, where the route is accessible have to give 24-48 hour notice. ...

I hope that [you] will stand up for the people on this human rights issue.

I am hoping the Oireachtas will do so. This is about fairness and opportunity. Over the past two decades, we have invested heavily, and rightly so, in the education of young people with disabilities. They need to be able to move on. This is an example of an issue that is preventing them doing so.

On the same issue, the secretary general of the National Bus and Rail Union, NBRU, Mr. Dermot O'Leary, made the following public statement last week:

26 February 2019

The NBRU will continue to campaign for appropriate funding for public transport. We will continue to advocate for our transport service to remain in public ownership. We will also turn our attention away from the spotlight of what may appear to some to be constantly speaking about transport disruption to concentrate our energies and focus and work on issues around the harsh coal face of industrial strife, working with all organisations, including those from across the political spectrum, to ensure that the most vulnerable amongst us, those with disabilities, will have equal access to public transport. This particular issue, for us at least, holds as much significance as striving to achieve improvements for our members.

In that spirit, I would hope that our public services and the Oireachtas would not be found wanting in ensuring that accessibility of public transport is moved on speedily for people with disabilities.

**Senator Ivana Bacik:** I ask the Leader to keep us apprised of progress in the other House of the omnibus Brexit legislation, as I know he will do. I understand it will come before the Seanad on 11 March. It is legislation that we all hope will not be necessary but which nonetheless is essential as a contingency. I do not think there will be an obstacle to getting it through in a timely fashion, given its urgency, even though we do need to scrutinise properly and so forth. I welcome that there are some positive signs in Britain in the last 24 hours, notably the Labour Party move towards embracing the idea of a second referendum. I hope we will see a stronger momentum towards that end in very early course.

I pay tribute to Ellen Coyne and Katie O'Neill, journalists with *The Times*, Ireland edition, for their exposé last week of the tactics of an American group which it seems are seeking to recruit Irish people to blockade and obstruct access to clinics and medical services for women seeking abortion in line with legislation here, as women are now entitled to do. It was a very worrying exposé of the deeply intimidatory and aggressive tactics being used by certain groups. In calling for a debate on the need for exclusion zones I want to raise a particular concern about reports that the Mansion House has apparently been used as a venue for a fundraiser for a group associated with some of these American groups. I am really concerned that this is the case and hope we will hear some explanation or receive some clarification on the matter. Will the Leader organise a debate on the need for exclusion zones and how best legislators can respond to the difficulties women with crisis pregnancies may be facing in accessing medical services? This is a critical matter, given how recently the legislation was passed by this House and in the light of the Minister for Health's promise that legislation on exclusion zones would be introduced as a matter of urgency early in the new year. In the Government's legislative programme I see that such legislation is not on the priority list for this session. Will the Leader see what progress can be made in that regard?

I commend our colleague Senator Reilly on the great work he has done to ensure charging points for electric cars have been put in place on the Leinster House campus. This positive environmental move will encourage people to drive electric cars. For many years I have been pressing for decent bicycle parking facilities on the Leinster House campus. I have to say I have met very little enthusiasm and support from those involved in the management of Leinster House, which is really unfortunate. I will be pressing the matter further because Senator Reilly has shown us how it can be done. We need to see adequate bicycle parking facilities being provided. We also need to see shelters over the bicycle parking facilities that are available and properly allocated bicycle spaces. When I cycled in today, as I always do, I saw myriad cars parked on the lawn on the Merrion Square side of Leinster House. It was supposed to be the case that we would not see that happen again.

**Senator David Norris:** There was no place else to park.

**Senator Ivana Bacik:** We need to visibly do a lot more to encourage people to use other forms of transport, particularly bicycles, in getting to Leinster House.

**Senator Terry Leyden:** It is a long way from Roscommon on a bike.

**Senator Ivana Bacik:** It is made difficult for people to cycle here. There are no proper bicycle parking facilities close to the entrances to the building. I will certainly be raising this issue again. I have been raising it for many years and I am getting very fed up at the lack of progress and the apparent lack of commitment to support those who choose to cycle to Leinster House.

**An Cathaoirleach:** The Senator should write to the commission on that one.

**Senator Ivana Bacik:** I have done so.

**An Cathaoirleach:** I have not seen it on the agenda.

**Senator Ivana Bacik:** Nothing has happened.

**Senator Diarmuid Wilson:** The Senator should have a word with Senator Reilly.

**Senator Anthony Lawlor:** I welcome the opportunity Senator Ardagh has given me to highlight a Bill I am introducing in the Seanad next week. The proposed Civil Liability (Capping of General Damages) Bill 2019 will provide for the imposition of a cap on the level of awards which may be made in respect of a claim for general damages arising from personal injuries, for the confirmation by each House of the Oireachtas of draft regulations, for the legislation to be reviewed after its enactment and for related matters. I am delighted that Senators will have an opportunity to support the Bill when it is introduced next week-----

**Senator Catherine Ardagh:** The Government has its own Bill.

**Senator Anthony Lawlor:** -----and debated on Second Stage the following week. I would be delighted to hear something about it.

**Senator Catherine Ardagh:** On a point of order, I am seeking to have a Government Bill taken on Committee Stage.

**An Cathaoirleach:** Please, Senator; let Senator Lawlor continue. I am sure he will be able to amplify his concerns when he introduces the Bill next week.

**Senator Anthony Lawlor:** I thank the Cathaoirleach.

I really want to talk about work permits, a review of which was carried out last year. The changes made were welcomed by the hospitality and agriculture sectors. Almost one year has passed since they were introduced. The Leader might call on the Minister for Business, Enterprise and Innovation, Deputy Humphreys, to come before the Seanad in order that we can review the regulations that were changed last year with a view to updating them. There are certain difficulties, particularly in the hospitality sector. People are trying to get different types of chef into the country to provide services here. They are not being trained or facilitated here in this country. Such a debate might be possible.

**Senator Terry Leyden:** Will the Leader invite the Minister for Agriculture, Food and the Marine, Deputy Creed, to come to the Seanad as soon as possible to debate a new pilot scheme? The closing date for the receipt of applications under the beef environmental efficiency pilot scheme for farmers with a single suckler cow, known as BEEP, was last Friday, 22 February. Given that it had opened on 4 February, it is a very restricted pilot scheme. A farmer has to weigh his or her single suckler cow and calf. There is a grant of €40 per cow, less the cost of hiring the scales, not to mention getting the cow onto them. Cows are large animals, weighing between 600 and 800 kg, and weighing them is very difficult and quite dangerous from a health and safety point of view. Under the scheme, it is not very rewarding. A significant number of farmers are saying the scheme is bull and that they are going to bin it because it does not reflect the crisis faced by suckler cow farmers in terms of the cost of production. Fianna Fáil has proposed a €200 per animal single suckler cow payment under a scheme with no red tape. The Government will have to respond on the issue because every time Fine Gael is in power, it introduces really elaborate schemes which ensure farmers do not receive a fair return. It can be proved that the best Ministers and agricultural schemes have been introduced by the Fianna Fáil Party-----

**Senator Jerry Buttimer:** What about Alan Dukes?

**Senator Terry Leyden:** -----because we do not represent the big ranchers down south and elsewhere. Small farmers in the west and the north west are at a major disadvantage.

**Senator Jerry Buttimer:** Fianna Fáil must have had a bad weekend.

**Senator Terry Leyden:** The scheme looks to be a disaster. From a health and safety point of view, we cannot ask farmers who are living alone to try to get their big cows onto scales to weigh them for less than €40. What is the benefit? There is no benefit whatsoever. Somebody in the Department came up with this hare-brained scheme to try to ensure only a limited number of farmers would be able to avail of it at a time of crisis. Farmers in the United Kingdom with a single suckler cow are getting a higher price than Irish farmers. As they are getting approximately €180 more, we need a €200 suckler cow payment under a scheme with no red tape. I ask the Minister for Agriculture, Food and the Marine to come to the House to discuss the issue.

**Senator Marie-Louise O'Donnell:** There has been a lot of talk recently about housing and I am looking forward to the launch of a report tomorrow on housing for the elderly, in particular. There has been a lot of talk about new retirement villages, a term I do not particularly like, but we will have to wait until tomorrow to see what happens at the launch of the report by the Minister. We must focus on healthcare assistants who do the serious, real work in nursing homes of washing, turning, cleaning and feeding our elders. Why are their skills not included on the critical skills list? Nobody is listening to me.

