



DÍOSPÓIREACHTAÍ PARLAIMINTE  
PARLIAMENTARY DEBATES

**SEANAD ÉIREANN**

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

Gnó an tSeanaid - Business of Seanad . . . . .	56
Nithe i dtosach suíonna - Commencement Matters. . . . .	56
Medical Aids and Appliances . . . . .	57
Legislative Reviews . . . . .	58
An tOrd Gnó - Order of Business . . . . .	60
Community Participation (Disability) (Miscellaneous Provisions) Bill 2019: First Stage . . . . .	74
Eleventh Report of the Committee of Selection: Motion . . . . .	74
National Minimum Wage (Protection of Employee Tips) Bill 2017: Report and Final Stages. . . . .	74
Message from Joint Committee. . . . .	91
National Surplus (Reserve Fund for Exceptional Contingencies) Bill 2018: Second Stage . . . . .	91
Adoption (Information and Tracing) Bill 2016: Committee Stage . . . . .	102

## SEANAD ÉIREANN

*Dé Céadaoin, 12 Meitheamh 2019*

*Wednesday, 12 June 2019*

Chuaigh an Cathaoirleach i gceannas ar 10.30 a.m.

---

*Machnamh agus Paidir.*  
***Reflection and Prayer.***

---

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

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

The need for the Minister for Health to make a statement on the provision of HSE funding in the community healthcare organisation, CHO, 3 area for new power chairs and the measures being taken to address the waiting list for funding.

I have also received notice from Senator Gabrielle McFadden of the following matter:

The need for the Minister of State at the Department of Justice and Equality with special responsibility for equality, immigration and integration issues to make a statement on the plans, if any, he has to review and strengthen the law on hate crime, incitement and online hate speech which is becoming increasingly common in political discourse and society at large.

I have also received notice from Senator John O'Mahony of the following matter:

The need for the Minister for the Minister for Transport, Tourism and Sport to provide clarification on the fees incurred by the holders of a free travel pass when they book a train seat in advance.

The matters raised by Senators Maria Byrne and Gabrielle McFadden are suitable for discussion and will be taken now. I regret that I have had to rule out of order the matter raised by Senator John O'Mahony on the grounds that the Minister has no official responsibility in the matter.

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

## Medical Aids and Appliances

**An Cathaoirleach:** Tá fáilte romhat, a Aire-Stáit as iarthar Chorcaí.

**Senator Maria Byrne:** I, too, welcome the Minister of State and thank him for coming to discuss this very important issue.

I raise an issue in CHO 3 - the mid-west - of the HSE. Recently I have encountered three cases - I am sure there are many more - in which people have received not very nice letters. They were told that as there was no funding available, they would not be given power chairs. The three cases which are very significant involve two children and one adult. The adult suffers from a rare form of dwarfism that renders him unable to walk very far. As a consequence, he needs a power chair. One of the two children suffers from a rare condition, Moyamoya, while the other suffers from rare conditions and has had to use a chair since they were a very small child. The biggest issue for the three is they have outgrown the chairs they use. All three have received a similar letter citing a lack of funding and indicating that the HSE does not know when funding will become available. I am concerned because the lack of funding is holding them back. Their families are also concerned. The parents of the two children take them out as often as they can, but because they no longer fit in their chairs it has become very difficult for them to leave their homes. In fact, one of the children now falls out of their chair because it is too small. When will funding be released? How can the lives of the two children and one adult concerned and their families return to normal? It is very important that this issue be resolved as quickly as possible.

**Minister of State at the Department of Health (Deputy Jim Daly):** Gabhaim buíochas leis an gCathaoirleach as ucht na fáilte, mar is gnách, agus gabhaim buíochas leis an Seanadóir freisin for raising this important issue.

The HSE provides a wide range of medical and surgical aids and appliances such as wheel-chairs and walking aids free of charge for medical card holders and those participating in the long-term illness scheme. Assessment by a relevant health professional is required. The community funded schemes is the collective name for the many products, supports, supplies, appliances and aids provided through community services. There is a variety of products and services provided under the schemes. The products and services play a key role in assisting and supporting service users to maintain everyday functioning and remain in their homes and local community. Their provision also avoids the need for a hospital presentation or admission, while facilitating early discharge from hospital back into the community.

Each community healthcare organisation, CHO, operates standard processes for the allocation of funding for medical and surgical aids and appliances. At times, because the demand for resources exceeds available capacity, there may be waiting lists for some categories of items provided from the medical and surgical aids and appliances budget in a particular CHO. CHOs undertake a range of initiatives to ensure optimum use of resources. I refer, for example, to the efficient recycling of stock items such as walking aids.

In the CHO 3 area in the mid-west, there is a waiting list in place for the purchase of 25 powered chairs. It should be noted that waiting time varies depending on the priority rating, a rating which is made by healthcare professionals based on clinical risk. Priority is given to clients with the greatest level of clinical need. In addition, work is progressing in CHO 3 on the establishment of a stock database to maximise recycling of stock items across the mid west. Under

the aids and appliances project, data will be transferred onto an online system allowing clinicians to review all stock online, validate waiting lists and use recycled stock more efficiently.

At national level within the HSE, a service improvement programme has been established to improve the standard and quality of the many products and services provided as part of community funded schemes and to implement standardised national contracts for the supply and pricing of these products to ensure best value for money across all CHOs. These measures will help to ensure that there is equitable access to products and services irrespective of where the service user lives.

**Senator Maria Byrne:** I thank the Minister of State. While I accept that everything is being assessed and that there is a waiting list, the lives of these three people have been impacted. The Minister of State has just said there are 25 people on the waiting list. I am not sure how many other people are affected but I have been contacted by three individuals and I am really concerned that they have no quality of life. They cannot do what they have been used to doing every day. It is my understanding that in other CHO areas people get their wheelchairs more or less straight away. It very much depends on the number of people on the list. Is there any hope that some of the funding that is not being used in other areas could be diverted on a temporary basis? It is not fair that 25 people are waiting in the CHO 3 area while there are few if any waiting in others. I know that is hearsay but the people with whom I am in contact have spoken to patients in other areas who got chairs immediately. There is a problem here and the funding must be found. That is what I am asking for today.

**Deputy Jim Daly:** I thank the Senator. She makes a very fair point. I will speak to the Minister following this discussion and I will try to get a handle on the national picture. The answer I have given the Senator is very much focused on CHO 3 but the Senator makes a very valid argument that if there were better alignment between all nine CHOs and a streamlining of the available funding, that might improve the situation. Ultimately, we want to ensure that the three people to whom the Senator refers and the other people on the waiting list of 25 in the CHO 3 area are dealt with as quickly as possible. I will have a conversation with the Minister in terms of the HSE looking at this issue from a national perspective in order to try to get better alignment between the CHOs to better utilise the system. Each CHO working on its own is not going to solve the problem and better collaboration may be required. I will speak to the Minister on behalf of the Senator.

### **Legislative Reviews**

**Senator Gabrielle McFadden:** I thank the Minister of State for making time to come to the House. Political discourse, both here and abroad, is being degraded by a variety of groups and individuals who peddle messages of division and hatred that have no place in Irish culture. Several of the candidates in the recent elections ran campaigns based on messages of hate and fear that were designed to get attention and support for themselves, irrespective of the consequences of their message to individuals, the State or society. Indeed, since the elections, we have even seen a failed candidate who considers herself wiser than others, who came from the east, following a chemtrail in the sky and bearing a message of cold racism and slur, telling children from the midlands that there is no place for them at the inn because their skin is a different colour. Thankfully, the good people of Longford sent her back from whence where she came.

I ask the Minister of State to outline what is being done to review and strengthen the laws

on hate crime, incitement and online hate speech. This problem is not unique to the Republic of Ireland. If one looks west, across the Atlantic, one will see a President who deliberately divided a nation for his own political purposes and who dismisses any criticism as fake news. Looking east across the Irish Sea, one can also see damage and division being created by individuals for their own political ends. North of the Border, Sinn Féin and the DUP are engaged in a discourse that is driven only by party-political agendas and interests. In the Republic, there are populists motivated by the desire for attention and electoral gain who will do or say anything to further their own self-interest. All of these people have a number of things in common. Their message is one of division, setting up one group against another on the basis of nationality, gender, sexuality, colour, religion, social class, political ideology or indeed any other perceived variant of otherness. They also all have simplistic answers and superficially appealing mantras including that someone else should pay, it is someone else's fault and that they bear no responsibility and so on. The other thing that these people have in common, whether they are right wing or left wing, is that they are not concerned about the interests of the people they supposedly represent. Their primary concern is to radicalise people behind their own cause or group or to draw attention or electoral support for themselves. Those of us in the middle must stand up to these extremists. We must counter their politics of division. Otherwise, as W.B. Yeats wrote:

Things fall apart; the centre cannot hold;

Mere anarchy is loosed upon the world.

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

I thank Senator McFadden for raising this important issue. I also congratulate her on the presentation she has just made. It was very measured but very well researched and strong.

Safety, fairness and inclusion are at the heart of the work of the Department of Justice and Equality. The Minister and I are committed to ensuring that Ireland is a safe and secure country for everyone. This means working to find effective ways of protecting people from the effects of hate crime and hate speech and of signalling very clearly to perpetrators that hate crime and hate speech, whether they take place online or in the real world, are not tolerated or accepted here. There is already a significant body of criminal law in place to deal with hate crime and hate speech. The Prohibition of Incitement to Hatred Act 1989 includes offences of incitement to hatred on account of race, religion, nationality, ethnic or sexual orientation. In brief, it is an offence to use words, behave, publish or distribute written material, or broadcast any visual images or sounds which are threatening, abusive or insulting and are intended or, having regard to all the circumstances, are likely to stir up hatred. In addition, where any criminal offence such as assault, criminal damage or a public order offence is committed against a person because of their race, religion, colour, ethnicity or some other prejudice, it can be prosecuted through the wider criminal law and the courts can consider evidence of a hate or prejudice motive as an aggravating factor at sentencing.

Of course, the criminal law must be kept under review. We must learn from our experiences of the implementation of the law in practice and from the experiences of other countries and we must ensure that the law keeps pace with developments in society. I am very conscious of recent calls from civil society, international bodies and others for reform of the legislation in this area. With that in mind, the Department of Justice and Equality has arranged for research to be carried out on the effectiveness of hate crime laws in other jurisdictions. This work will look at how other countries have legislated to deal with offences which are motivated by prejudice or hate and how effective those laws have been in practice. Separately, the Department

is undertaking a review of the Prohibition of Incitement to Hatred Act. As part of this review, the Department will shortly carry out a public consultation on the Act and the results of this consultation together with wider policy analysis and review will inform proposals for changes to the Act which will be brought before this House for debate in due course.

**Senator Gabrielle McFadden:** I thank the Minister of State. I am aware of the work that he does on this issue all of the time. I was a member of the Joint Committee on Justice and Equality in the previous Oireachtas term and know of his commitment in this area. I really welcome the fact that the Department has commissioned research, which will be invaluable. I also welcome the proposed public consultation and would urge Members of both Houses to work with that process.

Fine Gael is a party of unity, equality and opportunity. Those are the words on the wall in the room in which our parliamentary party meets. I would like us to create a society in which everybody is engaged in democracy for the betterment of that society. I welcome the response of the Minister of State. I pledge to work with him and I encourage others to do so too.

**Deputy David Stanton:** I thank the Senator for her remarks and for the opportunity to discuss this very important matter. Hate crime means that vulnerable groups and individuals are targeted simply for who they are. The impacts of hate crime and hate speech are especially serious because they have a ripple effect that spreads far beyond the individual victim. If not dealt with, this can lead to a divided society in which entire communities feel unsafe. The serious nature of this behaviour means we must be especially careful to ensure that the legislation in place to deal with it is robust. The work being undertaken in the Department will help ensure any reform introduced is effective and reflects best practice internationally. I look forward to debating the matter with Senators when the legislation comes before the House.

Research on hate crime in other jurisdictions is likely to be completed later this year. The public consultation is due to go live very soon and I welcome the Senator's call for others to engage in it. Departmental officials will then consider the outcome of this work to determine the best approach to legislating in Ireland.

We welcome the fifth report of the European Commission against Racism and Intolerance. In its report it highlights a number of positive developments in recent years. We will work to implement its recommendations, particularly the two priority recommendations on hate crime and Traveller accommodation.

When candidates use hate speech and hate crime in their canvassing, they are engaging in lazy politics. They are being populist and scapegoating others. This type of behaviour is shameful and I am glad that it has not taken hold or been successful here.

*Sitting suspended at 10.55 a.m. and resumed at 11.30 a.m.*

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

**Senator Jerry Buttimer:** The Order of Business is No. a1, motion regarding the eleventh report of the Committee of Selection, to be taken on the conclusion of the Order of Business, without debate; No. 1, Private Members' business, National Minimum Wage (Protection of Em-



ployee Tips) Bill 2017 - Report and Final Stages, to be taken at 12.45 p.m. and to adjourn after two hours if not previously concluded; No. 2, National Surplus (Reserve Fund for Exceptional Contingencies) Bill 2018 - Second Stage, to be taken at 3 p.m., with the contribution of group spokespersons not to exceed eight minutes and those of all other Senators not to exceed five minutes; and No. 3, Adoption (Information and Tracing) Bill 2016 – Committee Stage, to be taken on the conclusion of No. 2 and to adjourn no later than 9 p.m. if not previously concluded.

**Senator Gerry Horkan:** I thank the Leader for outlining the business. The latest report from Dr. Gabriel Scally was published yesterday. It highlights that Irish women's smear tests have regularly been tested in unapproved laboratories overseas. Originally, we were told there were six laboratories, then 11 and now 16. The HSE was not aware of and had not approved some of these sites. One of the laboratories, which was one too many, did not have appropriate accreditation. Clearly there was a breakdown in communications between the HSE and those doing the tests. The Leader will agree that the fact the HSE did not even know there were 16 laboratories involved is very disconcerting. Dr. Scally is certainly not happy with the legal processes which, he said, convert error into injustice and then convert that into financial remedies. We need the Minister for Health to come to the House to give us an update on the Scally report and what measures he is putting in place to give certainty to people using the service. We know that no testing system is 100% perfect and things can go wrong but the scale of what went wrong is frightening and shocking to most of us. We need to know that in future it will be a lot tighter and more rigorous than it has been.

I also want to raise the issue of knife crime. In the early hours of yesterday morning, a very tragic event occurred when a homeless man was fatally stabbed on O'Connell Street. This was only four weeks after a very tragic stabbing of a teenage boy in Dundrum, close to where I live in south Dublin. He was also fatally injured. Other Senators have spoken about crime generally and gangland crime. In the past two years, there has been an increase of 66% in seizures of knives by gardaí. We certainly need to know what they Garda will do in terms of prevention. There is no real scrutiny of the level of criminal activity that involves knives. It is imperative the Department acts before these figures rise further. We need far stricter sanctions for people carrying knives than we have had in the past and measures in place to detect people carrying knives because clearly it is a big problem.

Dublin City Council commissioned a survey by the Royal Holloway University of London. The survey found the impact of living in hotels, particularly on younger children, is very destructive. They struggle to learn how to crawl and to walk due to a lack of space, they struggle with their speech and some have sleepless nights and go to school exhausted as a result of anti-social behaviour in these settings. It is important when we consider the issue of homelessness particularly for people growing up, who are developing as human beings and developing their skills, that they have the space to do so safely. I ask the Leader to invite the Minister for Housing, Planning and Local Government to come to the House to discuss the effect of homelessness on families with young children.

**Senator Billy Lawless:** As Senators will know, it is exam time and almost 125,000 students are sitting the junior and leaving certificate examinations, which is an increase on former years. I take this opportunity to wish them well in all their endeavours and exams.

Every year these students will wait anxiously for their results, particularly leaving certificate students, to see if they have the necessary points to attend college or university to follow the courses they want. Each year there is a cohort of students who want to follow a particular

career path but do not achieve the points necessary to attend third level education. University is not for everyone and sometimes that expectation is unfairly put on some students. I received a copy of the recent report on work permits and apprenticeships compiled by the Oireachtas Joint Committee on Business, Enterprise and Innovation and commend the committee on its work. Apprenticeships have a very important role to play for students who do not see themselves attending university or college for three or four years and would rather learn as they work. The range of apprenticeships has increased in the last number of years in employment sectors, other than craft and construction, into fields such as accounting and financial sectors, property, biopharma and the hospitality and food sectors. I am a huge advocate for skills, trades and manufacturing. An Chomhaire Oiliúna, AnCO, FÁS and now SOLAS have played a huge role in furthering the skills of young people.

In the 1980s, a son of an old friend of mine did a FÁS apprenticeship course on thatching. This young lad, William Cahill, was what I would call a townie but he is now the top thatcher in the United States and works with all the major theme parks. He also has his own reed farm. He is an example of the opportunities that exist for boutique skills. As we reach full employment, apprenticeships will play a valuable role in addressing some of the skills shortages we have today. The Government should seek to incentivise businesses, particularly small and medium-sized enterprises, SMEs, to recruit apprentices. It is important that apprenticeships are seen and encouraged as an equally viable option for students as third level education.

I call on the Leader to invite the Minister for Business, Enterprise and Innovation to address this House on how the Government will implement the recommendations made by the Joint Committee on Business, Enterprise and Innovation. As many of us here know, including myself, third level education is not for everyone but hard work will always be rewarded.

**Senator Colette Kelleher:** I propose an amendment to the Order of Business that No. 14 be taken before No. 1. I refer to putting the Community Participation (Disability) (Miscellaneous Provisions) Bill 2019 on the Order Paper. The Bill was developed by my colleague, Senator Dolan, and it is about the full participation of people with disabilities in their communities. One of the effects of this Bill would be to make toilet facilities, which we all take for granted, readily available to people with disabilities. People suffer the most incredible indignities in public spaces when they try to use public toilets. If any of us had to endure that even for a day then we would be rightly concerned and upset. The Bill seeks to make playgrounds inclusive by using universal design and ensure private buses have the same standards of accessibility as public buses. The Bill seeks to put the advocacy services that are available to people on a statutory basis. I hope that my colleagues will support my proposal to amend the Order of Business.

**Senator Rose Conway-Walsh:** I take this opportunity to congratulate Senator Grace O'Sullivan on her election to the European Parliament.

**Senator Aodhán Ó Ríordáin:** Hear, hear.

**Senator Rose Conway-Walsh:** We will certainly will miss her from this Chamber, but I have no doubt that she will do a marvellous job in Europe for us. I hope that she will stay in touch with this House. I thank the former MEP, Liadh Ní Riada, for her hard work, particularly for rural and coastal communities. She did Trojan work, particularly in the area of fishing and rural development. I wish her well for the future and I have no doubt that she will continue to make a major contribution.



12 June 2019

I welcome yesterday's announcement on the approval of Spinraza. Senators will know that I have spoken in this House many times about Spinraza so I was absolutely thrilled yesterday when we got the news it is going to be made available. I was particularly thrilled for Grace O'Malley and Cillian Mearns and their parents because I got to know them personally. Access to Spinraza will give Grace and Cillian a much better quality of life. I thank the Minister for Health for allowing humanity to prevail in this situation. Access to Spinraza was an issue that I was never going to let go of but I acknowledge that it is never too late to do the right thing.