**Senator Ivana Bacik:** I am.

**Senator Anthony Lawlor:** We are listening.

**Senator Marie-Louise O'Donnell:** I do not see it. I do not mind if Members are listening to me or not, but if they are on their phones, writing letters and so on, they are not necessarily listening to anybody.

*(Interruptions).*

**Senator Marie-Louise O'Donnell:** I was not referring to Senator Lawlor, in particular.

*(Interruptions).*

**An Cathaoirleach:** Let us get back to the issue at hand.

**Senator Marie-Louise O'Donnell:** It is very serious. We are talking about retirement villages, nursing homes, care packages and care in the home, but we are not talking about the quality and quantity of those who do the caring. We are living in Utopia in building rockets with nowhere to land them. My point is carers are not deemed to have “critical” skills such that they cannot apply to come here from non-EU countries. This is also problematic when it comes to retaining healthcare assistants. Who is going to staff all of the new nursing and retirement homes? Are we engaged in workforce planning, given the ageing demographic? I would like the Minister to come to the House to discuss the critical skills list. It has been expanded to include agrifood workers, that is, those in the meat industry who work in meat and boning halls, but it has not been expanded to include the carers of elderly persons in nursing homes. Their skills are not considered to be “critical”, which means that it is very difficult for non-EU healthcare assistants to come and stay here. I ask the Minister to come to the House to outline his plans for retirement villages and nursing homes, given the ageing demographic, and the workforce planning that has been engaged in to date, with particular reference to the skills of healthcare assistants.

*4 o'clock*

We all forget about them. They do the serious and the real work every day in these organisations. They are paid very little and their work does not come under the heading of critical skills ability. Minding an elderly person all day, every day is a role demanding critical skills. They might not be medical or nursing skills as it is a different kind of care. Perhaps the Minister will come in and outline his plans for that.

**Senator James Reilly:** I thank Senator Bacik for her kind words. I regret to say that the single charger unit in the Oireachtas has not been working since last Thursday but people are working on it. I support her call for specified spaces for people who cycle to work.

Let me address an issue we raised in the House a number of weeks ago, and for which we had support across the House, namely, a radical housing plan for elderly citizens. I welcome the fact the Minister of State at the Department of Housing, Planning and Local Government, Deputy English, will launch a report tomorrow, where his work will come to light. Most Members will have received a document from Alone in which it called for investment in a range of housing options for older people, including dispersed housing, shared housing in the community, dedicated sheltered housing, nursing homes, etc. This is not about putting people out of their homes but rather about giving people choice. I informed the House some weeks ago that 50 people came together in Skerries to try to develop a co-operative so that it could build houses and people could live together in a community. They need support and a template on how to do this because they are not quite sure how to go about it. What we called for in that motion, which the House supported, was a new co-operative model which would have a similar type of charitable status to approved housing bodies, so that the co-operative would not have to pay levies which would make it less expensive for it to build these houses. It is proposed to have a capital fund of 1% to 2% finance to build elderly housing. We could then think about a possible reduction in local property tax. Sites should be reserved for housing for the elderly in

all our towns and villages, so that people can stay in the communities in which they have lived all their lives and have made such a commitment and given such service to and that they can continue to enjoy the friendships they have built up. We have often acknowledged that what is more important for mental health in old age is a good circle of friends rather than family. I commend the Minister of State on tomorrow's report.

**Senator Máire Devine:** I wish to raise awareness of the mental health legislation and the revised heads of Bills. On Thursday last, the Mental Health Commission said it would intervene robustly in any areas or approved centres that are not protecting patients' human rights and operating a substandard service. Fines of €5,000 were imposed after the Mental Health Commission took the first prosecution of its kind against the HSE under the Mental Health Act for failures at the psychiatric unit in Kilkenny.

Senator Reilly will remember that for more than a decade St. Ita's Hospital, Portrane, was found to be highly unsuitable but nothing was done about it. The mental health inspector has been inspecting approved centres since the early 2000s and has made recommendations but this is the first time the Mental Health Commission prosecuted a psychiatric unit. Perhaps it will now prosecute the HSE for CAMHS in Wexford, where clinicians have to conduct interviews on the care of children in corridors. This is to the detriment of the services being offered. If the Leader could ask the Minister to come to the House to update us on the revised heads of the mental health (amendment) Bill, which has regard to human rights and the provision of proper modern services for patients and which has been in his hands for more than three years, it would be helpful.

**Senator Frances Black:** I raise an issue about which I have become increasingly concerned. In recent weeks a great many reports of State authorities needlessly cutting down trees have come in from right across the country. I am amazed at the number of councillors and members of the public who are speaking out and contacting us. It seems to be happening all at the one time, which is a little bit strange. My concern is that it is just easier for local authorities to cut down the trees while they are still budding rather than dealing with any issues which might arise when they are in full bloom, such as cleaning up debris, access to light, and so on. If these decisions are related to the weather it might explain why this seems to be happening all at once. I do not know why it is happening, but I do know that there are some blossoming trees on my road which are starting to bud now. I sit at my window and I look out at the robins and other birds. I would be devastated if the authorities came along and just cut down a clatter of trees for no reason other than that they are budding a bit early and the authorities do not want to clean up the leaves.

Would it be possible for the Government to address why State authorities are doing to this now and to this extent? Just last week another bunch of trees was cut down in Merrion Square, apparently to address problems with anti-social behaviour. In reality, this means people sleeping rough. The solution cannot be to simply cut down the little shelter available to these people, which also has a terrible environmental cost. We have the lowest level of forest coverage in the EU and the second lowest level on the entire European continent. In this context, surely we should not be seeing State authorities cutting down trees to such an extent. It is all over social media. We are destroying our natural habitat and people all over the country are deeply concerned about it. People are rethinking how we protect our environment and the Government really needs to listen.

This recent spate of cutting highlights a flaw in our current system. We need a national

biodiversity strategy which clearly outlines the ecological and social value of these trees. My colleague, Senator Grace O’Sullivan, will be raising this issue as a Commencement matter later in the week. I would really appreciate it if the Minister, Deputy Madigan, would come to the House and address this issue in detail with the Senator and with us all.

**Senator David Norris:** First, I would like to support Senator Black. I have received considerable correspondence on this matter of tree-cutting. We had very vigorous debate about this very problem on two separate occasions during consideration of the Heritage Bill, because that Bill was introduced twice. People in the countryside have been noticing this and writing to various Members of the House.

I very much welcome moves by Mr. Jeremy Corbyn, leader of the UK Labour Party, to support, in certain circumstances, the holding of a second referendum. I have been hoping that he would take this step for some time and I am very glad that he has done so. The circumstances to which I referred are very likely to arise, so it looks more and more the case that we will have a second referendum. I sincerely hope the voting public in Britain will have learnt a bit of sense, will have listened to the arguments, and will understand the catastrophe facing their country and in which they are involving other European countries. I hope they will have sense and will vote to stay in, even though Britain will have a much reduced status as a result of this farting around.

**Senator Lorraine Clifford-Lee:** I speak about the horrific murder of Clodagh Hawe and her three sons, Liam, Niall and Ryan. Last night’s documentary on “Claire Byrne Live” was a great public service. RTÉ should be proud of it. It gave a voice to Clodagh, her sons and the Hawe family that had been missing for a long time since their deaths in August 2016. Mary and Jacqueline, Clodagh’s mother and sister, gave a great account of her and her three children. It made the brutal description of their murders even more harrowing. They also painted a picture of control and abuse within the family home. Control and abuse are often not apparent when they do not involve physical violence. Mary and Jacqueline were clear that until the night of the murders, there had been no physical violence within the home, but there was within it Alan Hawe who controlled Clodagh and the boys with a silent and menacing presence in their lives. It is interesting to note that Clodagh met Alan Hawe when she was just 17 years old in college. They married two and a half years later and there were signs from the beginning that it was a controlling relationship. The Women’s Aid campaign under way to help young women to spot the signs of controlling and abusive relationships early in relationships is very important in this context.

Alan Hawe left a letter that he had written after murdering Clodagh and before going upstairs to murder the boys who were asleep. He said in the letter that he was too important for his family to live without him and that he was going to be exposed for something awful that had occurred. We believe it was in his workplace, but the family do not have further details in that regard. It is clear that they want basic information. They want to know what happened and when. The Minister for Justice and Equality and the Minister for Education and Skills must meet Mary and Jacqueline to discuss the matter with them. There must be an independent inquiry into the deaths. It is only by examining cases such as this that we will be able to prevent similar cases from happening in the future.

Often abuse is ignored by women because they do not have alternative accommodation. We must examine the provision of shelters for women and children who need to leave abusive relationships because sometimes the signs of abuse are overlooked until something catastrophic happens when it is too late. Ireland started to collect data just over 20 years ago for the num-

bers of women killed by men. An average of ten are killed every year and often they are killed in their home by a man with whom they have been or are in a relationship. In that period 16 children died alongside their mothers. This is a live issue and we should have an independent inquiry. We must also receive some information on the domestic homicide review that was promised after the murders. Perhaps the Leader might update us on the issue.

The Civil Liability (Amendment) (Prevention of Benefits from Homicide) Bill introduced by Deputy O'Callaghan in the Dáil should be pressed forward by the Government. It was passed on Second Stage, but it has gone to the place where all such Bills go to die. The debate on it should be resumed. After Alan Hawe had murdered his family, he went online and transferred money from joint accounts into his own account. That has consequences for how the estate will be distributed. Out of respect for Clodagh and her boys, we should act on this issue, not just wring our hands.

**Senator Fintan Warfield:** I was in the Mansion House this morning where the Children's Rights Alliance announced the report card on the Government's progress in implementing the programme for Government. The State was commended on making progress in dealing with childcare and lesbian, gay, bisexual and transgender, LGBT, rights, but it received the lowest grade possible in dealing with child homelessness. It struggled in dealing with children's mental health services and the rights of Traveller and Roma children. The Children's Rights Alliance noted the increase in the number of children in emergency accommodation from 1,600 in 2015 to almost 4,000 today. It called on Government to declare a state of emergency, for local authorities and State bodies to provide for adequate long-term social housing and to take children out of emergency accommodation. It noted the extremely long waiting list in the child and adolescent mental health services, CAMHS, and the delays in implementing A Vision for Change. It called on Government to ensure that all children had access to mental health services in a timely manner and to carry out a progress report on A Vision for Change.

A couple of weeks ago I questioned the local authorities' underspend on Traveller-specific accommodation. The impact on children was noted in the report. We also urgently need to see the publication of the report by the Traveller accommodation expert group.

I have mentioned several issues concerning children. The Department of Children and Youth Affairs has probably set the standard for engaging with sectors and outreach. I am sure the Minister, Deputy Zappone, would be happy to come into the House to discuss some of the failures in Government but also the improvements that have been made.

**Senator Ned O'Sullivan:** The sixth anniversary of the establishment of the education and training boards, ETBs, will fall on 1 July next. The then Minister, Ruairí Quinn, put an end to the vocational education college, VEC, system and he amalgamated the 33 VECS into 16 ETBs. My colleague, Senator Wilson, is very knowledgeable about this and he has raised it. One of the main reasons the then Minister gave for the amalgamation was the serious capital savings which he estimated at €2 million per year. I would like if the Minister for Education and Skills could come in and update us on those finances. I am not expecting any great savings because I have been observing how the ETBs have set up lots of sub-committees and been very active on a variety of fronts. I am not saying they are not giving value for money but Members would like to know if savings have been affected.

We are in the run-in to the great Cheltenham national hunt racing festival which, as the Cathaoirleach knows well, is the showpiece and flagship for national hunt racing in these is-

lands and, in particular, here in our country where it is such an important part of the fabric of life and indeed the economy. Not everybody can afford to go to Cheltenham or Ascot or any of these places but there is a huge following for the racing game and people follow it by watching it on television.

Prior to this year viewers had a very real choice, they could pay onto their Sky package for “At the Races”, channel 415, or “Racing UK”, channel 426, I think. However, Horse Racing Ireland in its wisdom decided to give and grant the entire franchise for the televising of Irish racing to “Racing UK” which has now been transmogrified into “Racing TV” so there is no choice. If a person wants to join it costs €360 per annum on the Sky package and I have a feeling it will start going up because there is no competition there but that is not really my worry. My real worry is whether we will get enough racing on television any more. On any given Saturday there will be four, five, six and more race meetings in England, Scotland or Wales and there will probably be one or two here in Ireland. These races will overlap. The broadcaster is splitting the screen and there will be two races going on-----

**An Cathaoirleach:** The Senator’s finishing post is clearly in view.

**Senator Ned O’Sullivan:** I will get there by a short head. Although a person might have an interest in one race and be watching it, there is no commentary on the split screen. Worse than that, the channel is omitting other races. It cannot just literally show the racing. Which racing is going to lose out, I ask the Cathaoirleach and the Leader? Will it be the UK races, some of which are worth only £2,000 in prize money, or will it be the valuable Irish races many of which are worth far more? There was a classic example last week of a very important bumper. Senator Norris is looking at me wondering what a bumper is.

**Senator David Norris:** I know what a bumper is.

**Senator Ned O’Sullivan:** Good man. It is the last race of the day.

**Senator David Norris:** I may not be horsey myself but I come from a horsey family.

**Senator Ned O’Sullivan:** It is a race of great interest to the punter. They did not show it because there was some Mickey Mouse race on over in Uttoxeter or somewhere. The Minister for Agriculture, Food and the Marine should be asked to come in here to assure the Irish viewers that there will be fair play for them. They should be able to watch racing without being charged an arm and a leg and should be assured that the races will be seen live, not repeated, reviewed or recorded.

**An Cathaoirleach:** It might be an appropriate matter for a Commencement debate. I invite the Leader to respond.

**Senator Jerry Buttimer:** Senator Ned O’Sullivan neglected to give us a tip for Cheltenham. He might do that on the Order of Business in the coming weeks.

**An Cathaoirleach:** The Leader might be safer without it.

**Senator Jerry Buttimer:** I commend the 15 Members of the House for their contributions to the Order of Business. Senator Ardagh raised the issue of the Judicial Council Bill. I have sought an update on the status of the Bill. It would be premature to divide the House next week on a Bill that may not be complete for a variety of reasons. I will endeavour to get information for the Senator. I would also say to her that in the Department of Justice and Equality, the

focus has been on the Judicial Appointments Commission Bill, which is taking up a lot of the officials' time.

**Senator David Norris:** It is being given careful scrutiny.

**Senator Jerry Buttimer:** The Senator is back again this week for more of it.

**Senator David Norris:** I am. I will be coming from my sick bed.

**An Cathaoirleach:** The Senator might miss some of the start of the Judicial Appointments Commission Bill.

**Senator Jerry Buttimer:** Senator Ardagh has highlighted an important Bill. Senator Lawlor also referenced the issue of insurance costs and premiums. The making of awards by the Judiciary has been addressed by the Minister. I will endeavour to have information for the Senator by next week and I hope she will not divide the House on the matter.

Senators Ardagh and Craughwell raised the Momo challenge. We must all join with the HSE, Suicide Awareness Voices of Education and the International Association for Suicide Prevention. These groups have prepared very important and reflective responses to the challenge, which is having a very negative impact on young people's lives. Through the medium of Oireachtas TV, I appeal to parents, teachers, mental health professionals and young people who are watching and listening. We must be aware of the need to talk with adolescents and children who have heard about or are engaged in any aspect of the challenge. We must appeal to them to express their feelings in response to this game. For young people who have engaged in self-harming behaviours or who have plans, for whatever reason, to engage in behaviour that is not positive, there needs to be a reaching out. I ask all Members to be aware of the impact of this game. I alert them to the email we have received regarding its potential impacts. We must all ensure that those who are most vulnerable are looked after and supported.

I have not got an answer for Senator Ardagh on the issue of the Dublin industrial estates. Perhaps she might put down a Commencement matter. Senator Craughwell also raised the issue of the Defence Forces and we will have a debate on the Defence Forces in due course. I agree with him that there is a need for an address to be made in respect of the payment of fees for those who cannot afford them in labour relations disputes.

Senator Conway-Walsh raised the issue of Translarna. We all welcome its approval. She also referred to Spinraza. It is important that we use language wisely. Nobody is sacrificing anybody on any altar. All of us want to ensure that those who are in need of medical intervention and care receive it. I am a former Chairman of the Oireachtas Joint Committee on Health and, on World Rare Diseases Day, that committee introduced hearings on rare diseases. I ask people to listen to the comments made by Dr. Michael Barry in recent days. Pharmaceutical companies should reflect upon the charges and costs they ask us to pay for drugs.

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

**Senator Jerry Buttimer:** We all want to ensure that the ongoing negotiations are successful. As Dr. Barry said, we have not had a final "No". We are very much aware of the frustration, hurt and anger being experienced by a very small group of people and their families. We value the young people who require this drug and we support and understand their position. I ask the pharmaceutical companies to reflect upon the costs they ask the State to pay for the drug. I am

happy to have the debate with the Minister in due course.