Today, I would like to raise the issue of Belmullet Community Hospital. Last Monday night, hundreds of people attended a public meeting on the hospital. The attempts being made to get rid of agency staff and not renew temporary contracts is absolutely deplorable. One man put the issue succinctly when he said they promised us the birds in the sky but they did not tell us we have to catch them ourselves. The announcement was made within days of the local and European elections. As the Leader will know, there were 40 beds at the hospital but that number was halved when Fianna Fáil was in government even though the area is bigger than County Louth. I ask the Leader to confirm that the Minister of State at the Department of Health, Deputy Jim Daly, will visit the hospital next week and who he will meet. I would like to know as many people are interested in meeting the Minister of State.

The nearest hospital to Belmullet is 50 miles away. We talk about delivering healthcare as close as possible to communities and yet we are doing the exact opposite in terms of the privatisation and centralisation of health services, which must stop. We cannot have it both ways. We cannot have platitudes saying that we believe in primary and community care yet at the same time make the most vulnerable in our society pay for overruns and the neglect of the health service.

I wanted to raise another issue but I will hold it over until tomorrow.

**An Cathaoirleach:** Yesterday, some of us expected that our colleague, Senator Grace O'Sullivan, would grace us with her presence. On behalf of the Seanad, I would like to say I was very happy she was elected and I want to congratulate her publicly. I am sure she will be a tremendous asset to the European Parliament because she was a very good contributor in this House and was very passionate about the issues she represented. Like myself, she ran on the agricultural panel. Somebody described another election recently by saying that A was head of the poll but B was man of the match. In this election, Senator Grace O'Sullivan deserves the accolade of woman of the match, coming from humble beginnings to becoming an MEP. She is the success story of the entire European elections. I hope she will come in here before she takes up her seat in the European Parliament but if she does not, then at least I have put my comments on the record.

I am sorry for the intervention and I call Seanadóir Aodhán Ó Ríordáin.

**Senator Aodhán Ó Ríordáin:** I propose an amendment to the Order of Business that the debate on Committee Stage of the Adoption (Information and Tracing) Bill 2016 conclude at 6 p.m.

**An Cathaoirleach:** Does the Senator want the debate to be adjourned or conclude?

**Senator Aodhán Ó Ríordáin:** To be adjourned.

The Minister for Health, Deputy Harris, and the Government are to be commended for their

action in respect of the availability of Spinraza, on which we have made many contributions in this House. The Health Service Executive, HSE, has now announced that it will fund it. The decision made by the United Kingdom in recent weeks to change its position was welcome and probably led to the decision made here this week. I think, in particular, of Sam Bailey and his family who have been campaigning with others throughout the country to reach this day. I commend the Government for what it has done. It is a life-changing moment for many children. I congratulate, in particular, the Minister for Health and his officials on doing the right thing.

It has been announced that Philomena Lynott has passed away at the age of 88 years. She was the mother of Phil Lynott and worked so hard to keep his legacy alive. Her love for him is a great Irish story. I offer my condolences and those of the Labour Party to her family and those who loved Philomena and Phil.

**Senator Kieran O'Donnell:** I welcome yesterday's announcement that the Cabinet has approved the amendment of the fair deal scheme to the effect that the 7.5% contribution, based on the family farm or a small business, will apply for a limit of three years and hope it will be expedited. I note that the Minister of State at the Department of Health, Deputy Jim Daly, plans to bring the legislation to the committee, as well as here, in the autumn. It will be one of the most important Bills to pass through the House. I would like to see someone who has been assessed for two years based on a family farm or small business being limited to three years or someone who has paid for one year only having to pay for a further two years. They should be allowed to defer the contribution attached to the business or the farm. These are specific points, but they are nonetheless extremely important. There are times when we must acknowledge that a particular measure will make a huge difference to families. I also like the fact that the business or farm will be continued for at least six years. It is a positive measure. I very much look forward to seeing the detail of the legislation. I know from dealing daily with families on the fair deal scheme that this change will make an enormous difference to families throughout the country in availing of nursing home care.

**Senator Terry Leyden:** I congratulate Fran McNulty, the RTÉ "Prime Time" reporter who has been appointed as the new correspondent on agriculture and consumer affairs at the national broadcaster. I recognise the contribution made by former Deputy George Lee over five years as RTÉ correspondent on agriculture and the environment. He was very fair and focused and highlighted the issues in farming in a very positive way. He was an excellent correspondent. He brought a certain gravitas to the work and attention to an industry that did not receive that level of coverage in RTÉ until his appointment. RTÉ is funded through the Oireachtas or by those who pay their TV licence fee and we are being well served on the Brexit issue by correspondents such as Tony Connolly, Fiona Mitchell, Sean Whelan and Tommy Gorman. RTE has proved to be one of the most well respected and recognised broadcasters in the world for being fair and broadcasting the real truth of the news, not false news. We should recognise its work and excellent correspondents and reporters, including those on "Morning Ireland" and others throughout the day who give 100% to the people of Ireland. We are very lucky to have such a station in the State.

**Senator Michael McDowell:** One of the issues we have not really dealt with in this term in the Oireachtas is the financing of broadcasting. We constantly hear on television and radio advertisements urging people to buy a television licence, rather than face prosecution. There are even advertisements to highlight the fact that holiday homes, caravans and the like are required to have a separate licence if a television is brought to them for the weekend. A lot of money is spent on inspectors in travelling around the country chasing homeowners to check whether

they have a television licence. A lot of expenditure is incurred in prosecuting people and even after all of this, there is a significant underpayment of licence fee income if the figures are to be believed. An Post gets a cut of the licence fee revenue it collects. It seems that the time has come to grasp this nettle. It would be far more efficient if the local property tax, when it is being reformed, whereby there would be a lump sum payment per household spread over 12 months, was integrated with the collection mechanism. I know that would not deal with everything because it would not deal with pubs, hotels and places of business, but as far as ordinary householders are concerned, it would seem to be a far more equitable and efficient way of collecting the amount due. If the television licence fee is around €160, a person with a caravan, to be strictly compliant with the law, has to come up with €320 out of his or her pocket every year. How much does someone have to earn if he or she is paying tax at the top rate, as many do, to be able to pay that amount? It turns out that he or she has to earn approximately €640 to pay for two television licences out of his or her after tax earnings. The time has come for the Government to face up to this issue, be honest and collect the fee in an efficient way and give the pretence that it is a licence which is a form of taxation. It is a broadcasting levy. Surely the time has come for us to face up to this issue. It has been hanging around for years, ever since the former Minister for communications, Pat Rabbitte, talked about cavemen. It must be addressed at some stage.

**Senator Colm Burke:** The Scally report released yesterday identified the fact that where there were contracts with laboratories the work had been sub-contracted. This morning I raised queries at the Oireachtas Joint Committee on Health about whether there was a provision in the contracts that allowed it to be sub-contracted.

*12 o'clock*

I raise an extremely concerning issue about women under 25 years of age who do not come under the CervicalCheck programme. I have a letter addressed to a GP about someone who is under 25 years of age and suffers from an immune deficiency and is, therefore, more likely to contract cervical cancer. The GP became concerned and, believing the issue was urgent, arranged to have a smear test conducted privately. As the results showed that it was an abnormal smear, the GP immediately referred her to CervicalCheck. The letter from CervicalCheck states that because she did not go through its process, it cannot put her on its list. It is astonishing that someone with an abnormal smear test result does not come within the remit of CervicalCheck and must be seen under a screening programme, resulting in a considerable delay. It is wrong, where it has clearly been identified that someone under 25 years of age has had an abnormal smear test result, that CervicalCheck is closing its doors. Cervical cancer is not confined to those over 25 years of age. I know of cases of people as young as 18 and 21 years of age where cervical cancer has been diagnosed and they have to go through the treatment process. I ask that this matter be brought to the attention of the Minister for Health. I would like him to come to the House to tell us exactly what changes are occurring in the provision of the CervicalCheck programme. Are there restrictions which prevent certain women from gaining access to care and treatment? That is exactly what has occurred in this case and the woman concerned does not have a big income. At the time she felt it was important to have the issue dealt with, as per the advice of her GP, and has now been told that she cannot receive care under the CervicalCheck programme. I ask that this matter be brought to the Minister's attention and dealt with as soon as possible.

**Senator Lynn Ruane:** I join in the good wishes extended to our colleague Senator Grace O'Sullivan. The Civic Engagement group has been effective and had a lot of success in pursu-

ing the different policy initiatives and agendas it has put forward. Senator Grace O'Sullivan has always been an integral part of that work, with Ed Davitt who works in her office. Although we wish her well, we will definitely miss her as part of the group. She is a huge loss in the work we do.

I support Senator Ó Ríordáin's request that the Order of Business be amended to allow the Adoption (Information and Tracing) Bill 2016 to be adjourned at 6 p.m. A huge amount of work has been done by the Department, something I will not deny, in getting the Bill to where it is now. Unfortunately, however, there has been a problem in communication with the Adoption Rights Alliance, the Irish Council for Civil Liberties and all of the different groups involved, including adoptees who are scared and anxious about the Bill, even with the Minister's amendments. They believe it is flawed and does not balance their right to information and an identity. Given that those who will be affected most by the Bill only become aware on Tuesday of last week when they were contacted by Senators that it was on the schedule, we need to give them time to engage with the parties and Senators on the 161 amendments that have been brought forward. To do this, the debate on the Bill should be adjourned at 6 p.m. They were not able to contact many Senators last week when the House was in recess and we should give them the space they need to do so. I support Senator Ó Ríordáin's request in that regard.

**An Cathaoirleach:** Is the Senator formally seconding the amendment proposed in regard to Senator Dolan's Bill?

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

**Senator Fintan Warfield:** I join Senators in wishing Senator Grace O'Sullivan well as an MEP. With Ed Davitt, she will be a loss to the Houses. If there is to be a by-election to fill a vacancy in this House, although I am not sure of the timeframe, we should consider the amendment proposed by Sinn Féin to the Seanad reform implementation group, whereby lists of replacements would be submitted, rather than have yet another progressive voice on the Government benches, or not, as in the case of Senator Marshall.

**Senator Ian Marshall:** Keep digging.

**Senator Fintan Warfield:** He is not with us every time, although there is great love between Senator Marshall and me.

**Senator Jerry Buttimer:** Senator Marshall's reputation is being questioned.

**Senator Michael McDowell:** I used to be progressive once.

**Senator Fintan Warfield:** Every Seanad by-election should not result in a win for the Government. We should have lists, like they have in-----

*(Interruptions).*

**An Cathaoirleach:** Please allow Senator Warfield to get out of the difficulty he is in.

**Senator Jerry Buttimer:** Democracy is okay when it is on their terms.

**Senator Fintan Warfield:** I also support the amendment proposed to the Order of Business which has been seconded that the debate on the the Adoption (Information and Tracing) Bill be adjourned at 6 p.m. in order to give groups a chance to engage further on it. I come from the

position “Nothing about us without us”. On this occasion, the campaign and advocacy groups for adoptees have not been heard by the Department. While we will represent their concerns today, they should have an opportunity to meet it. We, therefore, ask Members to support the amendment proposed to the Order of Business.

On the issue raised by Senator McDowell, changes to the media landscape have obviously had a drastic impact on RTÉ and TG4. We need to be address the issue of collection. While the local property tax may help in that regard, it will not address the issue of funding for public services. If the property tax is €80 and the licence fee is €160, merging them will only result in a reduction in funding for public services. There is a non-payment rate of 18%, whereas the non-payment rate in Britain is around 5%. Therefore, addressing the non-payment rate first would be best.

**Senator Michelle Mulherin:** With reference to the sustained and continuous debate on climate change, it is a fact that the Sustainable Energy Authority of Ireland, SEAI, has experienced a considerable surge in uptake of the various grants it offers across its programmes. This is putting considerable pressure on its budgets. The issue was first flagged for me in April when it seemed that new applications were being stalled and contractors engaged in the provision of energy efficiency measures such as insulation and so on were experiencing delays in being paid and having new work approved. Immediately thereafter, when I took up the issue, it seemed to be in abeyance. Unfortunately, however, the news I have received in the last week is that there is a serious problem which was not addressed in April and, in particular, a serious budgetary problem with the warmer homes scheme, of which there has been a massive uptake. Individuals, in particular, older people who qualify under the scheme, have been ringing and wondering when their job of work will be done. Contractors who are rolling out the scheme under a service level agreement are entitled to expect payment within six weeks, but it is taking three months, at the very least, for payments to arrive at their door. There is a lack of clarity on funding. Has the budget been spent? Will more funding become available? This is a critical issue. We are encouraging people to take steps to make their home more energy efficient and warmer, reduce their energy bills and help us to achieve our climate action targets. There is a need for clarity for the many people who are wondering when their job of work will be done and the contractors who have serious cash flow problems. Private contractors have to pay staff and need to know where they stand. I ask, therefore, the Minister responsible to come to the House to clarify and shed light on the matter in order that people will know how to apply for grants, given that there is a lot of confusion about the various grants on offer. It would be helpful to have a good debate on the issue.

**Senator Ivana Bacik:** I offered my congratulations to Senator Grace O’Sullivan yesterday. Judging by her Twitter account, she appears to be very active in Brussels already. I am really delighted for the Senator. Her victory in the European elections was well deserved.

I support the proposal to amend the Order of Business - made by Senator Ó Ríordáin and seconded by Senator Ruane - to adjourn the Committee Stage debate on the Adoption (Information and Tracing) Bill at 6 p.m. rather than letting it run until 9 p.m. I was one of the Senators who engaged in the Second Stage debate on the Bill, which took place more than two years ago, on 22 March 2017. At that time, we were promised consultation on amendments to address the concerns many of us raised about the way in which privacy rights were appearing to trump rights to information. We waited for over two years and amendments were finally produced very late on Monday night. My assistant, along with others, attended a briefing organised by the Minister on Monday evening but the amendments were not even provided then. They were



provided later and we have really only had one day to grapple with them. There are, as Senator Ruane pointed out, 161 amendments in total. The Labour Party has other amendments but we did not put them forward for Committee Stage precisely because we had not had sight of the Government's amendments by Monday, which was the deadline for submission. We wanted to reserve our position in order that we would not duplicate anything. Plenty of other colleagues submitted amendments. Indeed, there is a huge number of amendments to the Bill, many of which have been tabled by the Minister. However, those amendments were only made available to us after the deadline for submission had passed and that is simply not acceptable.

In terms of Seanad procedures, I do not know why a Committee Stage debate is being scheduled to run from the afternoon until 9 p.m. Again, that was just indicated to the House by the Leader. While I know that this is what the Leader has been asked to do, it looks as if an attempt is being made to just ram through the Government amendments-----

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

**Senator Ivana Bacik:** -----without adequate time for debate or consideration. This is unacceptable, particularly in light of how long we have waited and given the extent of the issues that have been raised with us by persons who have been adopted and the Council of Irish Adoption Agencies. I received an email from the latter this morning stating that, having listened to the Minister's arguments on "Morning Ireland", it believes it would be a total disaster for adoption practice if the Bill is progressed in its new format. Further, the council does not believe that sufficient consideration has been given to the implications for Tusla if the Bill is passed. It is not just those persons who have been adopted who have objections here. Anyone who heard my colleague, Deputy Burton, speak passionately on "Today with Sean O'Rourke" about the flaws in this Bill would agree that we should proceed with caution. While we are willing to proceed with Committee Stage and do not want to delay the Bill further, the idea that we would run with Committee Stage until 9 p.m. is not acceptable. Given the late publication of the amendments and in view of the very serious concerns that the Adoption Rights Alliance, the Irish Council for Civil Liberties, the Council for Irish Adoption Agencies and so many adopted persons have raised, we should adjourn after a couple of hours of debate.

**Senator Niall Ó Donnghaile:** Ba mhaith liom fáilte a chur roimh an scéal aréir faoin reifreann ar chúrsaí vótála i dtoghchán na huachtaránachta.

The Leader is always encouraging us to be positive so I will start by being positive in welcoming the Cabinet approval for a referendum Bill to provide for presidential voting rights to be extended to citizens outside the State. This is something that I and many colleagues, not least Senator Billy Lawless, have focused on in our time in this House. The proposal has the broad support of people across this Chamber and beyond. A marker has been laid down. This is a very formal display from the Cabinet and the Government and what we need now is everyone, whether involved in political, civic, community, cultural and voluntary life, getting out there to ensure that we invest in our global diaspora and that citizens in the North are not left behind any longer. We need to win this for citizenship and in order to send a clear message to our citizens and to fellow member states across the EU that already afford this franchise extension to their citizens. I want to add a caveat to my positivity by stating that there is a bit of time to go between now and October. I sincerely hope that we get to that stage because I do not believe we can allow this issue to slide any longer. I do not think citizens outside the State will forgive us if we allow it to do so. I look forward to a very positive campaign and encourage all of the global Irish networks, not least organisations like the GAA, which will have a pivotal role in



this campaign, to get involved, as well as members of all political parties and none represented in this Chamber. We must go out, mobilise, encourage participation and win this.

**Senator David Norris:** I had indicated earlier that I was not going to speak but I just want to add my voice to those of my colleagues who have suggested that it is very bad parliamentary practice to introduce significant Government amendments very late in the day and then, without giving us time to consider them properly and table our own amendments, ram a Bill through over the course of five and a half hours. I assure the Leader that it will be the same two or three people who are engaging on every Bill in this House. This is just wrong, unfair and sloppy, and I completely oppose it. I will be voting with my colleagues on the proposed amendment to the Order of Business.

**Senator Jerry Buttimer:** I am not surprised at that.

**Senator David Norris:** I am sorry but I do not understand the Leader's Cork accent.

**Senator Victor Boyhan:** I am sorry for being late. I ask the Leader to arrange a debate on family hubs. I have just come from a meeting of the Joint Committee on Housing, Planning and Local Government at which presentations were made by representatives from the Mercy Law Resource Centre and Focus Ireland and by the Ombudsman for Children. They gave harrowing accounts of children who are staying in what is meant to be temporary accommodation. Family hubs were a new solution to replace hotel accommodation. We know, despite numerous promises by the Government, that families are being accommodated in hotels, in some cases for up to three years, all over this country. In many cases, they are many miles from their original homes and often they are in different counties to where their children go to school. We have a constitutional provision that refers to cherishing all of the children equally in this nation but that is simply not happening. In that context, it is important that we invite the Minister to this House to explain what he means by temporary accommodation and by hubs. At the very least, I call on him to establish an independent inspectorate to examine these hubs because we have heard harrowing stories today. Many Senators will have heard similar stories in their communities. This is an important issue and it should be given absolute priority. I ask the Leader to arrange an early debate on how we are housing children and families in inappropriate accommodation. These cases will be tomorrow's redress scheme. We will look back and ask what we did for our children and their families. This is an important issue and I ask the Leader to facilitate an early debate with the Minister for Housing, Planning and Local Government and his colleague, the Minister for Children and Youth Affairs, who also has a responsibility in this area.