Senator Dolan raised the issue of disability and public transport. We will have a debate with the Minister for Transport, Tourism and Sport, Deputy Ross, in due course.

Senator Bacik raised the issue of exclusion zones. I am happy to have the Minister to the House to address the matter and have a debate around the issue. It is important to acknowledge the right to protest and the right to assembly, but it is also important to understand that, in this case, women are going to maternity hospitals or doctors' surgeries to seek medical intervention. They should be treated with respect and afforded privacy, not subjected to harassment by anybody over their medical care or needs.

I share Senator Bacik's view on the need for adequate bicycle parking at Leinster House. It should be made easier for those people who cycle to and from Leinster House to park their bikes in a manner that befits the choice they have made.

I commend our colleague, Senator Reilly, on raising the issue of electric car charging points, notwithstanding the difficulties they are now encountering.

The Brexit legislation is passing through the Lower House, and it is envisaged that it will be in this House on 11 March. I will keep Members apprised of the position in due course.

Senator Lawlor raised the issue of changes to work permits. I would be happy to have the Minister come to the House to discuss the matter. I am sure we all agree that the issue of work permits is one that needs to be addressed. We are very much aware of the important role those from abroad play in filling positions in our hospitality sector in particular.

Senator Leyden continues to amuse me. I enjoy his contributions every day, and today is no exception.

**Senator Terry Leyden:** The Leader is very charming.

**Senator Jerry Buttimer:** It is disappointing that a learned Member, an experienced Member of the House, did not read the Budget Statement and subsequent press release from the Minister for Agriculture, Food and the Marine, Deputy Creed, in which he spoke about the issues the Senator raised. The Minister highlighted the closing date for the scheme in October. It was well flagged. The Senator probably knows better than I do that the February closing date allows for the optimum weighing time of calves and ensures prompt payment to farmers, which I assume is why he raised the matter in the first place. If we did not do that, the Senator would be criticising the delay in payment.

**Senator Terry Leyden:** The Leader should try to get a big cow onto a scale sometime.

**Senator Jerry Buttimer:** I did that on many occasions in my youth and in my not so youthful days because my grandparents and my uncle were farmers; I spent most of my summers farming. I actually learned to drive on a Massey Ferguson 20.

**Senator Terry Leyden:** There was no beef scheme then.

**Senator Jerry Buttimer:** Those were the days before roll bars.

**Senator Diarmuid Wilson:** The Leader was a small farmer.

**Senator Jerry Buttimer:** We all acknowledge that 2018 was a very difficult year for our farming community, and the Minister is very committed to and has demonstrated his support for the beef sector, which is a pivotal part of our farming community. We have put in place-----

**Senator Terry Leyden:** The Leader means to say “beef farmers”.

**Senator Jerry Buttimer:** -----a number of tailored schemes. As Senator Leyden knows, the Fine Gael Party has a history of great Ministers for agriculture, including the Tánaiste, Deputy Coveney, and the late Mark Clinton, to name but two.

**Senator Terry Leyden:** The Leader should not forget James Dillon.

**Senator Jerry Buttimer:** I am not surprised the Senator has made the argument about small and big farmers. It is what Fianna Fáil does. It talks the game.

**Senator Terry Leyden:** No. We walk the walk.

**Senator Jerry Buttimer:** We have seen €300 million put in place to support the sector. The Senator spoke about the €20 million pilot scheme, €23 million for the areas of natural constraint, ANC, scheme and a heap of other schemes that are benefiting the farming community. It is important to recognise that the community has had a difficult year and that is why the Minister is engaging with the Commissioner, Mr. Phil Hogan, in the reform of the CAP to ensure that all farmers, not just those mentioned by the Senator, are understood and represented. I will be happy to have the debate in due course. The Minister, Deputy Creed, is very much supportive of the suckler sector. The national farm survey showed that farmers were given €500 per suckler cow and the point should be reinforced that supports have been put in place.

Senator Marie-Louise O'Donnell made a very important point about an issue we need to address as a society and as a country, namely, the ongoing housing options for our ageing population and the types of care provided for them, whether it is in their homes, in community settings or resulting from downsizing. Access to care is multifaceted and multisectoral and we need to have a strong debate on this issue. The Senator produced a very fine report on housing choices and this must be just the beginning of our efforts. In tandem with the report, which is being launched tomorrow, the focal point must be on housing choices. If we learn nothing else from the recession about how we can deliver various types of housing, it should be that those who choose to downsize or to have a different housing model should be able to have that in a manner that allows them access to religious services, shopping facilities, the post office, banking, the hairdresser and such things.

In the village of Knocknagree, there are three families collecting child benefit at the post office. Forty years ago, every family in the village would have done so. We must ensure that we plan for that in our model of housing choice. We cannot do this on a piecemeal basis and must do it in a way that recognises that there are many different needs and that people living in the community should not be displaced nor discommoded. National planning policy must be able to articulate the view that housing choices for older people must be embraced in a real way. Government will argue that there are different forms of purpose-built housing and many different units are available. There are housing adaptation grants and housing supports but we must meet the projected changes in our population, which can only be done by having this conversation to lead us to the policy. In tandem with this issue is the choice of care and the way it is given and I would be happy for a debate in this House on the matter. Senator Reilly also commented on this.

Senator Devine raised the issue of mental health and I would be happy for the Minister to come to the House on the matter. I have not seen the report on tree-felling referred to by Senator Black. Perhaps a Commencement matter would be a more judicious way of getting an answer to her question. Senator Norris raised the issue of Brexit but I missed his other point.

**Senator David Norris:** It was in support of Senator Black's point about trees.

**Senator Jerry Buttimer:** Senator Bacik also spoke about Brexit. This is a very important two weeks and I hope common sense will prevail. If an extension is needed, I hope it will be given to the UK Government but I also welcome the 11th-hour conversion of the leader of the Labour Party, Jeremy Corbyn, to the need for a second referendum. It has come a bit late in the game and he has showed a lack of leadership around Brexit, though I do not want to stray into British politics.

**Senator David Norris:** He has been disappointing.

**Senator Jerry Buttimer:** Yes, he definitely has been disappointing. All of us in this House stand with the Government and our European partners to ensure we get a deal, that the backstop is recognised as it has been up to now, and that there will not be a hard Brexit.

All of us who have read about and who saw the television programme last night, which I did not see, on the horrific killing of Clodagh Hawe and her three beautiful sons, Liam, Niall and Ryan, can only but be appalled and concerned about what happened, and can recognise there is a need to ensure that the pain, anger and disbelief of this family and other families can be channelled into Government and agencies of the State working together to ensure we do not have repeat episodes of what was an extraordinary, horrific crime. All of us extend our sympathies and heartfelt thoughts to the families. As we all recognise, a review is being carried out by the Garda. The Garda is learning. Changes have been made in the way in which training in dealing with domestic violence is carried out in An Garda Síochána. The new sixth divisional protective service units are going live across the six Garda divisions in January with different models of training. I hope we will see the legislation that is needed being brought to fruition.

I am not sure where we are at with Deputy O'Callaghan's Bill, which seeks to amend the Succession Act in terms of inheriting assets, as Senator Clifford Lee mentioned. All of us recognise that changes need to be made to ensure that it cannot be allowed that people would benefit from what happened in this case. We extend our deepest sympathy to, and our thoughts are with, the family of the victims of this heinous crime.

Senator Warfield raised the issue of the Children's Rights Alliance report. I do not have the answers, as I did not read the report and I have not seen the report card. However, I would be happy to make time available to the House in the coming weeks to discuss the matter.

Senator Ned O'Sullivan raised the issue of the education and training boards. It is hard to believe it is the sixth anniversary of their establishment. On this occasion, with the Cathaoirleach's indulgence, I would like to commend the work of Mr. Ted Owens, the former chief executive of Cork Education and Training Board, who has now retired, and to thank him for his tremendous service to the city and county of Cork over many years as an educationalist and in latter years as the chief executive of Cork Education and Training Board. I would happy to arrange for the Minister, Deputy McHugh, to come to the House to discuss this matter.

I thoroughly agree with the Senator regarding the coverage of racing on our television

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screens. His points were very well made. If we were to reflect upon what has happened, all of us would be disappointed at the way in which racing coverage has gone. I certainly lament the lack of, or zero, coverage of racing on Channel 4, the reduced coverage on RTÉ, the fact there is no coverage on BBC and that we are moving towards a sort of pay-per-view model, which all of us recognise does not meet the needs of those of us who are racing enthusiasts. I might not be as knowledgeable about racing as the Senator but I am certainly interested in it. It reflects poorly that people who look forward every day to watching racing coverage on television have been discommoded or now have to pay an excessive amount. I do not have Sky Sports because I do not feel I can justify paying for it when I am never home but I know other Members have made choices - people I know who watch racing coverage and who are paying inordinate amounts to do so. I would be happy to arrange for the Minister to come to the House to discuss this matter which is an important one.