**An Cathaoirleach:** I wish Senator Boyhan well in his new grouping.

**Senator Niall Ó Donnghaile:** He is very welcome.

**Senator Jerry Buttimer:** Well observed by the Cathaoirleach. I was going to say that Senator Boyhan has gone back to his spiritual home but I do not think it is that in light of----

**Senator Michael McDowell:** I told the Leader we were all progressive over here but----

**Senator Jerry Buttimer:** I am not sure that Senator Boyhan was that progressive in his previous incarnation. I am sure he is very happy sitting next to Senator McDowell, as he has done for many years. Well observed on the part of the Cathaoirleach. It is amazing what politics throws up. I welcome the new gentler, kinder Sinn Féin. The local and European elections must have given the party some lesson because its members have been very nice so far this

morning. We welcome their newfound generosity of spirit and look forward to the hand of friendship being extended across the aisle and to seeing the party voting with the Government on legislation, other than the Judicial Appointments Commission Bill.

On a serious note and for the benefit of those Senators who were not here yesterday, I wish to again congratulate our colleague, Senator Grace O'Sullivan, on her election to the European Parliament. As the Cathaoirleach said, it was a man-of-the-match performance and we wholeheartedly congratulate her. She was a very strong participant in this House and a very positive colleague. I know that many of us will now look forward to postcards from Brussels, having received them from many parts of this country during the summer holidays. We wish Grace well. I join Senator Conway-Walsh in thanking all of our MEPs, those who were elected and those who stood but did not get elected. As we all know, it takes courage to stand for election, irrespective of one's political affiliation. We wish all of the defeated candidates well. We congratulate our outgoing MEPs who have retired, and wish our new MEPs every success in Brussels. Brussels is very important and the European Parliament is an important place to be with regard to future policy for our country.

Senator Ó Ríordáin raised the issue of the death of Philomena Lynott. On my behalf and on behalf of the Government, I offer our sympathies to her family. She was a very courageous woman. Any of us who read the biography she wrote, *My Boy*, could not but be impressed by her tenacity and integrity and the care she had for her son and for her city and country. We sympathise with her family. It is fitting that she was able to see the statue dedicated to Phil Lynott in our capital city. Ar dheis Dé go raibh a anam dílis.

We also remember the young man who was killed tragically yesterday on O'Connell Street, Peter Donnelly. We offer our sympathies to his family. Any life cut short by violence is something for which we must condemn the perpetrators. We must also find out the reasons for the attacks. I will come back to Senator Horkan with regard to knife crime.

I thank the 15 Members of the House for their contributions to the Order of Business. The Scally report is one we should all read because, as Senator Horkan quite rightly said, we need to bring certainty to the families and the women and we must also have confidence in the system. As Senator Colm Burke said, there are issues we must address. I am happy for the Minister to come to the House to discuss the supplementary report issued by Dr Scally. It beggars belief that the number of laboratories used increased without the approval of CervicalCheck. We must have an inbuilt system where there is confidence in the quality and assurance given to the women and their families. All of us recognise that the Minister, Deputy Harris, is committed to ensuring we get answers. This is why he and the Minister for Justice and Equality commissioned Mr. Justice Meenan to work on tort reform and on the issue spoken about this morning, which is that it is important we get answers.

Senators Horkan and Boyhan raised the issue of people living in hotels and family hubs. I have every intention of bringing the Minister with responsibility for housing to the House. It was our intention to bring him here next week but we must deal with legislation that needs to be passed. He will come to the House as soon as possible. There is a robust system of inspection but every effort must be made to ensure family hubs are a temporary and not a permanent solution. This is why the Government, through Rebuilding Ireland, is committed to increasing the number of houses. The point made by both Senators is important and I am happy for the Minister to come to the House in the coming weeks.

Senator Lawless raised the important matter of the leaving certificate and junior certificate exams and the leaving certificate applied exams. I join him in wishing continuing success to all the students who have gone through one week of exams. The Senator also raised the issue of apprenticeships. He is right that third level education is not for everybody. This is why the Government has a robust and active apprenticeship scheme and why last week, the Ministers of State, Deputies Mitchell O'Connor and Halligan, and the Minister, Deputy McHugh, announced €7.5 million to be awarded to ten third level institutions for the provision of new apprenticeships. It is important that we have a strong programme of apprenticeships and that we support and advertise it as a matter of urgency. The Government's 2016 to 2020 apprenticeship programme has set a target of 31,000. Last year there were 15,373 apprenticeships on the books. It is important that we urge people to consider apprenticeships. I concur with the Senator in that regard. The Minister of State, Deputy Halligan, came to the House recently to discuss the matter but I will have him back to the House in due course.

Senator Horkan raised the issue of knife crime. The point he made is valid. The Government is working on a national strategy on assault and particularly knife crime. The draft strategy is due to be published in July. In 2018, 1,136 knives were confiscated by gardaí through stop and search. This was a 60% increase from 2016. There is need for a national conversation on why people use knives, where knife usage is going and how we ensure it does not increase. I will be happy for the Minister to come to the House to discuss the matter.

I am happy to accept Senator Kelleher's amendment to the Order of Business regarding her proposal that Senator Dolan brings forward a Bill next week.

Yesterday, we had a discussion on Spinraza and all of us in the House were very happy with the announcement made. Many Members of the House, including Senator Conway-Walsh, campaigned vigorously for it and it is a good news story all round.

Senator Ó Ríordáin raised the issue of the Adoption (Information and Tracing) Bill 2016, as did other Senators. I cannot accept the amendment he proposed to the Order of Business. It is a bit unfair to suggest the Minister, Deputy Zappone, has not engaged. I will go ahead with my proposal.

I join Senator Kieran O'Donnell in congratulating, as we did yesterday, the Minister of State, Deputy Jim Daly, on the changes to the fair deal scheme. He will come to the House in the coming weeks.

Senator Leyden was on an RTÉ promotional tour and we congratulate George Lee on his appointment to a different brief. We also congratulate Fran McNulty on his appointment as agricultural and environmental correspondent. Senators Leyden and McDowell raised the role of RTÉ. The TV licence is an important part of raising revenue for RTÉ. Last year, the Oireachtas committee published a report that recommended changing to a broadcasting charge from what we have at present. I believe An Post receives €1.46 million from the licence fee. I would be happy to have a debate. The former Minister, Pat Rabbitte, attempted to change it. Given the report published today by Reuters on how people access news it is something we should look at. Today, more and more people do use media such as television or radio to access news or information. They use hand-held devices or iPads. We will have this debate in due course. The future of broadcasting and print journalism is something on which we need a debate and I would be happy to have one.

Senator Colm Burke commented on CervicalCheck and women under the age of 25. I do not have the answer to the question he raised. Perhaps it would be best served by a Commencement matter. He raised a very important issue. Senator Warfield also raised the issue of the media landscape as part of the discussion.

Senator Mulherin raised the issue of the SEAI grants and the need for clarity on funding. I would be happy for the Minister to come to the House but perhaps it is a matter that could be discussed by way of a Commencement matter.

I apologise to Senator Conway-Walsh as the issue of Belmullet District Hospital was raised in the House yesterday by Senator Swanick and I gave a reply on the issue of redeployment of staff. I do not have the exact answer to the question but it is important, as I said yesterday, that the issue is clarified. I am confident that it will be.

**Senator Rose Conway-Walsh:** Will the Leader confirm whether the Minister of State, Deputy Jim Daly, will go to Belmullet next week?

**Senator Jerry Buttimer:** That is beyond my pay grade. I cannot confirm it. It is not a matter for me as the Leader of the House to have input on that. It is a ministerial and departmental issue. I am sure Councillor Gerry Coyle will give the Senator the information if she asks him.

**An Cathaoirleach:** I am sure the Minister of State will convey the good news to the Senator if he is travelling.

**Senator Jerry Buttimer:** I do not have the answer, I am sorry.

**An Cathaoirleach:** Yesterday, in her absence, Senator Conway-Walsh was praised for her efforts on the hospital by her colleagues.

**Senator Rose Conway-Walsh:** That is a rare occurrence.

**An Cathaoirleach:** Senator Swanick was wearing his medical hat.

**Senator Jerry Buttimer:** Senator Ó Donnghaile raised the issue of the forthcoming referendum Bill and I look forward to the Sinn Féin Party canvassing actively on the matter with the Government. There is a long way to go between now and October and there will be various viewpoints. We look forward to the debate.

I am happy to accept the amendment to the Order of Business proposed by Senator Kelleher but I regret I cannot accept the amendment proposed by Senator Ó Ríordáin and others.

**An Cathaoirleach:** Senator Colette Kelleher has moved an amendment to the Order of Business that: "That No. 14 be taken before No. a1." The Leader has indicated he is prepared to accept the amendment. Is the amendment agreed? Agreed.

Senator Aodhán Ó Ríordáin has proposed an amendment to the Order of Business: "That debate on No. 3 be adjourned at 6 p.m. if not previously concluded." Is the amendment being pressed?

**Senator Aodhán Ó Ríordáin:** Yes.

**Senator Jerry Buttimer:** To clarify, it is likely that we will not get to the debate on No. 3, Adoption (Information and Tracing) Bill 2016, until 4 p.m. Adjourning at 6 p.m. would give

12 June 2019

only a two-hour window for debate. To be fair to the Minister, there are many reasons for the delay in moving the Bill forward. The Minister has been working on it. We will not finish Committee Stage tonight.

**Senator Lynn Ruane:** As an alternative, the debate might be adjourned after three hours.

**An Cathaoirleach:** Senators should not interrupt when an amendment is being dealt with.

**Senator Jerry Buttimer:** Gabh mo leithscéal, a Chathaoirligh. I neglected to give clarity in my reply and I apologise to Members for that. I try, as Leader, to be fair to everybody.

**An Cathaoirleach:** Is the amendment being pressed?

**Senator Aodhán Ó Ríordáin:** Yes.

Amendment put.

The Seanad divided by electronic means.

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

Amendment again put:

The Seanad divided: Tá, 18; Níl, 17.	
Tá	Níl
Bacik, Ivana.	Burke, Colm.
Black, Frances.	Burke, Paddy.
Boyhan, Victor.	Buttimer, Jerry.
Conway-Walsh, Rose.	Byrne, Maria.
Daly, Paul.	Coffey, Paudie.
Davitt, Aidan.	Coghlan, Paul.
Gallagher, Robbie.	Conway, Martin.
Gavan, Paul.	Lawless, Billy.
Humphreys, Kevin.	Lawlor, Anthony.
Kelleher, Colette.	McFadden, Gabrielle.
Mac Lochlainn, Pádraig.	Mulherin, Michelle.
McDowell, Michael.	Noone, Catherine.
Norris, David.	O'Donnell, Kieran.
O'Donnell, Marie-Louise.	O'Mahony, John.
Ó Donnghaile, Niall.	Ó Céidigh, Pádraig.
Ó Ríordáin, Aodhán.	Reilly, James.
Ruane, Lynn.	Richmond, Neale.
Warfield, Fintan.	

Tellers: Tá, Deputies Aodhán Ó Ríordáin and Lynn Ruane; Níl, Deputies Gabrielle McFadden and John O'Mahony.

Amendment declared carried.

Order of Business, as amended, agreed to.

### **Community Participation (Disability) (Miscellaneous Provisions) Bill 2019: First Stage**

**Senator Colette Kelleher:** I move:

That leave be granted to introduce a Bill entitled an Act to promote better provision in respect of the use by persons with disabilities of certain buildings and other places and transport services and for that purpose, to amend the Local Government Act 2001, the Planning and Development Act 2001, the Public Transport Regulation Act 2009 and the Building Regulations 1997; to provide for the commencement of certain provisions of the Citizens Information Act 2007; and to provide for related matters.

**An Cathaoirleach:** Is there a seconder?

**Senator Jerry Buttimer:** I second the proposal.

Question put and agreed to.

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

**Senator Colette Kelleher:** Next Tuesday.

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

Second Stage ordered for Tuesday, 18 June 2019.

### **Eleventh Report of the Committee of Selection: Motion**

**An Leas-Chathaoirleach:** I move:

That the report of the Committee of Selection be laid before the Seanad.

Question put and agreed to.

### **National Minimum Wage (Protection of Employee Tips) Bill 2017: Report and Final Stages**

**An Leas-Chathaoirleach:** I welcome the Minister for Employment Affairs and Social Protection, Deputy Regina Doherty. Before we commence, I remind Senators that a Senator may speak only once on Report Stage, except the proposer of an amendment who may reply to the discussion on it. Each non-Government amendment must be seconded.

I ask Senator Gavan to move amendment No. 1.



**Senator Paul Gavan:** I move amendment No. 1:

In page 3, between lines 10 and 11, to insert the following:

““employee” has the meaning assigned to it by the Organisation of Working Time Act 1997;”.

I welcome the Minister to the House. There is a tremendous show of support for the Bill in the Visitors Gallery, including by colleagues from SIPTU, Mandate, ICTU and Fórsa. I see, too, representatives of the One Galway and One Cork movements, which comprise trade unionists, student unionists and community groups, all of whom have played an instrumental role in supporting these proposals. The Bill has taken on a life of its own because there was real strength of feeling that a wrong was being done to workers in this sector. I pay tribute to all the people in the Gallery who have worked to progress these proposals. I am proud that the Bill was brought forward by Sinn Féin but, in fact, it belongs to our visitors, who campaigned on the streets to raise awareness of the issues. Some of them were in Ratoath last weekend voicing their support for the Bill and asking Senators to support it. I welcome, too, the warm support from colleagues in the Labour Party, the Civic Engagement Group and the Independent Group of Senators. I understood our Fianna Fáil colleagues will likewise support the Bill. We do politics best in this Chamber when we find where agreement can be reached and take a cross-party approach.

The Bill proposes to do two simple things. First, it gives hospitality workers a right to their tips. We know from research that one in three workers does not get his or her tips. Second, the Bill requires restaurants to display their tipping policy, something all customers would welcome. At the heart of the Bill is our view is that all workers who deliver a service in an establishment where a service charge is levied on customers should receive that fee. Mr. Richard Grogan, an employment law specialist who contributed to the work of the Low Pay Commission and described its report as staggering, has acknowledged that this is at the heart of the Bill. Customers who pay a service charge in a restaurant assume, as I did before getting involved in this, that the charge will go to the workers. However, we know from the excellent work of *The Irish Times* journalist, Ms Deirdre Falvey, that in many cases - in large chain restaurants, in particular - the owners pocket the service charge and the tips.

We had a meeting yesterday in Leinster House to which we invited Oireachtas Members to hear about our proposals. I regret to say that it was attended by colleagues from all parties and groupings save one. I have spoken to colleagues in Fine Gael who tell us they really want to support the Bill and cannot understand why the Minister is opposed to it. Yesterday, we heard testimony from a worker in a restaurant 100 yd. from this building who has been seeking to validate her right to the tips which were being withheld by the employer. When she joined a trade union with a view to organising to ensure she and her colleagues received the tips to which they are entitled, she and one colleague were fired. It is important to note that there are many good employers, but there is a problem in the sector. We know that 67% of the establishments that were inspected last year did not comply with basic employment law. That is a shocking statistic. It is a matter of regret that the Restaurants Association of Ireland, a representative of which I debated on LMFM Radio this morning, has refused to engage with workers, trade unions or joint labour committees to resolve this issue. I do not understand why the Minister sided with that body rather than coming down on the side of justice. I appeal to her, in a spirit of co-operation, not to divide the House today.

*1 o'clock*

We have support across the Chamber and I ask the Minister to work with us on the Bill. I wrote to her on 6 March and regret to say I never received a response. I also wrote to her colleague, the Minister of State at the Department of Employment Affairs and Social Protection, Deputy Breen, who was in the Seanad for the last session on Committee Stage and did not receive a response from him either. We want to work with the Minister on the Bill which will not pass into law today, it will just pass through the Seanad. It still has to pass through the Dáil. If the Minister has concerns, she should work with us before the Bill is taken to the Dáil. If she kills it today, it will be the last opportunity in this Oireachtas to deal with the issue, which would be more than disappointing as there are too many workers who depend on tips to make a living each week and deserve justice.

What is the Bill about? I will tell the Minister how it started. It is about a woman I met in Limerick who was taunted in a night club in Limerick by her employer. It is a prestigious restaurant which I shall not name. The employer taunted her about the fact that she would never see her tips and that there was nothing she could do about it. The Bill is also about my brother-in-law who has worked in the restaurant sector all of his life. He has seen his tips stolen in almost every restaurant in which he has worked. The Bill is about the man in the west who works in a five-star hotel who was told that he would get his tips at Christmas. He left the position in October and when he called to the hotel, he was told, "I am sorry, but we are not going to give you the tips because you are no longer an employee."

The list of reasons tips are held on to is huge. They include breakages; the employee is a trainee; it has been a slow night; or a fiver is missing from the till. All of these reasons are trotted out. It is particularly unhelpful that the employer bodies have consistently refused to engage with Senators in this Chamber who represent trade unions and workers. We are aware that while Minister has met the employers, she has not met anyone in this Chamber. I say that respectfully. Senators asked for meetings but were informed that the Minister was too busy, although I acknowledge Senators have met some of her staff. There is something uneven and unequal in what is happening. I do not wish to make the issue party political because we are better than that, but all Senators are aware that there is a significant issue with tips which we should and need to tackle. However, I really regret to say it appears as though Fine Gael will vote against giving hospitality workers a right to receive their tips.

I shall deal with some of the other reasons given and then conclude. I am aware that I will have the right to respond to the debate on the amendment.

The issue of taxation has been brought up, but it is an absolute red herring. The position is clear. One is obliged to pay tax on tips. That is the law and the Bill does not change it in any way or fashion whatsoever. It has been suggested that in giving workers a legal right to receive their tips an army of Revenue inspectors will descend on these low paid workers who are on or earning just above the national minimum wage to demand their tip money. That is without any credibility whatsoever and it is significant that the suggestion originally came from the Restaurants Association of Ireland. They are the same people who will not talk to Senators.

Interestingly, on LMFM this morning the head of the Restaurants Association of Ireland - I will not name him - got into an awful pickle. At one point he said overall revenues were boosted by 10% by tips. He then realised what he had said and in the next part of the interview said he had not said it, but all of the listeners had heard it. There is a problem in the sector and we

have a simple Bill which will protect hospitality workers in receiving their tips. It will require restaurants to display their policy on tipping. Good employers, of which there are many, have absolutely nothing to fear from the Bill.

I appeal once again to the Minister and her colleagues in Fine Gael. I do not believe it would serve the Chamber well to vote against the Bill. We have offered co-operation and to work with the Minister. It is a sincere offer made on a cross-party basis. I again acknowledge the tremendous support received across the Chamber. Colleagues were out on the streets in Galway, especially Senator Gerald Nash who has worked with me, with our colleagues from the Labour Party, those in the Civic Engagement group and Independent Members who came to me to say they would support me in the vote today. There has been an indication from Fianna Fáil Senators that they will do the same. I do not want this to be a victory for Sinn Féin; rather, I want it to be a victory for workers in the hospitality sector. As things stand, unfortunately, the Minister appears to be saying no. I ask her again to work with us. She has not met the people concerned, but they are here today. They have taken time off work to come because they know that there is a problem. Unfortunately, the Minister has said she will produce a Bill, of which nobody had heard until yesterday, this after eight years in government. While she has said there is a Bill in the offing, it will not tackle the key legal issue of giving hospitality workers a legal right to receive their tips. That is what we need. Even the Tory Party Government in Britain which may be the maddest Tory Party Government we have ever seen-----

**Senator David Norris:** Not yet.

**Senator Paul Gavan:** Maybe not. That is true.

**Senator David Norris:** There is Boris Johnson.

**Senator Michael McDowell:** The worst is yet to come.

**Senator Paul Gavan:** The Senator is probably right. After eight months of research in Britain, even it admitted that there was a problem in this regard and that workers needed to be given a legal right to receive their tips. Right now the Minister is placing herself somewhere to the right of Boris Johnson. Seriously, we need to do better than that. I, therefore, ask the Minister to work with us and not kill the Bill today as there is too much at stake for workers. We have gone out of our way to build consensus on the Bill. I ask the Minister to join us.

**Senator Ivana Bacik:** I second the amendment and welcome the Minister, Deputy Regina Doherty. I also welcome the opportunity to speak to the Bill. I commend Senator Gavan, in particular, and his colleagues, as well as my colleague Senator Gerald Nash and the other Labour Party Senators who have been so instrumental in supporting the Bill. I welcome all of those in the Visitors Gallery who have worked so hard and for so long to ensure workers will have a legal right to receive their tips. I thank Senators Gavan and Nash for organising what was a really good and helpful briefing in the audio visual room yesterday, at which Fiona Dunne from the Irish Congress of Trade Unions, ICTU, a speaker from One Galway and others were present to highlight the importance of legislation such as this.

I also speak in support of Senator Gavan's amendment which is sensible. It seeks to place the Bill within the framework of employment protection legislation. That is an important aspect of the amendment and the Bill which should be seen within the wider context of ensuring protection for workers in vulnerable positions in precarious industries, as well as in industries in which traditionally they have been low paid.

I agree with Senator Gavan that it would be great to see a cross-party consensus emerge on this issue. There is consensus in this House across every party and the Independents, but, unfortunately, there is no support from the Government party of Fine Gael. During the debate in the House on a previous Bill of mine, the Irish Human Rights and Equality Commission (Gender Pay Gap Information) Bill 2017 which was subsequently passed on Second Stage in the Dáil, we saw a cross-party consensus emerge on the need for the protection of workers and to ensure we would have in place a robust employment protection legislative framework. It would be very valuable if the same consensus emerged in the Seanad and the Bill was passed on Report Stage without a vote.

I am aware there has been great support from writers such as Deirdre Falvey, Richard Grogan and others who have illustrated the wider context and the need to ensure a legal right for workers to receive their tips. They have also illustrated the really shabby practices across the hospitality sector in Ireland and elsewhere, whereby tips and so-called service charges are routinely withheld for spurious reasons. Like many colleagues, I worked for many years in the restaurant industry and the hospitality sector as a waitress, a bar person and so on. I am very much aware of the huge importance of tips in the industry. I was also privileged to hear a speech recently by Saru Jayaraman, the founder of Restaurant Opportunities Centres, ROC, United which has been building a major campaign across the United States of America to illustrate the unfairness of an industry that relies heavily on and withholds tips. The campaign also illustrates the history of the practice of tipping. It originated in feudal Europe and became widespread and established in the United States post-emancipation when the restaurant industry won the right to employ liberated slaves without having to pay them a wage. It was the only industry, apart from Pullman car porters, to do so. Right into the 20th century various states won the right to exempt the restaurant industry from minimum wage legislation. There is now a massive campaign across the United States - One Fair Wage - to seek the removal of that exemption for the restaurant industry and ensure tips will be seen as a gratuity and not as part of the wages of an employee. That is the context in which this important Bill has been put before us. I would urge colleagues to read Jayaraman's book, *Forked: A New Standard for American Dining*, which sets out the history of tipping and the implications, not only for the restaurant industry but for society, where tipping becomes acceptable as a replacement for wages and where employees are not respected within an industry and are not paid fair wages. We do not have the same practice here where restaurants are exempt from the minimum wage, and yet what we have seen is the widespread usage by employers of tipping as a supplement to or a part of wages and that is what this Bill is seeking to avoid. The Bill is to ensure that employees are entitled to keep tips as a gratuity on top of wages, and that employers cannot withhold them for spurious reasons. Senators who have any knowledge of this area will be aware of how important this is for the many people working in the industry.

In the US, ROC United has produced a diner's guide to highlight the good practice of many employers which treat tips purely as gratuity, which pay fair wages and which do not withhold tips or service charges. There are now incentives being built in for good practice employers so that they are not undercut by employers who are withholding and depriving workers of tips. That is a positive initiative. It is name and fame rather than name and shame. My party used that language with the Irish Human Rights and Equality Commission (Gender Pay Gap Information) Bill 2017, as the Minister will be aware, to ensure that there are incentives for employers which are adopting good practices and which are seeking to ensure robust workplace practices for the protection of workers.

12 June 2019

I am sorry for indulging the patience of the House a little on Report Stage. This is an important Bill and I urge colleagues from all sides of the House to support it. I commend Senators Gavan, Nash and all those who put this important Bill forward.

**Senator David Norris:** While this matter of tips might seem trivial, and sound silly, it is crucial to the welfare of the many people employed in the hospitality sector. I welcome the people in the Gallery. I was not aware that so many trade unions were represented. I would say to the Minister that there are many people involved in the hospitality sector and the public gives tips on the understanding that they go to the staff and will not be frightfully pleased with Fine Gael if it takes the nasty step of trying to deprive these people of their legitimate tips.

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

**Senator David Norris:** They should not be taxed at all. Why should they? It is a gift. One gives something to an employee to say, "Thank you so much for being so efficient and so nice." I thank the people in the Gallery for the courtesy with which I have been routinely met in every restaurant I go into.

**Senator Ivana Bacik:** Hear, hear.

**Senator David Norris:** I go to restaurants a lot on the north side. I do not go to a huge amount anywhere, but I do go on the north side. I go to Chapter One, which is a superb restaurant with a Michelin star. I go to the Kingfisher, which is a little more down market but serves wonderful scampi. I was in there just the other day and there was a wonderful waitress. She was so full of good humour, I asked was she like this all the time. "Oh yes. I have a happy nature," she said. It was absolutely lovely.

**An Leas-Chathaoirleach:** Did that connect with the Senator?

**Senator David Norris:** Yes, I am happy. It is a great blessing. I have never suffered from depression.

I was a long time in Trinity and I am sorry to say I never worked in a restaurant. In fact, I never did any work when I was a student, except reading my books which is what I thought I was supposed to be doing.

**Senator Paddy Burke:** The Senator was privileged.

**Senator David Norris:** I was very privileged. An awful lot of the students used go to America, and they lived on tips. In France, if one neglects to give a tip, one will find a waiter or waitress coming after you saying, "Service, service, service." They will not let one away with it. One is compelled to give a tip.

I will tell the Minister something, and it might be a practical suggestion to my colleagues in the House. I always give the tip in cash right into the hand of the person who has looked after me, and to hell with the Revenue.

**An Leas-Chathaoirleach:** Safe policy.

**Senator David Norris:** The people in the hospitality industry work unsocial hours, until 11 p.m., midnight, etc., and they should get their just reward for this.

I would also say, and perhaps I suggested this earlier, it is the intention of the person giving



the tip that it goes to the employee to say, “Thank you for your service and thank you for your behaviour.” It is appalling that restaurants, on top of the service charge, grab the tip. Let the record show the Minister, Deputy Regina Doherty, is nodding sagely and she obviously agrees with us. I am sure the Government will not vote against this Bill.

I know why the Government might be a little opposed to it, and that is because it yanked up the VAT on the restaurants. They want to compensate for yanking up the tax at the expense of low-paid workers. That is stingy and miserable.

**Minister for Employment Affairs and Social Protection (Deputy Regina Doherty):** It is not true, and the Senator well knows it.

**Senator David Norris:** I do not. I would never say anything that was not true.

**Deputy Regina Doherty:** The Senator does know.

**Senator David Norris:** No, I believe it.

**Deputy Regina Doherty:** It is unfair and unjust for the Senator to misrepresent the Government’s position in that way.

**Senator David Norris:** I have obviously hit home. One can always tell.

**Deputy Regina Doherty:** People who tell untruths do hit home.

**Senator David Norris:** I never tell an untruth.

**Deputy Regina Doherty:** The Senator just has.

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

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

**Senator David Norris:** Anyway, it is a political view and it is one to which I am entitled. I strongly support this legislation.

I thank the Leas-Chathaoirleach for his indulgence. Turning briefly to the subject of the amendment, this is a matter of definition. The definition of “employee” was left out of the Bill and it is an appropriate amendment. It is no harm in a Bill, when one is dealing with the rights of employees, to know what definition of employee one is using.

**Senator Frances Black:** I welcome the Minister to the Chamber. I commend my colleague, Senator Gavan, on bringing this legislation forward. It is a vital piece of legislation. I also welcome all the guests, who have worked hard on this legislation. I would love if the Minister could support this. I really would.

I have worked in the industry. Some 35 years ago, I was a separated mother with two very small children and the tips were the difference for me in buying a bag of coal to heat the flat I was in. Thankfully, I had the support of my mother who was able to look after my children when I went to work as I was on my own with them. That is what happens today for workers. It was a question of whether I would be able to afford a bag of coal to keep the flat I lived in warm for my children while they slept. There was no central heating, as one can imagine, in those days in a very cold old house, and it was the difference. Every single penny counted. No



doubt workers today who are on a minimum wage depend so much on those tips. It is a vital piece of legislation. Even today, when I go into a restaurant I always make sure I leave a decent tip. To think that it may not be going to that person who has served me is just wrong. I would love if the Minister would support this legislation.

I also want to speak to the amendment, if that is okay. The proposed change-----

**An Leas-Chathaoirleach:** We are meant to be on the amendment. I allowed a little latitude.

**Senator Frances Black:** I know, but I just had to say that. I merely wanted to express the importance of this legislation.

The proposed change clarifies that we are drawing on the Organisation of Working Time Act 1997. As I see it, we are also building on that work. That legislation outlines crucial workers' rights protections, including maximum working hours, mandatory rest times, annual leave requirements and complaints procedures.

These are victories won over decades, in large part as a result of the trade union movement and those fighting for fairer conditions for working people. They were not won easily but they have greatly improved the lives of people all over this country. I see this Bill as a continuation of that tradition.

As legislators, we need to assess how the employer-employee relationship is operating in practice, highlight instances of injustice and unfairness, and then legislate to tackle that where possible. That is what Senator Gavan and his Sinn Féin colleagues have done. I commend the Senator for his hard work in preparing this legislation. The Senator has my full support.

In reality, it is quite a minor step. We are not reinventing the wheel here. We are simply saying that workers in our hotels and restaurants should have the right to keep their hard-earned tips. It is a small change but it is very important to people who are working on low incomes and in precarious conditions who often rely, as I did, on tips to make ends meet.

Most Irish people would agree with this legislation. I would imagine that every person one talks to would say, "Of course, they have to get their tips." It is not rocket science. It is plain common sense. If the Minister agreed to the proposal, it would be fantastic. The Bill has been ready for a number of years and we should progress it today. Will the Minister support it?

**Senator Rose Conway-Walsh:** I commend my colleague, Senator Gavan, on all the work he has done on the matter, as well as Senator Nash. I also commend those in the Gallery and others, some of whom I know from Galway and elsewhere. The Bill has been a collective effort and its passage seems to be a no-brainer.

I was surprised because I have worked in the hospitality sector. I worked for employers with the utmost integrity and it had never occurred to me that employers took tips from employees. When I was an employer in the hospitality sector, I would not have dreamed of pocketing the staff's tips. It must be stopped. It would be a positive step for us to take as a State, not least for tourism promotion and so on, if we could say we have a law that ensures that when a tip is given, one can be assured it will be given to the people serving and preparing the food, or whoever else it might be. We should embrace the Bill. I cannot understand why the Government fails to support it.

Senator Black spoke about low-paid workers within the hospitality sector. An average hotel

room in Dublin tonight costs €405 for one night. People are making a great deal of money on the backs of low-paid workers. When I visit a restaurant, I want to know that the tip I give will be given to staff members. People should make their choices based on whether tips are given to staff. It is certainly how I will choose which restaurants I visit.

**Senator Niall Ó Donnghaile:** Tá fáilte romhat a Aire.

**An Leas-Chathaoirleach:** I remind Senators we are dealing with an amendment. Senator Gavan will speak following other Senators' contributions.

**Senator Niall Ó Donnghaile:** A Leas-Chathaoirligh, surely you will not call me out on that.

**An Leas-Chathaoirleach:** You have said nothing yet and, therefore, I cannot call you out.

**Senator Niall Ó Donnghaile:** I was just about to deliver my greatest address in the Chamber but you have called me out on it.

I welcome the Minister and everyone in the Public Gallery who has been mentioned. There is no legal, technical or legislative impediment to supporting the legislation for the Government's colleagues in this House or in the other one. The strength and beauty of the legislation is its simplicity. It is succinct and direct but it hopes to achieve a great deal. The most powerful statement I heard at yesterday's briefing in the audiovisual room was that if a person is given precarious pay, it will lead to a precarious life. Thus far and on earlier Stages of the debate, we have spoken about staff relying on tips, which they need to make up the difference in their income because they are in precarious, low-paid work. That is the case, however, only when they receive the tips. We need to remember that much of the time, they do not even receive the tips, which is the whole point of the legislation.

Dublin city's tourism and hospitality sector is thriving. The remarks of Senator Conway-Walsh resonate with me and any of us who must travel to this city for work, where quite the buck is to be made in the hospitality sector. On Friday morning, I will travel with the Joint Committee on Justice and Equality and, as a result, I was planning to stay the previous night in Dublin to facilitate the journey. A large conference is taking place in the city tomorrow. While I do not know what it is, it is doubtless having an impact on the availability of accommodation. To stay one night - Thursday, 13 June - one fairly standard, corporate or business hotel in the city quoted me £936 sterling. It is not the case, therefore, that such hotels do not have the ability to pay their staff; they do.

The elephant in the room, however, is that they will not do so and choose not to do so. They pocket and steal the tips and keep them from the people to whom, as Senator Norris rightly said, we want to give a tip. We want to acknowledge their hard work. In a modest way, we also wish to extend a degree of solidarity, knowing full well the precarious nature of their work. As we progress the legislation and the debate, we must acknowledge that the other elephant in the room is a section of the political class which deems it okay to exploit workers or that a hotel provider can charge £936 sterling a night on a day when a conference is taking place in the city, while an immigrant working in the front of house cannot keep his or her tip. That goes to the heart of the opposition to the legislation. It is an ideologically driven approach that backs the bosses but not the workers because some politicians do not care. That is the greatest shame, which is why I urge colleagues across the House to reflect not only on the simplicity and the ability of the legislation to be passed but also on the profound impact it will have on social and

economic justice for those in the hospitality sector.

**Senator Michael McDowell:** The other Independent Senators and I have collectively discussed the Bill and will strongly support it. The amendment, which will extend the definition in the Organisation of Working Time Act 1997 to the term “employee” when it is used in the legislation, is necessary and good.

The Bill will create an offence and empower the Minister to make regulations. Those two provisions are being relied on in respect of the Control of Economic Activity (Occupied Territories) Bill 2018 as amounting to incidental expenditure for the purposes of allowing the Government to veto that legislation under the Standing Orders of Dáil Éireann. While I will not bother the House at great length on the matter, I recently had the opportunity to study in detail the provisions of the Standing Orders of the Dáil, which is a matter usually for that House, and the provisions of the Constitution which it is supposed to reflect. I have come to the view that the Government is wholly wrong in attempting to use the money message veto in respect of a Bill simply because it either creates the right for a Minister to make a regulation or creates an offence which, if it was committed, might or might not cost money to prosecute. Somebody has to call out the Government on the matter because it abuses the Standing Orders of Dáil Éireann.

**Senator David Norris:** The Standing Orders of the Seanad, too, need to be changed.

**Senator Michael McDowell:** Yes, although that is another question.

**Senator David Norris:** It is a related question.

**Senator Michael McDowell:** Under the Constitution, this House has the right to initiate legislation. The money message veto was used in the other Chamber but the Bill before us fits exactly the same criteria. It will create an offence and require the Minister to make legislation. The threadbare and utterly unacceptable suggestion that it involves appropriating the public revenues and that, therefore, it would require a message from the Taoiseach is simply not true as a legal proposition, about which, I hope, one will hear more in the fullness of time. I say this in case anyone believes that it does not matter what the Seanad says or does because the Government has a veto. That is a spurious and misguided proposition which somebody somewhere seems to have taken on board without considering the legal implications. As a House, we must protest about our Bills effectively being stymied in another House, not by the will of that House but by the will of the Executive. We must stand up against it. It is strange that in this House we do not have any such inhibition on our legislation other than Standing Order 41, the amendment provision Senator Norris referred to, but the other House can be vetoed by the Executive on an utterly spurious and unstatable legal ground. I will not put it any further than that. I want to make it very clear that from now on, I will protest about this at every available opportunity because what is happening in the other House is unlawful and must be resisted.

I congratulate the Members who have brought this Bill to this Stage and those who have assisted them from outside. When a customer pays in cash, as Senator Norris suggests, there is very little an employer can do to get the cash out of the employee’s pocket.

**Senator David Norris:** Exactly.

**Senator Michael McDowell:** However, our society is transforming increasingly to a cashless society where payments are made electronically and through credit cards. It is wholly wrong that this entirely positive development and transformation in how we live economically

is used as a licence to plunder workers' pockets.

**Senator David Norris:** Some customers use a credit card and then give cash.

**Senator Michael McDowell:** That is compounded by the fact that people who receive gratuities are usually working at the coalface in various service industries like hospitality, where wages have consistently been low. It is about time this legislation was passed. If the Government has its own legislation in mind, what is wrong with letting this Bill pass this House, bringing it to the floor of Dáil Éireann, moving whatever amendments it feels are required and persuading the majority - which is not a Government majority in either House - that its legislation has merit?

**Senator Paul Gavan:** Absolutely.

**Senator Michael McDowell:** The Government of the day took the then Deputy Alan Shatter's Private Members' legislation and ran with it. Why not run with this vehicle? What is so objectionable about it? Is the problem that the legislation comes on yellow paper and does not have the name of a Minister written on the back? If there is something wrong with the Bill, the Government should cure it. The Government cannot simply say it has its own proposal. That simply does not wash any more from a Government which has not acted on this matter for a long period and does not have a majority in any event to push through its own legislation or amendments. It is dependent on the goodwill and support of others to get any legislation through. I know the Minister does not like being portrayed as Ms Scrooge and I am not going to do that. However, I will ask the Government to get real and to look at the realities of the situation. This legislation would----

**Senator David Norris:** There was no Ms Scrooge. He was a bachelor.

**Senator Michael McDowell:** Senator Norris is forgetting his sister-in-law, about whom we never heard.

**Senator David Norris:** My sister-in-law?

**Deputy Regina Doherty:** I hope not.

**Senator Michael McDowell:** No, Mr. Scrooge's sister-in-law.

We have to face up to the fact that this is an unusual Parliament. The Government is in a minority. The will of the great majority of Members of this House is for this legislation to be passed. I dare say that when the Bill is brought before Dáil Éireann the will of the great majority of that House will be for it to pass. Why resist it? If the Government has problems with any part of it, why not put down amendments on Committee Stage in Dáil Éireann and see in the Committee and Report Stage debates if the Government's arguments stand up and whether a majority of the Members of that House agree? The Government should stop obstructing what is clearly fair and just legislation. That is my appeal. I am not saying that the Minister personally has an animus against workers or anything like that. I have been a Minister. This refusal is innate departmental conservatism. Departments do not want anybody else's legislation. They want to come up with their own. I did this myself in my time.