We have put certain sporting events on a list. It is equally important that we do the same with racing. Cheltenham is one of the high points on the racing calendar. Equally, as the Senator said, and it is particularly true, if we have a very good race meeting in Ireland, is coverage of it lost to a UK meeting? I do not want to be disrespectful to our colleagues across the water but some of the racing there is definitely not as good as ours. The Senator's point is well made. I will arrange for the Minister to come to the House to discuss the issue.

Order of Business agreed to.

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

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

#### SECTION 44

Debate resumed on amendment No. 91a:

In page 31, to delete lines 6 to 12.

- (Senator Michael McDowell)

**Acting Chairman (Senator Gerry Horkan):** I welcome the Minister for Justice and Equality, Deputy Flanagan, back to the House. He was in possession on the adjournment of the debate on the last occasion. The House was discussing amendments Nos. 91a and 91b together.

**Minister for Justice and Equality (Deputy Charles Flanagan):** I had concluded my contribution and ask respectfully that the amendment be put.

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.

*5 o'clock*

Amendment again put:

The Committee divided: Tá, 10; Níl, 22.	
Tá	Níl
Bacik, Ivana.	Burke, Colm.
Clifford-Lee, Lorraine.	Burke, Paddy.
Craughwell, Gerard P.	Butler, Ray.
Daly, Paul.	Buttimer, Jerry.
Horkan, Gerry.	Byrne, Maria.
Humphreys, Kevin.	Coghlan, Paul.
Leyden, Terry.	Conway-Walsh, Rose.
Norris, David.	Conway, Martin.
O'Sullivan, Ned.	Devine, Máire.
Wilson, Diarmuid.	Hopkins, Maura.
	Lawlor, Anthony.
	Lombard, Tim.
	Mac Lochlainn, Pádraig.
	McFadden, Gabrielle.
	Mulherin, Michelle.
	Noone, Catherine.
	O'Mahony, John.
	O'Reilly, Joe.
	Ó Donnghaile, Niall.
	Reilly, James.
	Richmond, Neale.
	Warfield, Fintan.

Tellers: Tá, Senators Lorraine Clifford-Lee and David Norris; Níl, Senators Gabrielle McFadden and John O'Mahony.

Amendment declared lost.

Question put: "That section 44 stand part of the Bill."

The Committee divided by electronic means.

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

Question again put: "That section 44 stand part of the Bill."

The Committee divided: Tá, 23; Níl, 8.	
Tá	Níl
Burke, Colm.	Bacik, Ivana.
Burke, Paddy.	Clifford-Lee, Lorraine.
Butler, Ray.	Craughwell, Gerard P.

Buttimer, Jerry.	Daly, Paul.
Byrne, Maria.	Horkan, Gerry.
Coghlan, Paul.	Humphreys, Kevin.
Conway-Walsh, Rose.	Norris, David.
Conway, Martin.	Wilson, Diarmuid.
Devine, Máire.	
Gavan, Paul.	
Hopkins, Maura.	
Lawlor, Anthony.	
Lombard, Tim.	
Mac Lochlainn, Pádraig.	
McFadden, Gabrielle.	
Mulherin, Michelle.	
Noone, Catherine.	
O'Mahony, John.	
O'Reilly, Joe.	
Ó Donnghaile, Niall.	
Reilly, James.	
Richmond, Neale.	
Warfield, Fintan.	

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

Question declared carried.

#### NEW SECTIONS

**Senator Gerard P. Craughwell:** I move amendment No. 91b:

In page 31, between lines 18 and 19, to insert the following:

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

(2) A member of the Supreme Court, the Court of Appeal or the High Court may notify the Secretary to the Government in writing of his or her willingness and availability to be appointed to any vacancy for any judicial office mentioned in *subsection (1)*.

(3) Where a judicial office mentioned in *subsection (1)* stands vacant or where the Minister reasonably apprehends that it will stand vacant, the Minister shall request the Commission to seek expressions of interest on the part of any other eligible persons for appointment to such office.”.

Amendment put:

The Committee divided: Tá, 9; Níl, 21.	
Tá	Níl
Bacik, Ivana.	Burke, Colm.
Clifford-Lee, Lorraine.	Burke, Paddy.
Craughwell, Gerard P.	Butler, Ray.
Daly, Paul.	Buttimer, Jerry.
Horkan, Gerry.	Byrne, Maria.
Humphreys, Kevin.	Conway, Martin.
McDowell, Michael.	Devine, Máire.
Norris, David.	Gavan, Paul.
Wilson, Diarmuid.	Hopkins, Maura.
	Lawlor, Anthony.
	Lombard, Tim.
	Mac Lochlainn, Pádraig.
	McFadden, Gabrielle.
	Mulherin, Michelle.
	Noone, Catherine.
	O'Mahony, John.
	O'Reilly, Joe.
	Ó Donnghaile, Niall.
	Reilly, James.
	Richmond, Neale.
	Warfield, Fintan.

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

Amendment declared lost.

**Senator Michael McDowell:** I move amendment No 91c:

In page 31, between lines 18 and 19, to insert the following:

“45. Nothing in this Chapter or Chapter 4 shall operate to prevent the Government, where it considers that it is necessary or expedient to do so by reason of urgency or for other sufficient reason, to advise the President to appoint a person to fill a vacancy in a judicial office to which section 44 applies without any request being made by the Minister to the Commission in accordance with that section.”.

This amendment is designed to fill a lacuna in the legislation, which is that there is no provision at all for a timetable to be adhered to by the commission in making its decisions. It seems to me-----

**Senator David Norris:** I am sorry to interrupt but are we dealing with amendment No. 91c or 91d?

**Senator Michael McDowell:** I think it is amendment No. 91d.

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**Senator David Norris:** Is it 91c or 91d, Acting Chairman?

**Acting Chairman (Senator Catherine Noone):** It is amendment No. 91c.

**Senator Michael McDowell:** I am sorry. I thought it was amendment No. 91d.

**Senator David Norris:** That is the reason I interrupted Senator McDowell.

**Senator Michael McDowell:** I thank Senator Norris.

**Senator Martin Conway:** We did not make that much progress in Senator McDowell's absence.

**Senator Michael McDowell:** Yes, I am sorry that progress in my absence was not as rapid as I thought.

**Senator David Norris:** We had good snap votes.

**Senator Michael McDowell:** This amendment and the next amendment relate to time-frames. This amendment sets out that:

Nothing in this Chapter [which is chapter 3] or Chapter 4 shall operate to prevent the Government, where it considers that it is necessary or expedient to do so by reason of urgency or for other sufficient reason, to advise the President to appoint a person to fill a vacancy in a judicial office to which section 44 applies without any request being made by the Minister to the Commission in accordance with that section.

The purpose of the amendment is to provide that where the Government considers that it is necessary or expedient, by reason of urgency or for some other sufficient reason, to bypass the commission and to fill a vacancy in an office to which section 44 applies without going through the commission, it effectively gives the Government the green light in such circumstances to make such an appointment. It would defeat the whole purpose of the Act if the Government could just do it for no reason at all. It would have to be necessary or expedient to do so by reason of urgency or for sufficient reason and that is what this amendment is designed to bring about.

**Senator David Norris:** I strongly support this amendment, which is an important one tabled by Senator McDowell. Four words are significant here because this does not operate in any circumstances or the general run of things. The four words are, "necessary", "expedient", "urgency" and "sufficient". In order for the amendment to come into play the Government would have to consider it necessary on the one hand, or expedient, and the reason for that is the urgency or other sufficient reason. That really justifies itself in allowing the Government to advise the President to fill a vacancy in a judicial office to which section 44 applies without any request being made by the Minister to the commission in accordance with that section. The whole idea of it being without any request being made by the Minister to the commission is because it is a situation of urgency and necessity, so it is not proper to contemplate that there should be any kind of delay in the matter.

**Deputy Charles Flanagan:** I understand where the Senator is coming from with his new amendment No. 91c. However, given that the amendment operates on the basis of the existing section 44, we have considered similar amendments and texts previously. Senators will be aware that the existing section 44 is not in keeping with my particular position on the matter.