**An Leas-Chathaoirleach:** Moreover, the Senator got away with it.

**Senator Michael McDowell:** When the Government is in a minority it should accept the

realities. It should accept this amendment and allow the legislation to pass today.

**Senator Gerry Horkan:** To follow Senator McDowell, I was talking to Senator Gavan earlier and I commend-----

**An Leas-Chathaoirleach:** I remind the Senator to stick to the amendment.

**Senator Gerry Horkan:** I will try to stick to the amendment but I noticed that a many previous speakers managed to cover other points.

**Senator David Norris:** Everybody did.

**An Leas-Chathaoirleach:** I was too generous at the start.

**Senator Gerry Horkan:** The Leas-Chathaoirleach had better continue. As somebody who is often in his position, I think he has to be fair to everybody and show everybody the generosity he showed other Senators.

**An Leas-Chathaoirleach:** I have been doing that.

**Senator Gerry Horkan:** I know, and the Leas-Chathaoirleach always does so. I welcome the Minister back to the House. This is not aimed at her in any way. I know that she and many others have concerns about the Bill. As Senator McDowell said, I call on her to let it pass and go before the other House where Members can table amendments if there are concerns.

I am not making a Second Stage speech or anything like that but I have concerns about how the legislation will operate. Many employers are good and many pubs and restaurants are fine. We are legislating for the hard cases. There are people who abuse the situation and effectively use tips to fund the wages of their staff rather than giving them to staff in addition to wages. Many of the people in this sector are at the lower paid end of the labour market. They are often in precarious employment. They are often vulnerable and may be in part-time jobs. These workers include students who are working to get through college. In many cases, they are working to feed a family and keep a household budget going. As a collective, we all want to make sure that tips reach their intended destination. It is important for the tipping policy in any restaurant to be transparent, whether it is compulsory or voluntary or applies to groups of more than six or ten people. A restaurant, pub, hotel or any other establishment should have a policy and people should know what that policy is in the interests of fairness. As was referred to, the cashless society is becoming a much bigger deal. Many people will give a cash tip if they pay by credit card but some people do not. There is also a concern about where the tip ends up.

Equally, there are concerns for employers. Will this system become very bureaucratic and expensive? Will employers need a staff member to administer it? By and large, employers do not want to get involved. They worry about tips becoming taxable income, as they probably will if they are recorded. This tax will be additional to employer pay-related social insurance, PRSI, obligations. We could end up with a situation where workers are worse off in the end. That is certainly not the intention of the Bill but I am concerned that it could be an unintended consequence. I certainly do not want that. As a party member, I am happy to let the legislation pass. It is a very sensible suggestion. The Minister may not be in a position to do so but I call on her to let it go to the other House and persuade Members there of the merits of any amendments the Government wishes to introduce. It is everybody's intention that hardworking people, often on minimum wages, who earn tips based on their service should receive them.



They are a gesture of appreciation of the extra trouble they have gone to. Not everybody tips but I am sure lots of people do, and they mean for the money to go to the person they want it to go to. Pubs and restaurants have different systems in place. Some places pool tips, some share them with kitchen staff, some pay barmen extra because they do not get tips and so on. We do not want to over-legislate for this, which may not be possible. This is very well intentioned legislation. I commend Senator Gavan and his group on putting it forward and raising an issue that I did not realise was as big as it seems to be. Perhaps I am naive but I assumed that tips go where they should go. I always try to ensure that if I give a tip, it does go to the right person. There is a problem with certain establishments when it comes to credit cards. One of them, which is not too far from here, has been the subject of a lot of coverage. I do not know how valid that coverage is but it is probably a case of there being no smoke without fire.

Rather than dividing the House, perhaps the Minister could accept the amendment. It will probably be passed in any event but perhaps the Minister could accept it and bring it to the Lower House where it will be dealt with. I again thank Senator Gavan and his group for putting forward the amendment and highlighting the issue. My party and I are happy that there is a transparent system and that people who earn tips should benefit from them.

**Deputy Regina Doherty:** Since everybody else has welcomed the workers and their representatives, I will also welcome them, particularly Mr. Shevlin. I hope Ratoath's residents treated him well on Sunday. He is welcome back any time. I wish to focus on the people who have championed this cause over the past number of months. That goes for Senator Gavan as well because the intent behind this Bill is honest and displays integrity. It is important to say that because the aim of this Bill is the same as what I will propose at the end of this little ramble.

I also hope to set out the reasons I cannot support the Bill. I appreciate that Senator McDowell might want to tar my reputation by referring to level of standards to which he aspired when he was a Minister. However, I certainly do not feel that I have a monopoly on wisdom and I do not have a particular penchant for having my name at the end of a Bill as long as it does exactly what we intend it to do. The Senator tarring me in that way is a bit disrespectful. While I accept that we are all on the same page and all want the same thing, I will outline the reasons why I cannot support the Bill.

In the first instance, we should address suggested definition contained in Sinn Féin's amendment. The proposed insertion of the definition of "employee" contained in the Organisation of Working Time Act into the National Minimum Wage Act would be confusing and impractical because one Act would then contain two definitions of a single term that were developed for different purposes. That is almost irrelevant and we could fix it but it is the basis on which I am opposed to the amendment.

I am also opposed to the Bill in its entirety. Clearly, the Bill is honest in its intent. It seeks to provide additional protections for employees working in the hospitality sector and other sectors who depend on tips in order to reach a decent standard of living. Senator Gavan obviously thinks it winds me up that Fine Gael is opposing the Bill. It is not Fine Gael that is opposing the Bill, the Government - including a number of Independent colleagues - is opposing it. We are not opposing the Bill purely for the sake of doing so because we have been we were engaging with the Senator. He is aware that we asked the Low Pay Commission to conduct a review of current practices on tips and to report back to me and to the Houses with its findings and what it considers to be necessary in order to effect change. It is not fair to state that we have not acted for eight years. The Senator's Bill was only published two years ago. We engaged with him



on Second Stage and said that we would engage with the Low Pay Commission, which we did. The commission consulted extensively and returned with a very detailed report. I wish to place on record the fact that I have the utmost respect for the members of the Low Pay Commission, as, I hope, everybody else does.

The conclusions of the Low Pay Commission's report were unanimous and strong. We are all aware of the representative bodies that make up the commission.. The commission consulted widely and has representation across all stakeholders, including union representatives, worker bodies and industry. It advised me strongly against introducing a heavily regulated regime in this area or primary legislation. It warned me that legislation would be unworkable from an adjudication perspective and from the point of view of enforcement. That point was reiterated by the Workplace Relations Commission, which is the body that would have to enforce this legislation if or when it is passed. I have been informed that the legislation is unenforceable.

The Low Pay Commission also warned that there would be unintended negative consequences for people in the industry who, in the main, are lower paid workers. Those consequences include the reclassification of service charges, which could lead to a reduction in people's take-home pay. Regardless of whether one calls it the money they get through the PAYE system, the wages system or what they take home as cash in hand, if we pass this Bill, that will be no more and there will be a reduction in take-home pay. I do not believe any Senator or anyone in the Public Gallery expects or wants that to be the result of this Bill being passed. It would be unwise of all of us if we were to ignore recommendations of the Low Pay Commission.

It is because of that, the context of the recommendations and the work and intent behind what the Senator is trying to do that I have come up with the new proposals I outlined to his party leader in the Dáil yesterday. I have considered the Low Pay Commission's report and listened genuinely to the concerns of the union representatives and others who came to meet me. The Senator is right - I meet a wide variety of stakeholders because my job involves doing so. It is not my job to side with anybody, although that is a charge which, for some reason, the Senator seems to throw in my face all the time. Regardless of whether it is me or somebody else in the role - it could be the good Senator in the future - it is the Minister's job to provide independent legislation that is robust and that actually does what we all want it to do. It was on this basis that I met a wide range of people.

What we propose to do is amend the Payment of Wages Act 1991 in order to ensure that it will be illegal for tips to make up or satisfy any part of a person's contractual hourly, weekly or monthly wage. We will also provide in law to place a requirement on employers to clearly display for the benefit of workers and patrons of these establishments their policy on how tips, gratuities and service charges are distributed. This must be in clear public view and will be subject to an inspection regime of the Workplace Relations Commission. My Department will monitor the effects of the legislation as it is bedded down with a view to carefully considering whether there is any further legislation that will arise from the passage of those pieces of Bill if it is necessary. By limiting the scope of the legislation in this way, we will support low-paid workers and workers in precarious situations and avoid the pitfalls the Low Pay Commission suggests will arise if we pass the Bill before the House. The heads of the legislation to which I refer are being drafted by my Department officials and I will bring a memorandum to Cabinet shortly.

The Senator mentioned the simplicity of his Bill on a number of occasions. That is probably the real reason I cannot support it. It is anything but simple. There are a number of reasons

for this, including technical issues that will make it unworkable. Senator McDowell made the charge that I would not work with this Bill. It would be far easier to amend the Payment of Wages Act and produce exactly the same outcome as spending an awful lot of time trying to amend the Bill in order to get the desired effect. For argument's sake, the Bill proposes to amend the National Minimum Wage Act in a way that fails to distinguish between tips and service charges despite the fact that the National Minimum Wage Act does distinguish between them. That distinction is really important and if it is not clear in the Bill, the calculation of a person's minimum wage will come under scrutiny and employers will be required to do exactly the same with tips as they do with service charges, which is a perfectly legal arrangement. This would mean that all tips, be they cash or through the trunk system or however they are paid, would have to go through the PAYE system and, ultimately, everybody who works in the hospitality sector would end up earning less. I could not stand over that. Senator Gavan is right to state that all income is taxable. However, as Senator Norris observed, gifts are different. Unfortunately, in this country, gifts are not different. They are all treated as being taxable, which is why we have gift tax. As a result, every form of income is taxable as far as the Revenue Commissioners are concerned but the difference is that under current practice, people who receive tips are responsible for declaring them at the end of the year. If this Bill passes, that will immediately become the responsibility of the employer and people's entitlement to receive, in full, the tips they currently receive will be taken away just to try to fix a problem relating to a few rogue employers who need to be brought into line by means of new legislation. However, we would end up having the unintended consequence of everybody who relies on tips earning less. They would also then be subject to having those earnings, from a PAYE perspective, increased which would have an impact on their housing assistance payments, HAP, medical card applications and working family payments. Their income would be perceived as being more, although their take-home pay would be less. It would have a disastrous effect on the application of all social welfare benefits.

My Department and I have met several bodies from the hospitality industry. I was pleased with the response from these bodies, including the Irish Hotels Federation, along with the taxi, restaurant and hairdressing representative associations, and their co-operation in providing a code of practice with regard to displaying policy on tips in establishments. There are no interested parties, including those with first-hand testimonies, in allowing the more undesirable practices which exist in the industry. As for Senator Gavan's case of a young lady in Limerick, once the payment of wages legislation has been passed, no more will she have to take that sneering from her employer and that she has no rights to her tips. She absolutely does. More importantly, that employer should be wary of the State coming after him. The undignified way the employee in question has been treated is the reason we need to have an inspection regime and make a change to the Payment of Wages Act.

The proposals will tackle head on the main issues in the industry, namely, that employers are unfairly taking tips to which they have no right. We will make it unlawful for them to do that through sanctions. We are proposing to put an end to the lack of transparency for customers. As Senators pointed out, many customers assume their tips, either through card payments, cash or service charges, go directly to the employees. We need to ensure there is transparency in policies, as well as an inspection regime to ensure these policies are upheld.

Transparency will send a strong and positive message. It will have a proper impact on how patrons, employers and employees will behave. Most employers want to do the right thing. For those who do not, however, I hope a clear message will be sent from all of us that we will

12 June 2019

not tolerate employers taking employees' tips. We will pass legislation to ensure they do not but it will also be simple legislation to ensure there are not any unintended consequences. We must also ensure that those who rely on their tips get to bring home those tips to which they are entitled while ensuring they do not end up in the back of the taxman's coffers.

**Senator Paul Gavan:** I thank the Minister for her response.

Where to begin? I will begin with the Low Pay Commission report. The representatives on the commission from the Mandate trade union and ICTU are here today in the Gallery. They have written to the Minister and all Senators calling on the Government to support this Bill. Their position could not be clearer.

It was a bizarre report.

**Deputy Regina Doherty:** It is their report.

**Senator Paul Gavan:** It stated no research was done and in the next sentence stated it would not do any either. Fortunately, Deirdre Falvey did research for *The Irish Times*. Apparently, it is one of the most read articles published by the newspaper this year. It found the major restaurant chains put on between 5% to 15% service charges which they then pocket.

What those in the Gallery have already clued into is that the Minister's proposals - at this late stage as we have had the Bill for two years - will not deal with the central point, namely, hospitality workers deserve a right to their tips. They do not currently have one. Our Bill will do that.

The Minister's interpretation of the taxation rules is quite bizarre. I hope Senator McDowell will not mind me saying but I was encouraged that it was his view as well. The Minister is just incorrect about taxation. This proposal gives a legal right of redress. It does not change the fact that for tips given in cash, it is up to the employee to declare those. It does not change the fact that tips on credit cards already pay tax which will not change either.

The other point the Minister seems to have forgotten, which suggests to me that she is not as close to this issue as she needs to be, is that most of the workers in this sector do not earn enough money to pay any tax. Are we serious about helping these workers? This Bill seriously does. I welcome comments from Senators Horkan and McDowell and other Members because they are saying, with one voice, let the Bill pass. I would be happy to keep this cross-party consensus going and work with the Minister to address any concerns she has. We have looked at the Bill thoroughly and know there are no tax implications. Rather than Fine Gael taking a stand to deny hospitality workers a right to their tips, the Minister should work with us.

Amendment put:

The Seanad divided: Tá, 25; Níl, 14.	
Tá	Níl
Bacik, Ivana.	Burke, Colm.
Black, Frances.	Burke, Paddy.
Conway-Walsh, Rose.	Buttimer, Jerry.
Craughwell, Gerard P.	Byrne, Maria.
Daly, Mark.	Coghlan, Paul.

Daly, Paul.	Conway, Martin.
Davitt, Aidan.	Lawlor, Anthony.
Freeman, Joan.	McFadden, Gabrielle.
Gallagher, Robbie.	Mulherin, Michelle.
Gavan, Paul.	Noone, Catherine.
Higgins, Alice-Mary.	O'Donnell, Kieran.
Horkan, Gerry.	O'Mahony, John.
Humphreys, Kevin.	Reilly, James.
Kelleher, Colette.	Richmond, Neale.
Lawless, Billy.	
Mac Lochlainn, Pádraig.	
Marshall, Ian.	
McDowell, Michael.	
Norris, David.	
Ó Céidigh, Pádraig.	
Ó Donnghaile, Niall.	
Ó Ríordáin, Aodhán.	
O'Donnell, Marie-Louise.	
Ruane, Lynn.	
Warfield, Fintan.	

Tellers: Tá, Deputies Paul Gavan and Niall Ó Donnghaile; Níl, Deputies Gabrielle McFadden and John O'Mahony.

Amendment declared carried.

*2 o'clock*

**An Cathaoirleach:** Applause is not allowed in the Chamber. Members should know better, as should those in the Gallery. They must respect the House. There is a way out which I do not want to use. Senator Lawlor should not tempt me. We either have respect for the Chamber or we do not. Those who want to applaud can go to a football match.

**Senator David Norris:** Exactly.

**Senator Jerry Buttimer:** Senator Norris should be spoken to also.

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

### Message from Joint Committee

**An Cathaoirleach:** The Oireachtas Joint Committee on Justice and Equality at its meeting today has completed its consideration of Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018.

12 June 2019

*Sitting suspended at 2.10 p.m. and resumed at 3 p.m.*

## **National Surplus (Reserve Fund for Exceptional Contingencies) Bill 2018: Second Stage**

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

**Minister of State at the Department of Finance (Deputy Michael D’Arcy):** I am pleased to appear before the House to take Second Stage of the Bill. The Bill is an important plank of the medium and long-term policies of the Government, putting our national finances on a sound and sustainable footing and building our resilience to external shocks. The national surplus reserve fund for exceptional contingencies, or rainy day fund, will be an economic buffer available for drawdown in the event of exceptional circumstances resulting in a sharp economic downturn. It has the potential to act both as a counter-cyclical tool and a contingency fund to support Government fiscal policy in mitigating the effects of a downturn. Steps taken by the Government and its predecessor, including proactive mitigation measures and the preparation of better crisis management plans, give me confidence that we are now better prepared to meet future crises. Nevertheless, with a strongly performing economy, setting reserves aside now will further strengthen our position.

I will now outline the Bill’s provisions. Section 1 is a straightforward section comprising definitions. Section 2 sets out that the “National Surplus (Exceptional Contingency) Reserve Fund” will be established on commencement and that the fund’s purpose is to hold assets for reasons specified in section 9.

Section 3 places a cap of €8 billion on the value of assets in the fund but allows any return to be held in the fund. In the current interest rate environment, we can expect a near-zero return or a small carrying cost. It is unlikely, however, that the cap will be reached for a number of years and it is expected the interest rate environment will normalise before then. While the cap has been influenced by a number of factors related to the carrying cost, a Dáil Committee Stage amendment provides for the Dáil to amend the cap up or down following a proposal from the Minister for Finance. The proposed overall size and contribution levels to the fund reflect that the carrying costs are effectively a trade-off in not reducing the national debt as they reduce the funds available for increases in public services, reductions in taxation or both. Concurrently, the existing State cash balances serve to reduce the required size of the fund as they would be the first draw in the event of a requirement for additional funds.

Section 4 provides that the fund be managed and controlled by the Minister for Finance and includes standard provisions on the keeping of accounts, audit formalities and the laying of audited accounts before the Oireachtas. The Minister’s intention is to delegate his investment responsibilities in respect of the fund to the National Treasury Management Agency, NTMA, under section 28 of the National Treasury Management Agency (Amendment) Act 2000.

Sections 5 and 6 relate to the transfer of assets to the fund. Section 5(1) requires the Minister for Finance within 30 days of commencement to transfer assets not exceeding €2 billion to the fund from the Ireland Strategic Investment Fund, ISIF. The intention remains that the transfer will be €1.5 billion but a higher maximum has been specified to allow for some headroom in case some of the transferred assets transpire to have a slightly higher realised value.



The Irish Fiscal Advisory Council, IFAC, has previously suggested that higher payments should be provided to ensure sufficient counter-cyclical to offset faster-than-prudent growth rates. This would give the Oireachtas no clarity, however, as to the amount of ongoing payments and would further complicate the making of budgetary decisions. Instead, subsection (2) sets out that in each year from 2019 to 2023, the Minister for Finance is to transfer €500 million from the Central Fund to the rainy day fund, subject to subsections (5) to (7), inclusive. Under subsection (4), the Dáil can pass a resolution authorising additional transfer to the fund in a range of circumstances, such as if there are windfall tax receipts or a substantial budget surplus. It might also be used to augment the fund further in the years after 2023.

In the Dáil, some Opposition amendments were opposed by the Government on the grounds they sought to undermine the intention to have the fund provisioned as quickly as possible. As the fund is intended to protect the State in uncertain times, it is necessary to establish it now when the State has the resources to do so. Once established, use of the fund will be influenced by our wider preparedness for further crises but tail risks will always remain. As State funds are fungible, however, the rainy day fund cannot be viewed as being distinctly for one purpose. The most recent economic and financial crisis saw the State's financial reserves being used as contingency funds for funding public services and for counter-cyclical purposes for employment initiatives. As such, subsections (5) to (7), inclusive, create a form of in-year contingency reserve for those years 2019 to 2023, inclusive, where a payment of €500 million is due. Those payments will generally be made towards the end of the year and, therefore, if there is a serious event requiring substantial unanticipated expenditure, it will be possible to reduce the amount of the payment by the amount of the additional expenditure incurred.

The type of event is deliberately not described in greater detail than a natural or other disaster, as it is intended to refer to inherently exceptional events or those exceptionally repeated in a given year. Examples might be an exceptionally severe weather event causing enormous damage or a major health risk such as a significant outbreak of foot-and-mouth disease. The facility is not intended to substitute for prudent contingency budgeting. If used, any payment will be made directly from the Exchequer under the normal public financial procedures. In addition, the Minister for Finance will report to the Dáil on the reasons for making a reduced payment into the fund. If between 2019 and 2023 we move into a substantial deficit, it will not make sense to borrow for the fund. Therefore, section 6 is an escape clause to allow the Minister to propose a resolution authorising that the €500 million payment not be made. The Minister must be satisfied that making the payment would place an undue burden on the public finances and the resolution must be passed by the Dáil.

Section 7 is a technical amendment to the National Treasury Management Agency, NTMA, Acts allowing the Minister to direct the NTMA, as custodians of the Ireland Strategic Investment Fund, ISIF, to transfer assets out of it to another specified fund. It also obliges the NTMA to comply with that direction.

Section 8 sets out the high level investment strategy for the rainy day fund. It is designed to be conservative and maintain a highly liquid fund to ensure that, if a crisis gives rise to an immediate funding requirement, the money will be available at short notice. Subsection (3) gives specific authority to consider the net Exchequer position in deciding where and how to invest the fund, when it is not possible to conserve its full nominal value. When the Minister delegates the investment functions to the NTMA, investment guidelines will be drawn up based on this mandate.

Section 9 sets out criteria for drawdown of the fund which are of vital importance for effective operation. These criteria act as a triple lock. The first element is that the Minister is satisfied on reasonable grounds that drawdown is necessary to remedy or mitigate exceptional circumstances, to prevent potential serious damage to the financial system in the State or to support major structural reforms with long-term positive budgetary effects. The EU's fiscal rules do not currently make specific provision for the development of a rainy day fund. However, the fund could be used as a counter-cyclical buffer in response to exceptional circumstances rather than normal fluctuations within the economic cycle.

An economic crisis can be quite unpredictable in its effects, and there is no point having the money but being unable to access it because a specific threshold or condition is not met. For this reason, Government is reluctant to be strongly prescriptive within the Bill itself, but we are working on indicators which might best be used to assess whether exceptional circumstances exist. The second element is that the Minister brings a memo to obtain approval of a proposed resolution. Following Government approval, Dáil Éireann decides whether or not to approve the resolution.

Decisions on drawdown will take place in the full light of democratic scrutiny. There is a modification to this procedure set out in subsection (4), for cases of serious urgency. If the Minister believes, again based on reasonable grounds, that a payment into the Exchequer is urgently needed before the next sitting of the Dáil, with Government approval, the Minister may make the payment into the Exchequer. The Minister must then report to the Dáil on the payment and the reasons for it at the next sitting. I very much hope we never need to use this provision, but it is necessary to provide for a situation which might arise from an extreme crisis.

Section 10 requires the Minister to comply with a resolution of Dáil Éireann or the emergency Government decision and transfer the amount specified into the Exchequer. Drawdown is specifically only to the Exchequer. Any onward transfer will be subject to the full rigour of the public financial procedures and can only be made with Dáil Éireann's consent.

Section 11 is fairly standard in that any expenses, which are not expected to be significant, incurred by investing the fund will be chargeable to the fund. Section 12 sets out the Short Title and includes a standard commencement provision. Commencement is intended later this year, subject to Oireachtas approval, when the delegation order and investment guidelines are ready and when the NTMA confirms it is ready to make the transfer from the ISIF.

The constructive and meaningful engagement on this Bill thus far has contributed to a robust proposal. As such, this fund could help proactively mitigate a future serious downturn and deliver on a commitment in A Programme for a Partnership Government that it would also deliver on this Government's ongoing commitment to creating substantial financial stability and developing economic resilience. I commend the Bill to the House.

**Senator Gerry Horkan:** I thank the Minister of State for a comprehensive opening statement and I do not intend to repeat all the various measures and provisions included in the Bill but I want to say a few words about it. As a party, Fianna Fáil will be supporting this Bill which would effectively establish the rainy day fund. It was a fund that we proposed ourselves as a party back in 2015 and in early 2016 it was negotiated into the confidence and supply agreement that this Government has with Fianna Fáil. It was then included in A Programme for a Partnership Government as a result and it was included and committed to by the then Minister for Finance, Deputy Noonan, in the summer economic statement of June 2016. The Taoiseach,

in his leadership campaign, said that he intended to raid the fund in June 2017 but in fact it had not been established at that stage.

In late 2018 it went through the Dáil and it is now coming into the Seanad to be established. I welcome that and it is a prudent and sensible thing to do at a time when our Exchequer returns are improving and positive to allocate some funds and build a bit of resilience because past experience has shown us that we will not always be on the up and we will not always be doing well. Shocks happen, though we wish they did not and it would be great if they did not. Sometimes they do not happen for long time. However, what goes up generally eventually comes down.

At the Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach not that long ago, one of the chief executives of one of the banks said that we are closer to the next recession than we are to the last one. In recent days the Irish Fiscal Advisory Council has pointed out that there are challenges and that as a State we have been quite lucky with the interest rate on the national debt and that we have been lucky to receive such a windfall in corporation tax payments. Bring them on, and the more we have the better, but the Irish Fiscal Advisory Council pointed out that of the €10 billion or so, between €3 billion and €6 billion of it could be at risk. I know Members may disagree with that but this is the Government's own watchdog saying it. It is not some critic or Opposition spokesperson just throwing it out there.

It is a prudent and sensible measure to do what we are doing. We are a small, open economy and we are particularly vulnerable to global changes. It is fair to say that there may be movements in the Organisation for Economic Co-operation and Development, OECD, and other places to deal with digital taxation, to deal with how the world taxes its resources and to deal with how those taxes are allocated, whether they are based on where the value was created, which would often be here, or whether it is based on where it is consumed, which would often not be here and that brings challenges.

Ironically, maybe the base erosion and profit shifting, BEPS, process and other processes have meant that we have been beneficiaries of intellectual property being moved into Ireland and taxed. As a result of that, we have been beneficiaries but equally, if it can move in that easily maybe it can go as easily. I do not wish it to and I would hope that we manage to keep it but it is an important feature to have. I know there are some people who will criticise that approach and say we should spend all the money now but it is a time of relative good fortune in our economic position, with interest rates historically low, with the national debt being much cheaper than it normally is to service, and with our corporation tax receipts being much better than they have been in a long time, so it is important.

However, we have challenges as the Minister of State knows and most of the Members of this House appreciate the challenge of digital taxation and receipts and so on as well as the challenge of Brexit and potentially a no-deal Brexit, which is not something any of us want to see, in this country at least. It is a possibility, however. Senator Feighan of the Minister of State's party made reference on the Order of Business yesterday to having been in Westminster on Monday. He referred to the level of uncertainty and said that he was more concerned about a no-deal Brexit now than he had ever been. It is not something any of us want to see but it is something we must prepare for.

I welcome the mechanisms that are there to lock in that money and that it is not easily squandered or raided. There are mechanisms in place, which the Minister of State outlined, to make

sure the money is only used for what it is supposed to be used for. However, it does make sense that we allocate this money in the next few years and bring it up to a figure of €8 billion. The Minister of State referenced a Committee Stage amendment from Fianna Fáil that said that cap can be moved and that if we were doing exceptionally well it could be decided that a little bit more would go into the fund, or equally, if there were times when it was really needed the money could be reduced. It is a good idea to put in €1 billion over the next few years and then €500 million or whatever it is in each of the following years. It is a substantial amount of money - €8 billion. We sometimes forget the size of it. We have a national debt of almost €200 billion, but €8 billion is a very significant amount of money. It could go a long way towards providing a bit of resilience or wriggle room if there was a time, as there was in the living memory of all of us, of shock or challenge. Whether it be global recessions, banking crises or whatever, we hope we have built-in mechanisms that will never allow those situations to develop in the same way again, but shocks will happen. We are dependent on a small number of corporations for a significant proportion of the corporation tax and if any one of those companies was to fail or not do well, or even relocate out of this jurisdiction, we could quickly have a significant hole, which is not something I hope for.

I wish the Bill swift passage through this House and into enactment. I thank the Minister of State for being here today. It is an important piece of legislation. It is an example of new politics working well.

**Senator Victor Boyhan:** I welcome the Minister of State. I will be brief.

First, I thank the Minister of State for his speech on the National Surplus (Reserve Fund for Exceptional Contingencies) Bill 2018. I thank him for his clarity on what is the central tenet of this legislation. As the previous speaker, Senator Horkan, stated, it is timely. It is prudent. It is the right thing to do. It is a wise decision. When we boil it all down to the micro level, would we not all like to be in a position to do that in terms of our personal finances on a much smaller scale? It is relevant and it is right, and it is the prudent thing to do.

We are conscious of the fiscal advisory council's cautions in the past few weeks, particularly in the past week. I will not rehearse that here, but it is a gentle and constant reminder that we all must be prudent and keeping an eye on the ball regarding the nation's finance.

I support the Bill. It is important. It includes a significant capping of €8 billion. I wish the Minister of State every success and that we have a clear passage and get this vital legislation through the Houses.

**Senator Kieran O'Donnell:** I welcome the Minister of State, Deputy D'Arcy, to the House. I very much welcome this Bill. I was just recalling when this came up for discussion. I would have looked for such a rainy day fund in 2008 or 2009. Therefore, it is not a new concept. However, it is a welcome concept. The fact that it is now happening and we are able to afford to pay money into a rainy-day fund shows that the state of the economy has improved considerably in recent years and we are now back to the finances being in a sound position and able to provide for the so-called "rainy day".

There are a few observations I wanted to make. The Minister of State speaks about the management and control, keeping the accounts and whatever. A question I want to ask concerns the level of funds that will be kept in liquid form. For example, there was the National Pensions Reserve Fund. Will the fund's criteria be along those lines that we need to hold a certain level

of liquidity? Once the NTMA takes over management of the fund, what level of liquidity will be required to be maintained?

If the Government reaches a situation where there is a crisis and the funding must be availed of, let us say, the Government has €8 billion in the fund and we reach a situation where there is a major financial disaster and the money has to be used, are there any measures within the Bill or being looked at to expedite replenishment of the fund when we reach a point at which we are back in a sound financial position? What will the criteria be? The fund will be built between 2019 and 2023.

I very much support the measure that applies if we have windfall gains. These are the two aspects I want to ask about. I suppose my first question is, will the rainy-day fund be included in the calculation of the national debt? Will it have a netting effect and reduce the national debt? If we have €8 billion, will it count against the gross national debt? Second, if we have a windfall tax, how would the Minister decide on whether that should be used to reduce the national debt level or paid into the rainy-day fund? What criteria will be used to determine that decision?

I note in the Bill that if one were to draw down money from the fund, it would have to come from a proposal from the Minister. If there were a situation where someone other than the Minister decided to put a motion down in the Dáil for the fund to be accessed and that particular measure found support in the House, what would be its legal status *vis-à-vis* the Minister in his capacity in terms of controlling the fund? I suppose those are the details.

We need to enact this legislation as quickly as possible. It is something that should be used, as it is described, for a rainy day. It is being kept in broad strokes but irrespective of who is in government, will the Minister of State be defining the type of criteria that will be used to determine the level of contingency that might arise, for instance, a natural disaster or putting counter-cyclical measures in place, or does he believe it is inappropriate to include such a measure and he must leave it at the discretion of the Minister for Finance and Government of the day to make that decision in terms of the fund?

I welcome the Bill. I thank the Minister of State, Deputy D'Arcy, for his work on this Bill and many other measures, and for coming before the House in a regular fashion and dealing with the aspects. I wish it fair passage. However, when it comes to it, and the fund is up and running, it is important that there would be some element of Government guidelines on how one defines contingency, how one defines, for example, a disaster, when one can make counter-cyclical payments out of the fund, and what its status is *vis-à-vis* a motion put down by the Dáil. It is extremely important that it is structured in a way that, if need be, it can be accessed quickly.

This fund is not necessarily about making huge investment returns. It is about having a fund in place that, if we reach a situation where there is a crisis point, we can access it to spend in the best interests of Ireland.

**Senator Rose Conway-Walsh:** Sinn Féin opposes this Bill. We do so not because we are against the idea of saving up responsibly to invest in the future.

In many ways, the Title of this Bill is misleading. Most people understand a rainy-day fund to be a mechanism to allow for investment whenever the economy begins to slow down, but this Bill calls for vast sums to be put aside now, and yet has limited criteria as to when and why it can be drawn down. Ask most people what the major issues we face are and they will say they



are housing, healthcare provision, climate change and the cost of living. Nothing in the legislation before us allows funds to be drawn down to address any of those problems.

The National Surplus (Reserve Fund for Exceptional Contingencies) Bill 2018 will see up to €2.5 billion of citizens' money transferred to the Government's reserve fund. The only purpose of this fund, according to the legislation itself and its operation with the fiscal rules, is for money to be drawn down in order to spend in the event of a natural disaster or to provide liquidity to the banking sector. As the Parliamentary Budget Office has noted, the best policy for responding to natural disasters such as flooding is to mitigate risk by investing in preventive measures such as flood defence and relief schemes, thereby reducing the likelihood and scale of damage caused by natural disasters such as flooding. Despite this, the Government has cut capital funding in flood risk management for 2019 by €3 million.

The other explicit purpose of the reserve fund is to provide money for the banks. The evidence and options before us, and the provisions of the National Surplus (Reserve Fund for Exceptional Contingencies) Bill 2018, lead only to the conclusion that the reserve fund is designed to recapitalise the banks if they repeat the reckless behaviour of the past. The tools should be in place and strengthened Europe-wide to ensure that the sovereign is separate from the banking industry and that it is the shareholders, not the citizen taxpayers, who foot the bill for banking crises, and pay to sustain their solvency.

Sinn Féin rejects any fund that could see up to €8 billion of taxpayers' money wasted to provide assurance to the banking industry should it want another bailout. The National Surplus (Reserve Fund for Exceptional Contingencies) Bill 2018 should be radically changed or swiftly rejected. In its current form, the Bill designs a reserve fund that cannot deal with the challenges that will face our society in a future downturn. Instead of investing resources in infrastructure, housing, green technologies and jobs for the future, it diverts resources into a fund that will only be used to recapitalise the banks. Instead of wasting resources in this way, Sinn Féin has brought forward a number of proposals that will future proof our economy and invest in the future, while mitigating the risks posed by Brexit and climate change.

Sinn Féin would establish a €2 billion Brexit stabilisation fund to support businesses and communities most exposed to Brexit as a result of disruptions to North-South and east-west trade. The fund would be resourced with €500 million of Government revenue annually in 2019 and 2020, in addition to utilising €1 billion from the Ireland Strategic Investment Fund, ISIF. This fund would then be deployed to boost capital investment in affected regions, to provide localised assistance for exporters in the agrifood sector, and to form investment partnerships with local councils to invest in the regeneration of towns and communities. Sinn Féin would increase the levels of investment provided for in the national development plan allocation for housing in the period 2019 to 2023, significantly increasing supply. Sinn Féin has also advocated an increase of €1 billion in capital investment for 2019 in our alternative budget. We need to increase capital investment across Departments for transport, housing, education, health, communications, environment and climate action, and dramatically increase the resources allocated under the national development plan in the period 2019 to 2023.

To respond to uncertainty in the times ahead, investment is required in our infrastructure, in the skills and education of our people, in housing and in developing a secure and stable economic base upon which our country can rely in the future. I put it to the Minister of State that we believe this would be a much better way to put funding away. We are very concerned. Perhaps the Minister of State could say something that would reassure me that we are not putting

away this money to be used, again, to bail out the banks. The Minister of State will be aware that many problems have still not been fixed within the banking system; not only in Ireland but also Europe-wide and globally. Are we going to be here to pick up the pieces again? The Minister of State has said that capital ratios have improved within the banking sector but I believe there are serious aspects still to be considered. I do not want to see citizens having to pay out again in addition to the €67 billion that we are already paying out, the effects of which people are still suffering. I would rather see money invested in people, and especially in children with disabilities who cannot get the vital services and supports they need. We spoke earlier of physiotherapy and all of those services. I would rather see funding directed to investment in our people and in people who are currently being marginalised and deprived of funding in all of these areas, rather than the funding being left to one side just in case the banks collapse again.

**Senator Anthony Lawlor:** I welcome the Minister of State to the House. The proposed legislation carries on from something that was here in the past that is still inactive. The former Minister for Finance, Charlie McCreevy, set up the National Pensions Reserve Fund with the whole purpose of setting money aside from surpluses or unforeseen funding that came into the Exchequer if such eventualities as this might occur. The sad part of the National Pensions Reserve Fund is that when the State hit a recession we used the money to bail out the banks and to buy stakes in the banks. Perhaps it should have been used for purposes such as this fund is proposing, such as infrastructure during times of economic hardship.

I have some questions for the Minister of State on this fund. Provision is made for all of the reports from the Minister for Finance to be put before Dáil Éireann. Can the Seanad be included in that? Perhaps a report could be made to the Seanad on where and how the money is being spent. Is it possible to include that within the legislation?

I am a bit worried about the fact that when the Dáil is not sitting, the Minister would have the right to make a decision on the fund. It is not that difficult to recall a Dáil in emergency situations. I believe it would be appropriate to consider the possibility of recalling the Dáil if it is during a non-sitting period, rather than the Minister of the day going ahead and making a decision. Sometimes I get nervous about situations such as that.

Sinn Féin has already referred to the fund being used to bail out the banks. If this provision is to be part of the legislation we should be looking at putting a levy on the banks to put money into the fund. If the fund is to be used for financial institutions and if it is to be part and parcel of the legislation, the banks should be paying into the fund also.

The Minister of State has described the fund as a “highly liquid fund”. Will the Minister of State explain this to the ordinary Joe Soap like myself who might not understand what is meant by that? Is it referring to cash or shares, or is it something else? Perhaps the Minister of State will describe that.

Reference has been made to not making additional money from the fund through investments and so on. What types of proposals has the NTMA suggested to the Minister of State about where this allocation of money might be placed? The Central Bank and the NTMA hold a lot of cash reserves currently. Perhaps the fund might be used in that way.