I will table amendments on Report Stage that will, if agreed, revert the direction of section 44 towards the specific procedure that we mentioned on numerous occasions in the House that will be applicable for the selection of what we have been describing as the three senior judicial posts where recommendations or the engagement on the part of the commission will neither be required or applicable. In that arrangement, the amendment as put forward by the Senators would be obsolete and, therefore, I will not accept it for that reason and reasons we discussed on previous occasions with particular reference to the three most senior positions. I am very much aware of Senator McDowell's difficulty with that, and the expanded and further developed regime he would like, but I am not inclined to expand it further or to develop it beyond the three positions.

**Senator David Norris:** I am not sure it is sufficient for the Minister to say he is not accepting the amendment because he has in mind some hypothetical amendment at some date in the future, perhaps on Report Stage. We have to consider what is before us, not what may be in the future. For that reason, I hope Senator McDowell will press-----

**Deputy Charles Flanagan:** Exactly. I hope he presses it as well. In fact, I would encourage him to do so straight away.

**Senator David Norris:** Perhaps not quite straight away. I think we need to hear some more pearls of wisdom.

**Senator Michael McDowell:** I agree with Senator Norris that I am dealing with section 44 as it currently exists, whereby there is no committee to advise the Government on the appointment of the Chief Justice, the President of the Court of Appeal or the President of the High Court. It is the commission that has to do all of that work.

*6 o'clock*

I do not want to be disorderly, but there is no timeframe provided for the commission to carry out its functions. If it takes a leisurely approach and decides that, with so many applicants, it can take two or three months to come up with a shortlist to fill a particular position, it might be considered to be completely unacceptable by the Government. Let us say the commission is to be involved in the appointment of a new Chief Justice. If the position is vacant for whatever reason and it takes three months to fill it, that could be problematic. There could be circumstances in which the Government believes we need to have a Chief Justice immediately because there are important decisions pending in the Supreme Court or the Chief Justice will be faced with important decisions or work on, for example, Article 26 references and so forth. As long as section 44 vests responsibility in the commission for the selection of individuals to fill these senior positions, it is appropriate to allow the Minister to opt out of that provision in circumstances in which there is urgency.

As Senator Norris said, we have to deal with the Bill as it stands. I am interested in and supportive of the reform of section 44 but only to a point, as the Minister knows. I do not think he and I are going to see eye to eye on the ultimate make-up of the section or how it will ultimately stand. It is my understanding it was amended by a majority in Dáil Éireann. The Minister indicated on the last occasion that he would determine where the Sinn Féin Party stood on the issue and let me know. That could be relevant in determining whether a majority in this House will support the passage of the Minister's amendment. If Sinn Féin is opposed to his proposal that it go back to a committee, we could be talking about a situation where this House

would not adopt the Minister's reformulation of section 44 on Committee Stage. I am interested in knowing if the Minister has done his homework and found out where Sinn Féin stands on the subject of the amendment Dáil Éireann made to section 44 against his wishes.

**Deputy Charles Flanagan:** If it was on Committee Stage, my assumption is that Sinn Féin did not vote with the Government on the occasion. There is a Senator here from that party who might be able to confirm that, but that is my recollection. I ask Senators to accept my bonafides on my inability to speak on behalf of any other party, particularly Sinn Féin, on where it might stand on the Senator's amendment or any of my future amendments. I am simply not in a position to say.

**Senator Michael McDowell:** Obviously, it would be wrong to ask the Minister to predict what Sinn Féin will do. Senator Warfield is present, but he may be keeping his cards close to his chest on this issue. If it is the case that Sinn Féin disapproves of the small committee operating under section 44 and sticks to the position that it should be the commission in its entirety, it is quite possible that this House will not pass the Minister's proposed amendment, depending on how reasonable it is and how other Members, apart from those in Sinn Féin, view it. In that context, it would be an advantage to know the substance of the Minister's proposed amendment to section 44 as soon as he and the Government agree on the kind of amendment to be tabled. In the meantime, we are dealing with section 44 as it stands. We are dealing with the commission in having a role in the appointment of the Chief Justice, a proposition to which I am utterly opposed. In the circumstances, the amendment should be made.

**Deputy Charles Flanagan:** Senator McDowell is being entirely reasonable when he says he would like to see the disposition of the Government as far as amendments are concerned at the earliest opportunity. I acknowledge this and will be happy to accommodate him.

On the more general issue of the filling of vacancies, particularly the three most senior positions, I do not recall in recent times, if ever, a situation where there was a delay or where there was not, on the part of Government, anything but a stated intention to proceed with haste once a vacancy arose. The most recent appointments were carried out in an entirely satisfactory manner. It is architecture along those lines of which I would be thinking in tabling an appropriate amendment on Report Stage, but I would need to secure Government approval. Of course, I would ultimately need the approval of a majority in both Houses.

**Senator Michael McDowell:** It has been suggested to me there is legislation pending for the appointment of further judges to the Court of Appeal. It has also been suggested to me, disturbingly, that such legislation has effectively been linked with the moving forward of the Judicial Appointments Commission Bill. That may not be the case, but I would be very disappointed if one Bill were to be taken hostage by the other, so to speak.

**Deputy Charles Flanagan:** I would share Senator McDowell's disappointment. I am very keen, however, having received Government approval, to proceed with the drafting of a Bill to facilitate the appointment of six judges to the Court of Appeal. I do not know the veracity or otherwise of the Law Library talk, to which Senator McDowell refers, but I would share his disappointment if there was any undue relationship drawn between any new Bill and this legislation.

**Senator Michael McDowell:** I very much hope the Minister's view is representative of the view of the Government in its entirety on the issue.

**Senator David Norris:** Not quite; there may be one dissenting voice.

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, 14; Níl, 18.	
Tá	Níl
Bacik, Ivana.	Burke, Colm.
Boyhan, Victor.	Burke, Paddy.
Clifford-Lee, Lorraine.	Butler, Ray.
Craughwell, Gerard P.	Buttimer, Jerry.
Daly, Mark.	Byrne, Maria.
Daly, Paul.	Conway, Martin.
Horkan, Gerry.	Devine, Máire.
Humphreys, Kevin.	Gavan, Paul.
Leyden, Terry.	Hopkins, Maura.
Marshall, Ian.	Lawlor, Anthony.
McDowell, Michael.	Lombard, Tim.
Murnane O'Connor, Jennifer.	McFadden, Gabrielle.
Norris, David.	Noone, Catherine.
Wilson, Diarmuid.	O'Mahony, John.
	O'Reilly, Joe.
	Ó Donnghaile, Niall.
	Reilly, James.
	Richmond, Neale.

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

Amendment declared lost.

**Acting Chairman (Senator Gerry Horkan):** I welcome the Minister, Deputy Flanagan, back to the House. We are now dealing with amendment No. 91d. Amendments Nos. 91d, 91e and 91f are related and may be discussed together, by agreement. Is that agreed?

**Senator Michael McDowell:** On the taking of which amendments together are we agreeing?

**Acting Chairman (Senator Gerry Horkan):** Amendments Nos. 91d, 91e and 91f are related.

**Senator Michael McDowell:** No, they deal with different subjects. I am not agreeable to that proposal.

**Acting Chairman (Senator Gerry Horkan):** The Senator is not agreeable to that. Therefore, they will be discussed separately. Is that agreed?

**Senator David Norris:** Yes.

**Senator Michael McDowell:** Yes.

**Senator Martin Conway:** It is not agreed.

**Senator David Norris:** It is agreed.

**Acting Chairman (Senator Gerry Horkan):** It is not votable. If it is agreeable to the House, they can be discussed together, but if not, we will deal with them separately. Therefore, amendment No. 91d is now being dealt with.

**Senator David Norris:** The proposal that they be discussed together was not agreed and that is the crucial point.

**Acting Chairman (Senator Gerry Horkan):** I am not sure that it is.

**Senator Michael McDowell:** I should explain the reason they should be discussed separately. This amendment and the previous one are probably more cognate than this amendment and the succeeding one, as this amendment and the previous one deal with time limits and the like and vacancies being left open, whereas the next amendment is quite different.

**Acting Chairman (Senator Gerry Horkan):** Will the Senator move the amendment?

**Senator Michael McDowell:** I move amendment No. 91d:

In page 31, between lines 20 and 21, to insert the following:

“45. (1) The Government may prescribe a time period within which the Commission may make its recommendation in respect of any particular vacancy or apprehended vacancy and the Minister shall inform the Commission of any such time period when requesting the Commission to make any recommendation in respect of such vacancy.

(2) The Commission shall make any recommendation within the time period prescribed by the Government pursuant to *subsection (1)*.”.