With regard to the EU and the implications the fund might have for Ireland’s overall national debt, have there been positive indications from that perspective around Ireland being able to borrow for day-to-day spending? The EU has set aside certain criteria and has the fund been

taken into account for this?

Overall, as with any business, it is important to set aside money for potential calamitous events, or if a small business is struggling with cashflow problems. I welcome a measure such as this. With respect to the €8 billion figure, it might not be sufficient. We should not so much have a cap on the value of the fund and when it reaches €8 billion but should allow it to increase further.

Overall, I welcome the Bill. It is a positive move. I am a little nervous about the way in which we can use it. I would have preferred if we had used the National Pensions Reserve Fund for infrastructural works. We would have got more benefit from that fund than from putting it into the banks.

**Minister of State at the Department of Finance (Deputy Michael D’Arcy):** I thank Senators Horkan, Boyhan, Kieran O’Donnell, Conway-Walsh and Lawlor for raising these issues. I will deal with the questions raised. Senator O’Donnell asked about the liquidity of the fund. I am proposing a highly liquid fund which will be held as a near cash fund so that it can be accessed very quickly if required. Senator Lawlor asked the same question. This would distinguish it from longer-term investment funds such as the Ireland Strategic Investment Fund or sovereign wealth funds. It will ensure that when we need the rainy day fund it can be drawn on without having to crystallise losses, potentially in adverse market conditions. I intend the funds’ assets to be kept as cash deposits or fixed income financial instruments or products. There are carry costs associated with maintaining a near cash fund and in the current interest environment, it suggests a near zero return. With interest rates expected to normalise over the coming years, I expect in the medium term the fund should have low but positive rates of return.

Regarding whether the fund is part of the national debt, it would be part of the national debt because it will be cash on hand. Our national debt is what we owe, what we have borrowed, what the sovereign owes, but there are cash balances that will form part of what will be our net debt rather than our gross debt.

Senator Kieran O’Donnell asked if the fund be replenished. That would be decided by another Dáil. We are putting in the initial tranche of €2 billion and between 2019 and 2023 the legislation states we will put in €500 million per year each year. Subsequent to that, if the Oireachtas chooses to add to that or continue that policy, the law can be changed. However, this legislation provides that we will put €500 million per year into the fund. If there is change of Government next year, it can change that provision if it sees fit. That is a matter for different parties with their respective views and their different ideologies.

In terms of a windfall tax, we are passing the legislation to ensure that €500 million per year will be put into the fund plus €2 billion at the start of the process. If there is a windfall tax, that is a matter for the Oireachtas to decide on in the future. If we get an enormous amount of money from some entity somewhere that we have not predicted, it can be put into the fund but we would question putting in more than €8 billion into a near cash fund. We do not believe that would be prudent. If we put it into a near cash fund, it may cost us a small amount of money or we may earn a very small amount of interest on it. Why would we do that while at the same time potentially continue to borrow in the future? Last year we had a surplus and we are not borrowing for the likes of this fund. We hope we will have a surplus this year but who knows what will happen in two or four years’ time, depending on the economic markets and the economic cycle that we potentially may or may not be in? We believe €8 billion is enough to have

in a near cash fund. We do not believe it is prudent to go beyond that amount.

Only the Minister for Finance can present to the Dáil in respect of the fund. Senator Kieran O'Donnell asked in the current context, where we have a minority Government, whether a finance spokesperson could present a measure in Dáil to access the fund and be successful in a vote in the Dáil for the money in the fund to be spent on something else. The answer to that question is "No". Only the Minister for Finance can present in that respect.

Senator Kieran O'Donnell also asked whether it appropriate to prescribe the type of event for which the fund could be used. We do not believe it is appropriate. We want to leave it broad and general so that the law does not prohibit the potential allocation of funding via the Minister for Finance to the Dáil. A flexible open arrangement is in place in terms of the legislation rather than it being more prescriptive. If we were more prescriptive an event could occur that nobody would had thought about and because the use of the fund for that purpose has not been prescribed, we would not be able to allocate funding towards it.

I thank Senator Conway-Walsh for her question. Her view is that we should be spending the money in this fund now.

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

**Deputy Michael D'Arcy:** Perhaps I mistook what she said. I understood she said we are not spending enough on health or on housing but we are. We will spend €18 billion on health in 2019. We have never spent more on health. In terms of housing, we are spending €2.4 billion. Again, we have never spent more on housing. The issue is whether we keep spending more money on those sectors but perhaps not get value for money. I believe we are spending enough. The issue is that we have to set some money aside when the tax-----

**Senator Rose Conway-Walsh:** On a point of information, I spoke about a Brexit stabilisation fund. I agree with the principle of having a fund.

**Acting Chairman (Senator Catherine Noone):** We cannot have a conversation at this point. The Minister of State is responding.

**Deputy Michael D'Arcy:** Senator Conway-Walsh has pulled me up previously stating that I mistook what she said to me and I do not want to do that now. What I am trying to do is to give an explanation. This fund could potentially be a Brexit stability fund and perhaps the Senator will vote in favour of the Bill.

This fund could potentially be used for a banking crisis. It is open enough and we are not prescribing exactly what its usage will be but it is not intended for a banking bailout. I want to be very clear on that. Thankfully, we are post the banking crisis but when it happened we had no structures in place as to how we would recapitalise the banks except to provide funds directly from the sovereign. The work done in the past decade has been to break the link between the sovereign and the banks. I want to put on the record, and it is important to be clear on this, that a core objective of the EU banking union is to separate the sovereign from the banks and prevent the use of state funds to bail out banks. The existing structures have been in place for a number of years. The EU banking union provides for a single potential supervisor through the single supervisory mechanism, SSM, a single rule book and a single resolution mechanism. This aims to improve co-ordination and mitigate against negative spillover in the future. The banks in question, the major banks on the Continent that are part of the eurozone, are regulated

12 June 2019

not by the Central Bank of Ireland or individual central banks but by the European Central Bank. That is why we are breaking the link between the individual banks in individual jurisdictions and the reason they are regulated by the European Central Bank.

The bank recovery and resolution directive is designed to impose the cost of bank failures on the banks, their shareholders and the holders of their eligible liabilities - that is for a bail-in. That directive, which has been passed, is part of European and Irish law to ensure that we do not go back to the sovereign and that the era of doing so has ended.

Based on these and on the wider banking union changes and the more intrusive and assertive regulatory regime, I would not expect the national surplus reserve fund to be required to bail out banks. The regulatory landscape has been overhauled completely at national level since the crisis with the introduction of the Central Bank Reform Act 2010, the Central Bank (Supervision and Enforcement) Act 2013. In addition, the Central bank of Ireland is acknowledged now as being one of the most robust and challenging institutions in Europe. The so-called light touch regulation is a thing of the past. The Central Bank of Ireland operates as an agent of the European Central Bank. These are the structures that are now European wide and European based to ensure that the era of bailing out a bank has ended and that the bailing-in happens through shareholders and the bondholders who invest in banks.

Senator Lawlor asked whether it possible to include the Seanad in terms of reports relating to the fund. It is not something that was put to us before and I will be looking at it.

In regard to the question of what happens if the Dáil is not sitting, we had this debate in the other Chamber. Some absolutely unforeseen catastrophe could befall the State and it may not be possible to recall the Dáil. For example, only 15 or 16 months ago there was a massive snowfall. If an event happens and it is not possible to reconvene the Dáil, the flexibility is there for the Minister to make a determination that there can be an allocation of funds, whatever that extreme event is. Subsequently, however, the Minister must present at the next Dáil sitting to explain the circumstances. We are putting in place this flexibility but we hope and anticipate it will never be used.

I touched upon the issue of the liquidity of the fund. The National Treasury Management Agency will be the custodian of the fund. It does a good job, better than most. I believe I have dealt with all of the issues.

Question put:

The Seanad divided: Tá, 23; Níl, 6.	
Tá	Níl
Boyhan, Victor.	Bacik, Ivana.
Burke, Colm.	Conway-Walsh, Rose.
Burke, Paddy.	Gavan, Paul.
Buttimer, Jerry.	Higgins, Alice-Mary.
Byrne, Maria.	Ó Donnghaile, Niall.
Clifford-Lee, Lorraine.	Warfield, Fintan.
Coffey, Paudie.	
Conway, Martin.	
Daly, Paul.	



Horkan, Gerry.	
Kelleher, Colette.	
Lawlor, Anthony.	
Leyden, Terry.	
Marshall, Ian.	
McFadden, Gabrielle.	
Mulherin, Michelle.	
Noone, Catherine.	
Norris, David.	
O'Donnell, Kieran.	
O'Mahony, John.	
O'Reilly, Joe.	
Reilly, James.	
Richmond, Neale.	

Tellers: Tá, Deputies Gabrielle McFadden and John O'Mahony; Níl, Deputies Rose Conway-Walsh and Niall Ó Donnghaile..

Question declared carried.

*4 o'clock*

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

**Senator Jerry Buttimer:** Next Tuesday.

Committee Stage ordered for Tuesday, 18 June 2019.

## Adoption (Information and Tracing) Bill 2016: Committee Stage

### SECTION 1

Question proposed: "That section 1 stand part of the Bill."

**Senator Ivana Bacik:** I welcome the Minister for Children and Youth Affairs, Deputy Zappone, and welcome the opportunity to again debate the Bill, which has been a long time coming. As some of us pointed out on the Order of Business this morning, Second Stage of the Bill was taken on 22 March 2017, which is over two years ago. We had awaited the amendments and I know we will now have a full debate on those amendments.

Section 1 gives the Short Title of the Bill as the Adoption (Information and Tracing) Bill 2016. There was huge expectation and hope that the Bill, as amended by the Government on Committee Stage and Report Stage, would represent a really historic step forward, in particular in terms of information rights for adopted persons, and a break with the past and the old practice whereby this was an issue shrouded in secrecy. Unfortunately, the publication of the Minister's amendments so late on Monday night has not given us sufficient time to have a very measured

debate on them. I welcome the fact we will adjourn at 6 p.m. I also welcome the fact the Minister has called a further briefing session with Senators tomorrow, which I will attend.

Things have moved on in the more than two years since Second Stage was debated. There is now a very strong and clear case for unfettered access to information, as suggested by the Title of the Bill contained in section 1. We have moved beyond the position where adopted persons or other stakeholders might have accepted conditions on access to information, and I stress the word “information”. The Bill is very clear. Section 1(1) mentions information and tracing. These are two separate matters. If any colleague was listening to my colleague, Deputy Joan Burton, on the radio this morning, she made a passionate case for separating the right to information from the right to contact or trace one’s birth parents. Clearly, persons who are adopted should have a right to information. At this point, we need to look more clearly and lucidly at why we simply cannot provide for an unfettered right of access, in particular to birth certificates, which are publicly available documents, without conditions.

On Second Stage, we debated at length the need to ensure some protection of rights to privacy for birth parents. I absolutely accept this and I know the Minister has had legal advice on it. Any reading of the IO’T case and other case law will show these rights must be balanced in such a way that privacy does not trump the right to information and the right to know one’s identity. I have read the flood of emails we have had from adopted persons, the Adoption Rights Alliance, which expressed serious concern about these amendments, and other stakeholders, such as the Irish Association of Social Workers and the Council of Irish Adoption Agencies, which have also expressed concern about what they see as a flawed Bill, even with the amendments.

Having read all of these, it seems a preferable means of ensuring protection for privacy rights while giving precedence to the right to information would be to do something like we did with the redress scheme. I have been privileged to represent survivors of institutional abuse before the redress board many times. When the State established the residential institution redress scheme there was a need to ensure people who might not have ever disclosed to their close family and friends that they had been a resident in an institution or had been abused in that institution would be able to come forward. Sensibly, the State then placed a prominent series of advertisements which reached out to NGOs and groups representing survivors. It was a comprehensive reaching out process over a period of time to ensure all those who might have been resident in institutions would be made aware of the existence of the scheme and would be able to come forward.

What I suggest, in order to balance rights to privacy and ensure the Bill is truly a right to information Bill, is that the State undertake to advertise that a right of access to birth information will be introduced at a point in future for all those adopted prior to the commencement of the legislation. In the time prior to the introduction of an unfettered right of access I suggest an extensive advertising campaign be undertaken by the State to inform all birth parents who might be concerned about the disclosure of their identity through the provision of birth certificate information that they could come forward and participate in a process to articulate and raise their privacy concerns. This would be a way in which the State could, therefore, clearly address the privacy concerns of what Deputy Burton described as a small but, nonetheless, important group of birth parents who may never have disclosed previously. It would also mean the State would clearly articulate that the rights to information and to know one’s identity would take priority and would be pre-eminent.

Very helpfully, Susan Logan of the Adoption Rights Alliance has supplied us with a table

of legislation elsewhere. If we look at Northern Ireland, Scotland, England and so on, we see the unfettered right of access to birth certificate information once an adopted person reaches the age of majority is now the norm in many countries. We have moved on. It is two years since Second Stage was debated. We need to address the Title of the Bill and state it should be a Bill about information rights. Tracing, access and contact comprise a separate issue and the Adoption Rights Alliance has made this point. In the Bill itself, section 1 details information and tracing as two different things. If one looks at the different Parts of the Bill, Part 4 is about tracing and Part 5, the most contentious Part, is about the provision of information. They are two different issues. Not all of those who have been targeted and who have been provided with information will go on to contact their birth parents. These are separate issues.

The Title of the Bill is crucial. This is also about information for birth parents who may be very anxious to be contacted by the children they gave up for adoption. As we know, shamefully in the history of the State many young women gave up children for adoption without full access to information or protection of the rights we now recognise as absolutely essential in those cases. In many cases, they were not assured of confidentiality and hoped beyond hope their children would contact them later. There is a very important group of persons waiting to be traced. I have met birth parents who are desperately sad the children do not want to contact them. There are very complex issues as to what persons will or will not do with information or what they want in terms of contact. We should not conflate information and contact, nor should we let privacy trump a right to information and identity.

**Senator David Norris:** I welcome the Minister to the House with some reservation because I must say it was most unwise to let us have these complex amendments late on Monday night and then, after a two-year gap, try to stuff this through in five hours. I made the point this morning on the Order of Business that it is the same two or three people speaking on every Bill here and it is abusing us to try to stick us here for five hours in a rush to get this over. It was most unwise. I am delighted it was defeated on the Order of Business.

**Minister for Children and Youth Affairs (Deputy Katherine Zappone):** By one vote.

**Senator David Norris:** By one vote but a victory is a victory as the Minister knows.

**Deputy Katherine Zappone:** The Senator is right.

**Acting Chairman (Senator Gerry Horkan):** A win is a win.

**Senator David Norris:** Yes, I was trying to think of that phrase but I could not quite find it.

I agree wholeheartedly with my distinguished colleague, Senator Bacik, that there is a distinct difference between information on the one hand and contact on the other. They are two separate issues. A little later, I will put something on the record from one of the adoptees who makes this point very clearly. Yesterday, a woman on the wireless spoke about how she had been trying for a number of years, perhaps four or five years, to get information but was refused. Subsequently, she discovered her mother had been trying to contact her for seven years. The agency was acting as a block between these two people, both of whom wanted to meet. That is profoundly disgraceful.

The inclusion of Tusla is not a good idea. It is a pretty discredited operation by now, I am sorry to have to say. I do not believe it has the competence, capacity or skills to take on this massive undertaking. When we have these enormous overruns and the consequent impact on

the funding of other services I do not believe for one second that the Minister will get sufficient money to arm Tusla for this situation. I have considerable reservations about involving Tusla.

I mentioned I had contact from a woman who is an adoptee. She told me none of the research supports the hypothesis that adoptees will turn up on birth families' doorsteps and pose a risk. She states that from her experience she has yet to meet an adoptee who would run the risk of jeopardising any potential relationship with his or her birth family by being anything less than respectful in his or her approach or dealings. I believe this is the case. If people want to be in touch with their birth parents, the last thing they will do is alienate them by popping up at the doorstep. Nobody likes unexpected and unsolicited calls, whether it is people canvassing at election time or whatever else. I echo what Senator Bacik said about other European governments. I was contacted by Dr. Maeve O'Rourke, a lecturer in human rights law at the Irish Centre for Human Rights at NUI, Galway. She argues that the Government's proposals are completely out of step with Northern Ireland, Scotland, England and Wales, not to mention numerous other European jurisdictions where adopted people receive their full information in adulthood. Our three nearest neighbours, namely, England, Scotland and Wales, have a completely different regime and are much freer in this regard. Dr. O'Rourke accepts that privacy is not an absolute right but that it should be respected. I wonder to what extent it is respected by involving Tusla in this? Here we have an agency that will not be fuelled by the same motivation as the adoptee getting involved. The more people who are concerned and involved, the greater the risk.

This Bill has been on the back boiler for two years but I understand that the Minister has yet to meet the Adoption Rights Alliance. I note that the Minister is shaking her head so perhaps my information is wrong. If it is true-----

**Deputy Katherine Zappone:** I have not met the alliance about the amendments, which have only been published. I have not met that group to discuss the amendments but I have met it over those two years.

**Senator David Norris:** I am glad to hear that. Will the Minister be meeting the alliance to discuss these amendments?

**Deputy Katherine Zappone:** I am happy to do that.

**Senator David Norris:** I thank the Minister. That is good news.

The alliance has said that anything less than unfettered access to birth certificates which are already public records and unredacted early life and adoption records is deeply discriminatory to adopted people and those born in mother and baby homes. Particular reference is made to access to medical information which is extremely important. Adoptees should have an automatic right to such information.

I have in front of me only part of the enormous volume of emails that I have received from adoptees urging me to vote against this legislation. They have called on me to vote "No". As adoptees, they are begging me to vote against this Bill. These voices must be listened to.

**Senator Ivana Bacik:** My apologies but I should have repeated something that I said on the Order of Business earlier today, namely, that given the lateness of the publication of the Minister's amendments on Monday night, Labour Party Senators had not tabled any amendments. We wanted to wait and see what the Government amendments would contain and did

not want to submit duplicate amendments. That said, I reserve the right to table amendments on Report Stage. Indeed, one of the amendments that we may table, once we have had time to review everything, is to section 1(2) which currently provides for the coming into operation of the legislation. That is the provision that could usefully be used to provide for a time period within which the State could conduct an extensive advertising campaign to alert all interested parties to the coming into effect of an unfettered right of access to birth certificates and other information about a person's adoption. The provision as it stands would give space for that to be done by the Government. As I said, that is just one mechanism that might be used as an alternative approach to the one proposed in the Government's amendments to ensure that there is some recognition of privacy rights but not at the expense of individuals' right of access to their own information.