**Senator David Norris:** The Senator should read it out in order that we will all know what it is about.

**Senator Michael McDowell:** For the benefit of Senator Norris, if he does not have the list of amendments, this amendment proposes to insert a new subsection which states: “The Government may prescribe a time period within which the Commission may make its recommendation in respect of any particular vacancy or apprehended vacancy and the Minister shall inform the Commission of any such time period when requesting the Commission to make any recommendation in respect of such vacancy.” It also proposes a second subsection which states: “The Commission shall make any recommendation within the time prescribed by the Government pursuant to *subsection (1)*.”.

Since it is an executive function which the Government is carrying out under the Constitu-

tion in advising the President to fill a vacancy, this amendment seeks to give the Government some control over the length of time the commission may or may not take to fill any particular vacancy. As I was about to say when I mistook which amendment I was speaking to earlier, there is a lacuna in the Bill, as currently proposed, namely, that no time limits are provided for the commission to carry out its function in respect of any appointment. The purpose of this amendment is to give the Government - it is the Government and not the Minister which has a right under the Constitution to advise the President to fill an appointment - the right to say to the commission that it may have, say, two months, three months, or whatever period is prescribed in which to submit a shortlist to it. Effectively, the commission would get riding orders as to the time within which it is expected to discharge its functions.

In the absence of an amendment of this kind, it seems there inevitably will be delays. People work better to deadlines. If the commission is told it has eight weeks in which to carry out its functions in respect of any particular appointment, if the Government so prescribes, that will concentrate minds in the commission and get it to go through whatever procedures are required in a timely fashion to meet the Government's deadline. Somebody might say this is just a means whereby the Government could prescribe such a short time period within which the commission might make its recommendation that it would effectively steamroll the commission into making very rapid appointments, but that is not what is proposed in this amendment.

I am of the view, I presume most Senators would agree with me on this, that the Government is presumed to act in good faith but it is not the case that we can assume the commission will see the filling of vacancies with the same degree of urgency as the Government might do on any particular occasion. Since it is a governmental function to advise the President under the Constitution, since these shortlists are purely advisory and do not bind the Government in any way under the Constitution and since the Bill preserves the right of the Government to do its own thing, and the Bill, as it is currently constituted, effectively requires the Government to consider first the shortlist submitted by the commission in any particular cases, it seems that if the Government has a residual right to make its own decision in respect of appointments, it should also have a correlative right to say to the commission that if it is going to give the Government a shortlist, it should do so by a certain date and not consider it has three months, three and half months or longer to come up with it, as the Government wants to fill whatever position it is within a shorter timeframe. In my view, the absence of any mechanism whereby some outer time limits can be imposed on the commission is a fault in the legislation as it currently stands and I ask the House to adopt this amendment and vote for it because it will be a considerable improvement on the Act and a considerable disincentive to unnecessary delay.

**Senator David Norris:** I understand the reasoning behind Senator McDowell's amendment and it is important the Government should have the possibility of prescribing a time limit. However, I believe there is something wrong with the Senator's amendment. The word "may" occurs twice in the amendment. It states: "The Government may prescribe a time period [that is all right] within which the Commission may make its recommendation". I believe the latter use of the word "may" should be replaced with the word "shall". Otherwise there is no question of prescription. The Government is not prescribing anything. It is saying that if the commission feels like it on a wet Thursday afternoon it might do this. Senator McDowell said that this amendment would give the Government control but it does not really because of the second occurrence of the word "may" in it. The commission may make its recommendation but it might very well not. I believe that the second occurrence of the word "may" in the amendment should be changed to "shall" but, otherwise, it is a perfectly sensible amendment and would lead to

greater efficiency in the administration of this process.

**Senator Michael McDowell:** I am grateful to the Senator for his careful analysis of what he said is a deficiency of my drafting-----

**Senator David Norris:** Do I hear a “but” coming?

**Senator Michael McDowell:** Yes, but may I make two points which may encourage the Senator to be more supportive of the amendment in its current form? First, I ask him to look at the terms of subsection (2) of the proposed section, which states: “The Commission shall make any recommendation within the time period prescribed by the Government pursuant to *subsection (1)*.” It does not leave it open to the commission, on a discretionary basis, to decide whether to comply. If it does not do so, that is that, so to speak. I defer to the Senator being a great Joycean scholar and an authority on the English language, but, on my own behalf as draftsman of this amendment, the reason the word “may” is used twice in the amendment is this-----

**Senator David Norris:** The Senator is queen of the “mays”.

**Senator Michael McDowell:** Yes, the queen of the “may”. The reason I have to do that is that the commission is not obliged to make a recommendation if it does not consider anybody as suitable. Therefore, it could advise the Government that in a particular case it is not in a position to make a recommendation. It is not automatic there will always be a recommendation and the Bill deals with a situation where the commission is unable to make a recommendation and what happens as a consequence of that.

**Acting Chairman (Senator Gerry Horan):** No doubt all Members are all speaking through the Chair.

**Senator David Norris:** Of course; he is looking at me but he is speaking through the Chair.

**Senator Michael McDowell:** While thanking Senator Norris for his scrupulous examination of my amendment, it is at least defensible-----

**Senator David Norris:** I accept that.

**Senator Michael McDowell:** -----and may actually attract his support in its present form.

**Senator Gerard P. Craughwell:** I support Senator McDowell’s amendment. The Acting Chairman has been involved in boards of management of schools and the like and he is aware of the difficulty that is experienced at a time when a vacancy arises within an organisation. Here we are talking about a public appointment to a senior judicial position. One sets a date by which the recommendation has to be brought before the Government. We are talking about a commission that consists not of just of members of the Judiciary but members of the public. One must try to bring those people together in order to agree, for example, the advertisement, in the first instance. Once the advertisement has been agreed and published, one has to go through the short-listing period. We already have seen how that will be carried out. Once the short-listing is completed, one then has to get the board together again to carry out the interviews, before one ever arrives at the point of making a recommendation. That can be an extremely difficult task, depending on the time of the year in which it falls and depending on the commitment of senior members of the Judiciary who are part of the commission. They may not be able to appear at a particular time because of commitments to the courts or whatever. I agree that the way to focus minds is to put a time limit there. One sets a date by which it must be brought before the

Government.

While I understand Senator Norris's two "mays", the point made by Senator McDowell that subsection 2, with the "shall make a recommendation" trumps the second "may" and takes care of that. To allow a situation to develop where we have an open-ended *laissez-faire*-type approach, that is, where one fills the vacancy when one is ready, is simply not good enough.

We might also find ourselves in a situation in the event - one would not like to see it happen - of the untimely death of a judge, in which there was an urgent requirement to fill a post. From that point of view, the Government must be in a position to put time limits to ensure the commission carries out its work in a timely way for the needs of the State and the Judiciary. This is a simple change to the Bill that gives the sort of clarity that Senator McDowell is talking about. It removes that lacuna to which he adverted and it would give the Government a sense of reassurance that when a vacancy arises, it will be filled by a certain time. For that reason we should ask the Minister, who has been more than willing to accept amendments in the past, to perhaps accept this one too.

**Deputy Charles Flanagan:** I will not be accepting this amendment as I detect some discord among the-----

**Senator David Norris:** There is no discord.

**Deputy Charles Flanagan:** ----- Opposition, which at best will lead to uncertainty. It will be, of course, expected of the new commission to operate in a timely manner and to fill the vacancies as required, which has been the position to date. That is certainly the expectation that will be incumbent on members of the commission. I do not think that there is need for such deadlines. I agree there is an element of discord here.

**Senator David Norris:** There is not, that is nonsense from the Minister. He is talking through his hat.

**Deputy Charles Flanagan:** I am not accepting the amendment.

**Senator Gerard P. Craughwell:** I compliment the Minister on his sharp observation of what he perceives as some dispute between my two colleagues.

**Senator David Norris:** There is not, as I completely accepted Senator McDowell's explanation and the Minister knows that. He is being mischievous.

**Acting Chairman (Senator Gerry Horkan):** Allow Senator Craughwell to continue without interruption, please. Senator Norris can come in after Senator Craughwell.

**Senator Gerard P. Craughwell:** Senator Norris is making his opinions known and there is no disagreement between my two colleagues. We are back to the same thing here which worries me. When I hear a Minister saying that he is confident something will happen or that he is fairly sure that at the end of the day, people will do this, that or the other, I note that unless it is written down in black and white, what one is confident about today means absolutely nothing. In ten or 20 years' time, when people are reviewing this Bill and we find a judicial appointment has been left open for six months because they did not get their act together, nobody is going to turn round and say that the Minister was sure at the time that we would act appropriately or would fill the job at a particular time. There is only one way to have certainty and that is to have in black and white, and everybody knows where they stand from day one. The applicants for

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the job will know that there is a finite day. Everybody will be aware of the fact that a vacancy has arisen and that it will be filled by a particular day. This sort of come-day, go-day, attitude to the effect that the Minister was sure at the time is a little too lax for me and opens up all sorts of possibilities. I accept the Minister's bona fides; I am just not so sure that those who will come after us will be as diligent or as careful as he is. I ask the Minister to reconsider.

**Senator Michael McDowell:** I thought in my innocence that I persuaded Senator Norris of the merits of my amendment.

**Senator David Norris:** The Senator has.

**Senator Michael McDowell:** The Minister seems to be in doubt about this.

**Deputy Charles Flanagan:** I am.

**Senator David Norris:** The Minister need not be.

**Acting Chairman (Senator Gerry Horkan):** Senator Norris can come back in a minute.

**Senator David Norris:** The Acting Chairman should say the same to the Minister.

**Senator Michael McDowell:** This will probably require-----

**Acting Chairman (Senator Gerry Horkan):** The Minister knows better than Senator Norris that he can come back in.

**Senator Michael McDowell:** -----Senator Norris to make a formal statement of this position and he may require a reasonable audience to make that statement since it is an important issue but I am not suggesting anything to him. In any event-----

**Deputy Charles Flanagan:** The only way to prove Senator Norris's bona fides is by a walk-through vote.

**Senator Michael McDowell:** There we are.

**Senator David Norris:** We have not got there yet, the Minister should stop trying to rush things.

**Acting Chairman (Senator Gerry Horkan):** Allow Senator McDowell to continue, Senator Norris, without interruption.

**Senator Michael McDowell:** I was going to say the Minister has stated he is confident that various things will happen. I am not confident for the following reason. It is not that I doubt in any way the bona fides of the members of the commission, if it is ever established or if it ever comes into operation. Equally, it is not that I doubt that they will appreciate there must be some degree of urgency about their work and they are not free to take lengthy periods of months to do their work in a leisurely fashion. I am not suggesting they will behave in that way. My point, which the Minister should take on board, is that the existing Judicial Appointments Advisory Board, JAAB, to which the Minister adverted, operates only where the Government is not going to appoint a judge. Its current workload, for that reason, is much more limited than the workload of the judicial appointments commission is likely to be. All appointments, subject to whatever happens to section 44, will be commission-based appointments if this Bill goes through. All appointments, bearing in mind the statutory duty that is placed on the Minister in respect

of vacancies and anticipated vacancies, will involve the commission deploying its procedures.

There are two points that arise out of that. The workload of this commission is going to be vastly increased over the present workload of the Judicial Appointments Advisory Board. When I was in the Minister's position, the meetings of the Judicial Appointments Advisory Board were relatively short. The members had the various applicants' paperwork, references and the like before them and they did their work in a timely fashion. As I now understand it, this legislation anticipates, although it does not 100% ensure, that every applicant will at least be likely to be interviewed and that the results of the interviews in respect of the successful applications will go to the Government. Unless these interviews are exiguous or *pro forma*, which would be pointless, they will have to be more or less standardised for all would-be appointees. Following the general pattern of public service appointments, the same kind of questions have to be put to everyone. One person cannot be subjected to a radically different form of interview from that of another person. Issues cannot be raised with one class of would-be applicants that are not raised with everybody else. Applicants cannot be asked to prove their suitability to a different standard compared with some other category of people. These interviews are going to be lengthy and complex things.

There are some points which should be borne in mind. First, the workload of the judicial appointments commission will increase very significantly compared with that of the JAAB, by reason of the extension of its functions to existing members of the Judiciary. Second, the procedures which are to be laid out in the Act, to which we have not yet come, will be a good deal more formalised and are likely to always or nearly always entail an interview process. Third, if the first two points are combined, it is very likely that the period between the Minister requesting the JAAB to make a recommendation in respect of an office and a person being appointed will be lengthened quite significantly when, in the future, the Minister asks the commission to carry out the functions envisaged in this Act. It is not really legitimate to say that the present system gives us a guide as to what will happen in future as regards delay. The present system will be virtually no guide as to what time will be taken in the future.

Bearing that in mind, we then have to face up to the proposition that some form of outer time limit will have to be prescribed by somebody. The question we have to ask ourselves in that regard is who is the legitimate person to set this outer time limit? Should it be the commission itself or should it be some other body? The purpose of this amendment is not to vest that function in the Minister, but to vest it in the Government. The entire Government would fix the outer time limit for a decision on any particular case. The entire Government would do so, bearing in mind that it has a residual right to advise the President to appoint somebody completely outside the shortlist sent forward by the commission to the Government. This right cannot be taken away and this Bill, if enacted, will not do so. Bearing those things in mind, it seems the Government is the appropriate body to make the decision as to an outer time limit. There must be an outer time limit.

It is not by any means unthinkable that the normal timeframe for submitting a recommendation will be of the order of three or four months compared with the present situation with the JAAB, which I presume carries out its functions within six weeks to two months. I hope the Minister will take that on board. It is not unreasonable to think that, because of the increased workload, the increased complexity of the processes involved, and the interviews, we will be talking about three or four months. I am not being alarmist. That is my view of what is quite likely to happen.

If there is slippage due to the pressure of work in filling District Court positions or if some Minister does what the present Minister has indicated he is minded to do and says that six extra judges will be appointed to a particular court, whether the Circuit Court, District Court or High Court, the increased workload for the commission could be enormous. Filling a raft of vacancies such as would arise on foot of such a legislative change could put the commission into a kind of crisis mode as regards its other work. There is a very sound argument to be made for the fixing of outer time limits. I cannot think of any body more suited to fix such limits than the Government and I cannot think of any better way of doing this than that set out in amendment No. 91d. I will make way for Senator Norris to make his position clear in this regard.

**Senator David Norris:** I have been asked to make a statement because the Minister mischievously suggests he believes there is disagreement between Senator McDowell and myself. There was initially. I raised a question but Senator McDowell satisfactorily answered that question. I believe it would be better if the second “may” was a “shall” but, from the point of view of legality, I am quite convinced by Senator McDowell’s explanation and I reassure the Minister that there is no rift in the lute as far as this side of the argument is concerned. I completely accept Senator McDowell’s explanation of the matter. He has put down this amendment in good faith. It is a good amendment. It is important that the Government should prescribe a time period. I do not believe it is at all too onerous to expect the commission to make a recommendation within such a time period, not a bit. I am sure the Minister will confirm that he has now heard my statement and that he accepts there is no disagreement among us.

**Senator Gerard P. Craughwell:** Something I had not considered when I spoke before Senator McDowell is the onerous task that arises when a vacancy is to be filled. The Senator made the point that the questions would have to be the same for all applicants. Surely the marking scheme will then have to be the same for all applicants. A set of questions which would be deemed fair to all applicants will not easily be put together. Some applicants will come from the criminal side-----

**Senator David Norris:** Surely not.

**Senator Gerard P. Craughwell:** -----some will come from the business side-----

**Senator David Norris:** Those from the criminal classes are to be appointed to the Judiciary?

**Acting Chairman (Senator Gerry Horkan):** Senator Craughwell without interruption.

**Senator David Norris:** This is a revolutionary suggestion.

**Acting Chairman (Senator Gerry Horkan):** We will hear Senator Craughwell without interruption.

**Senator David Norris:** The Senator has to be interrupted when he is suggesting appointing criminals to the Judiciary. My God! What is this country coming to?

**Senator Gerard P. Craughwell:** The Labour Court has for years been bogged down in appeals over public service appointments in respect of which the same questions were not asked, the same marking schemes did not apply, or the marking scheme was not robust when it came under scrutiny.

**Acting Chairman (Senator Gerry Horkan):** I will ask the Senator to report progress. It

is 7 p.m.

**Senator Gerard P. Craughwell:** I am only getting warmed up.

**Acting Chairman (Senator Gerry Horkan):** There will be another day.

**Senator Martin Conway:** The Senator will have three hours tomorrow to warm up.

Progress reported; Committee to sit again.

**Acting Chairman (Senator Gerry Horkan):** When is it proposed to sit again?

**Senator Martin Conway:** Ag 10.30 a.m. maidin amárach.

The Seanad adjourned at 7 p.m. until 10.30 a.m. on Wednesday, 27 February 2019.