I would add, in terms of what Senator Norris has said, that it is unfortunate that we have rushed straight from the publication of the amendments on Monday night into the commencement of Committee Stage now. It appears that groups like the Adoption Rights Alliance, the Association of Social Workers and others have not had an opportunity to consult with the Minister or with Senators, other than in the very short period of time since we had sight of the amendments and the start of this debate 20 minutes ago. That is unfortunate timing and it is just as well that we are not going to have a five-hour debate this evening in that sort of vacuum. As a result, we are going to see more amendments tabled on Report Stage than might otherwise have been necessary. Ms Susan Lohan of the Adoption Rights Alliance, in an email I received earlier today, referred to the labyrinthine nature of the new processes provided for in the Government's amendments. There is no doubt but that these are complex technical amendments and the new processes that would be provided for are as cumbersome and unwieldy as those that pertained previously. This is something that I said on Second Stage over two years ago, that the process provided for in Part 5 of the Bill seems to be unnecessarily cumbersome. I do not think that has changed with the new provisions in the amendments which we will be debating individually. I just wanted to make that general point about timing and to reserve the right to submit amendments on behalf of Labour Party Senators on Report Stage.

**Acting Chairman (Senator Gerry Horkan):** I wish to point out to Senator Bacik that the facility exists for Senators to submit further amendments on Committee Stage to those elements that are not dealt with today.

**Senator Ivana Bacik:** I am quite well aware of that and thank the Acting Chairman for the reminder.

**Acting Chairman (Senator Gerry Horkan):** I would make that point to all Members of the House; they do not have to wait for Report Stage.

**Senator Ivana Bacik:** The Acting Chairman is quite right. I thank him for that and reserve the right to submit additional lists of amendments on Committee Stage. It is in everyone's interest that this Committee Stage debate will adjourn at 6 p.m. because that will give us more time to consider the Government's amendments and consider our own position in terms of whether we wish to submit additional amendments.

**Senator Victor Boyhan:** I welcome the Minister to the House. I know that she is committed to this issue and has put a lot of work into it. It is important to acknowledge that but also to acknowledge the presence in the Public Gallery of some people who are directly affected by this issue. This is a really important day for adoptees in the context of their right to their



identity, their right to know where they have come from, to whom they belong, their lineage, history and connections. Everyone has that right. It is very easy if one has been brought up in so-called “normal” family circumstances, whereby one does not have those questions. I have personal experience of this and have many valuable friends who have had these experiences. I understand the constant searching and questioning. Where do I belong? Where do I fit in? It is very important. A lot of this is symbolic. One cannot necessarily crystallise this in words. It is a sense or a feeling and is much more nuanced than simple sentences, which is an important point.

I am disappointed that there was an attempt by the Government to push through five hours of debate. I do not know whether the Minister had any input into that but ultimately, she is the Minister. We were presented with a situation whereby we were expected to stay here for five hours today and I would like the Minister to comment on that. Did she have any knowledge of it? Did she support that proposal? It was a misjudged proposal in light of the short timeframe provided to study and engage with the Government’s amendments. I know some of the people who have been in the House in the last day or two, interacting and engaging with Senators on these issues. This situation is disappointing and I do not think the Minister should allow it, particularly given the great expectations people have of her.

Somebody said to me yesterday that this is about legacy for a lot of people. The Minister has a good track record in this area and I expect that she will listen and take all of this on board. This is a process that we are working through here. It is a legislative process and while the Minister has amendments, so too do Senators. I also want to put down a marker that I reserve the right to table further amendments. I do not want to just duplicate amendments in order to appear interested. I want to engage and work on this in a collaborative way in order to produce the best possible legislation. I urge the Minister to go back to the powers that be and to the Leader of this House and tell them that if more time is needed, more time will be provided. We need more time to go back and engage with and talk to people who have been directly affected by these issues. The Minister must give us that time. We should not push this through just for the sake of having legislation. We need good legislation. I do not doubt the Minister’s commitment or that of anyone else.

I ask the Minister to address my question about the five-hour debate, to clarify her position on that and to tell us who is driving the pressure on this House to do this work. This is important because it is about identity and much more. We should listen to others and we should have enough time to share the Minister’s amendments with people outside this House, to seek their advice based on their personal experience. At the end of the day, we all want good legislation that addresses everyone’s needs.

**Acting Chairman (Senator Gerry Horkan):** Obviously, we welcome all of our guest in the Public Gallery but I would particularly like to welcome Deputy Anne Rabbitte, who is the Fianna Fáil spokesperson on children. I see that Senator Marshall is also in the Gallery.

I will let the Minister for Children and Youth Affairs defend herself. It is the Leader’s office that schedules the business of the House but it does so in consultation with Ministers.

**Senator David Norris:** The pressure came from the Minister.

**Acting Chairman (Senator Gerry Horkan):** I will let the Minister speak for herself.

**Senator Victor Boyhan:** That is the point.

**Acting Chairman (Senator Gerry Horkan):** That is perfectly fine. I will let her address the matter. I have given everybody latitude and will continue to do so but we are discussing section 1 and whether it should stand part of the Bill. Senator Bacik's point is completely valid because it relates to the Short Title to the Bill, which contains the phrase "Information and Tracing". However, I would prefer if people would stick to dealing with section 1 if that is possible.

**Senator Marie-Louise O'Donnell:** The Title encompasses the heartbeat of the Bill. That is what we all want to speak to now. The specifics can come later. The Bill confuses the right to identity and giving adoptees their information with whether they desire to meet their biological parents. Senators Bacik and Norris mentioned this question of information as opposed to contact. Rights to identity and information are fundamental to equality. Why should a birth parent's objection deny the adoptee his or her birth certificate or information about his or her early life? There is no equality there. Forcing adoptees and birth parents into a quasi-legal process, which this Bill is doing, to argue their cases for or against release of information is fundamentally flawed, unfair and costly and it will cause extraordinary delays. A total of 15,000 people, birth parents and adoptees, are already on a contact register with the Adoption Authority of Ireland. Why set up a new register within Tusla? If this is going to be done, I hope the Minister will have both enough money and the 50 to 200 social workers necessary to carry out the kind of work and information seeking required in terms of the tracing process.

All the current information that the Adoption Authority holds on the 15,000 people in question will be lost or dormant as people are forced to re-register, as per the Bill, with Tusla. If the current register was placed on a statutory footing, active tracing and provision of information to those who request it could begin immediately. Natural parents - birth mothers - signed consent forms at the time of adoption. There is no evidence that they were given assurances of secrecy and privacy. This is a very important legal point. The Minister is very good at her job but I must point out to her that Tusla is not regulated for adoption services by the State regulator - namely, the Adoption Authority of Ireland - and, as a result, its adoption service would be unregulated. The Bill presumes that when adoptees receive information, this automatically leads to contact and reunion with their birth families. That is not the case. They will be seeking medical and social information but not necessarily contact, although that may happen. Adoptees must be given full access to their information, not a summary or a redacted version compiled by social workers.

I spent a long time in my office trying to telephone as many of the people who emailed me as possible. Those individuals put their hearts and souls into their emails about their lives and seeking their tribes. These people are not children; they are adults and they are not, as has been stated, simply going to rock up to others' front doors. They are in a state of crisis that has been ongoing for years. I do not want to read out all the emails I received. I have a file box full of them. This is a very important matter.

The Minister is one who defines equality in a thousand different ways in our society. I need her to define it in this instance because, at present, it is not defined correctly in the Title to the Bill. We need to find a balance. People have rights. We are talking here about the delicate nature of human beings. In that context, there is a need to reconsider what is proposed. As matters stand, I cannot vote for the Bill, especially in the context of section 5. The Title to the Bill, which I have tried to decipher, cannot be allowed to stand. There will be specific objections later, but those are my general objections. The Bill does not favour the adoptee. There must be a balance and no such balance exists at present. People have a right to know of their tribe. That is all I have to say at this point.

**Senator Alice-Mary Higgins:** I will speak to the section but I first want to acknowledge that there have been attempts to move forward on certain aspects of this Bill. The removal of the undertaking is important and should be acknowledged. I know that this was difficult to achieve and that the concession was hard won. There are also attempts to make the process more functional but there are principles and points of principle in respect of which there is division. When we look to information and tracing, some of the points raised by Senator Bacik could potentially be compatible with the requirements the Minister is trying to meet, and with the principles and objections. The Minister referred to an attempt to minimise and streamline this process, recognising that, in his or her private life, a birth parent may be for or against contact. No assumption should be made in that regard. As I understand it, a six-month time limit applies to the process. This is regarded as a reasonable period and it gives those in very particular circumstances and others involved in a case the opportunity to go the Adoption Authority of Ireland.

A general advertising scheme such as that which Senator Bacik proposes to put forward may have the potential be able to meet the collective requirement for a period of notice, particularly as, in the context of the Bill, future adoptions will occur under a different set of criteria. There is an assumption of access built in so we are dealing solely with a set group when it comes to historic access. A general advertising scheme by means of which people who wish and choose to can self-identify and then seek a process of whatever kind to vindicate their rights may be more appropriate than an ongoing process in which, for time immemorial, any adopted person seeking his or her information will trigger a set of specific queries about his or her birth mother and father. In the past day or two many, adopted people have stated that they do not necessarily want the fact that they have looked for their birth information to go to the birth mother or birth father. They may not wish them to know they are in the country. Who knows what they feel? Providing an adequate collection solution would address those individual privacy issues. Senator Bacik was not able to propose this scheme without sight of the Government amendments but it may address the process or kind of process the Minister is proposing and could be worth considering. It could take us forward in leaps and bounds. Once a set period has been undergone, unless particular objections have been raised, it would be generally assumed that people would access their information in a more natural way at a time of their choosing. We must bear in mind that people sometimes seek this information for specific and time-sensitive reasons.

I rarely talk about resources in this regard, except when talking about getting rid of tax reliefs. In this instance, rights must take precedence over resources. Nonetheless, an approach such as that set out by Senator Bacik would free up resources for those who are using that second half of the Bill, which deals with tracing, where birth parents and adoptees are seeking each other. It would allow for a bigger allocation of resources to ensure support for those situations where two or more parties are actively seeking one another. Perhaps this is the advantage of finishing the debate at 6 p.m. I would like the Minister to seek advice and test the potential of a collective time band solution. That relates to section 2(1) and the timeline by which measures are put in place. A certain section of the Bill may be commenced before others to facilitate those other sections coming into effect. It may affect the timing. We may need to bake that into the Bill.

I know the Minister is very keen for this to move forward but there is another general issue. In a situation where another Minister inherits this Bill after its passing, there may be a question around section 1 and whether we want to build in time caveats. We do not want this Bill to move through this process and be substantially improved to better reflect the concerns

the Minister is hearing today only to sit on a shelf and not move forward. I have outlined some thoughts on section 1. There is scope to fulfil what I know the Minister is trying to fulfil and, crucially, to address the one point that arises more than any other. We will address it later in the definitions of “personal” and “early”. I refer to the birth certificate specifically. Even with the advertising campaign, we should ensure that birth certificates will be available. That particular crucial document should become immediately available or there must be a collective consultation. I thank the Minister.

**Senator David Norris:** I wish to say one thing very briefly. Adoptees have made the very valid point to me that what they are seeking is their own information. It belongs to them. It is directly relevant to them. It is not the possession of the birth mother alone. That is a very important point to make. This information belongs to the adoptee. That is all I wanted to say.

**Senator Fintan Warfield:** I welcome the Minister to the House. Before we proceed, I want to add my voice to those who have expressed disappointment. Sometimes this place is like the Stone Age. Yesterday we were given amendments with stars beside them. We went through them one by one, collected our thoughts on them and put them down on paper. We were given a list and we addressed them as we received them. We were then given a list of numbered amendments and groupings. This dictates that we will take amendments Nos. 1 and 2 first, and in the second grouping we will take amendments No. 3 and 150, which is on the last page of amendments. Going through that is a mammoth effort. I would have proposed during the Order of Business that we would not take the Bill today so that we had more time to go through its provisions. I welcome the fact that at least we have a short period in which we can go through it today.

I also welcome the Minister’s commitment to meet with the organisations and the campaigns involved in this issue. I know she has come from a background of activism; nothing about us without us and all of that. I welcome the fact that she has committed to meeting those groups which represent the people affected and those with lived experience of the issue.

The Short Title and commencement relates to the Bill’s provisions. I wanted to take the chance to note that this is not that common in Ireland, or at least in this State, apart from what has been introduced in Britain and the North. According to an email I received, these proposals are completely out of step with the North, England, Scotland, Wales and many other European jurisdictions where adopted people receive their right to information at adulthood or at the age of 18. In England and Wales when a person reaches the age of 18 he or she has access to his or her birth records. That was introduced under the Children Act 1975. In the North, people who have reached the age of 18 have had access to their birth certificates and adoption files since 1987. In Scotland, adopted people over 16 years of age have been able to access their birth certificates and adoption records since 1930. It is not common that we are out of sync in this State. Sometimes we follow the British example, which is not for the greater good. In this case we are departing in entirely the opposite direction years later. In discussing the commencement of the provisions I wish to ask why they are so different to international best practice.

**Senator Lorraine Clifford-Lee:** I will not delay proceedings any longer because we have a lot of amendments to get through. I welcome the Bill. I acknowledge the issues that many colleagues have raised with it, but it is an important first step. That is all it is. It addresses a very dark history in this country. For many years there were attempts to sweep that history under the carpet and pretend it never happened, but the people affected are alive, as are their sons, daughters and grandchildren. They deserve this information. They deserve to have their

identities.

I have particular issues around the funding of Tusla. I would like the Minister to comment on how Tusla will operate. In a previous life I had a lot of interaction with Tusla and I know the good work it does, but in recent years there have been several problems in Tusla. There is chronic underfunding and understaffing. Making sure this operates correctly will be a major issue. I would also like to mention that further amendments are needed to deal with situations where incorrect birth details are registered. I have dealt with people who were wrongly given birth certificates that named their adopted parents. We need to address that. It is a very real issue.

**Deputy Katherine Zappone:** I will start by saying that now, perhaps more than ever before, I feel that this is a great Chamber in which to debate these issues. Having come from this House myself and believing in the power of what we can do here, I really mean that. The Senators are demonstrating that here this evening in the context of that Bill. I say that most sincerely. It is really great to be back here. I appreciate the Senators' demonstration of their passion and commitment to getting the best Bill possible. I also appreciate that this is rooted in the representations they are receiving from the people this Bill impacts most. Witnessing that makes me feel an even deeper desire to bring forward the best Bill we can possibly get in the context of our foundational document, the Constitution. That is very much at the heart of my efforts and those of my officials over the last couple of years. We have worked with the Office of the Attorney General and the Attorney General himself to bring the Bill we are discussing before the House.

In that regard, we attempted to do everything we could to represent the interests, concerns and desires of adopted people. As Senator Bacik pointed out, this Bill also provides for access to information and tracing for birth parents and other people related to the adoption process. Our efforts to come forward with various amendments, which I will address in a few moments, took account of the depth of representation insofar as we could in the context of the advice we received. I would very much like to find a way to have a Bill which would allow unfettered access to information for those adults in the way Senator Bacik and other colleagues have proposed which echoes the desires of the advocates who represent the people who have been adopted. If we could find that way together and it was acceptable to the Attorney General in the interpretation of the Constitution in reforming this legislation, that would be amazing.

This is probably one of the most significant Bills that will ever be brought before the Seanad. Many Senators will be aware that it is almost 20 years since the former Minister of State Mary Hanafin brought forward the Adoption (Information and Tracing) Bill. Why has it taken 20 years since that time to bring forward legislation? Other parties have brought forward other Bills. We are dealing with complicated issues. I accept and acknowledge the comments made by Senators Bacik and Norris. We are in 2019 and a very different context. Even since we began the debate on this Bill, our consciousness and awareness have changed in the light of several events, many in the context of my ministry.

Having said all of that, I come before the Seanad to say also that we have no legal basis on which to support information and tracing services in Ireland today. I believe Senators are aware of this, but it is worth noting. Ireland also does not have a legal basis on which to protect and preserve the 150,000 adoption records for people who have been adopted, to bring them together under one roof - that is an integral part of the Bill - and to raise the standards for how the records are cared for, catalogued and accessed, which is also an integral aspect. As that



has been the situation for 20 years, including the three years I have been Minister, yes, I am a woman in a hurry. Believe it or not, the desire to get this done has been behind the work of my officials and that of the Office of the Attorney General for the last couple of years. Regardless of whether we are on the right or the wrong side or just in the present moment of history, as Minister, I want to be able to bring forward a Bill that will work in a way that is really satisfactory to those on whom it will impact the most, that will protect the right to information on identity and ease the process to do it with the support of the State. I am standing firm in that regard and trying to face a future where we will bring in a law to initiate a culture of openness more than ever before.

I shall address some of the differences in this legislation in the light of the amendments we will be bringing forward. They are an integral aspect of the advocacy of adopted people subsequent to the publishing of the Bill which we have heard and listened to. Senator Higgins, among other Senators, has referred to some of them. One of the key phrases we heard from the groups was, “We want access to our information, not simply the summary of the information an agency would give to us.” This will inform the amendments we want to bring forward to provide access to information, not just a summary of it. The advocacy groups have also stated the persons affected do not want to have to sign an undertaking which they say would be offensive. It would take away or deny them disproportionately their right to identity and information. That will no longer be in the Bill if our amendments are accepted. People have also said they want to be able to get their birth certificates if they are on the files of the agency being applied to. In this context it will mainly be Tusla. People have said they do not want to have to get permission or something to bring to the General Register Office. Those affected have told us that this is what they want. Such a provision is part of a Government amendment that we will recommend.

Some may ask, “What is the big deal and why is it not simple to deal with issue?” Perhaps the Senators do not think this as they are law makers, but, believe me, it was not straightforward to have it accepted in terms of the release of birth certificates. There has been a lot of movement back and forth and, with the interpretation of the Office of the Attorney General, we are trying to ensure we will balance appropriately the rights of the birth mother. The Constitution provides for a right to privacy which in this context applies to the birth mother and it needs to remain. People might wonder why that was the case and we may have an opportunity to discuss and debate some of the issues involved as we go through the Bill. These parts have been exceptionally challenging, but I am grateful that we have this work to put before Senators in the form of amendments. One amendment will propose that we call it the register of adoption inquiries, not the register of adoption contact inquiries. Again, this is after listening to the people who have advocated. These are just a few examples to which I wanted to point for Members, given that we are speaking about the Title and the beginning of the Bill. In the context of looking for information and the capacity to trace and support the tracing process, these things are important and will form part of the amendments the Government will bring forward.

Even with the changes to be proposed by the Government in the light of the process we have gone through in listening to the advocates, Senators are saying it is not good enough. I hear them. In response I again ask why has it taken so long. It is not just because we had to identify the number of amendments to be proposed and make sure they were all fine with the Office of the Attorney General. There were several other processes and options that we tried in order to balance the right to privacy in a way that would be acceptable but which we could not get through and which were stronger than the rights to information and an identity of the people who were adopted. We were not successful in that regard, but if there is another way forward

and it can be done in a way that is acceptable to the Attorney General's understanding of the Constitution and that meets in a better way the desire for information, particularly because most Senators are speaking in the context of adopted people, that will be fantastic and I will be open to it. If we can, let us do so.

I have had the opportunity to have a brief conversation on this issue with Senator Bacik and have listened to her very carefully. At the end of this process we need a law that will not ignore and shove aside the constitutional protection of the right to privacy of birth mothers. We simply cannot do that. The Constitution puts us in a different position from the United Kingdom, including Wales, or other jurisdictions identified by Senators where there is unfettered access to the right to information in this context. Ireland is in a different position and we have to pay attention to it. If it is completely and utterly unacceptable, we have to find a way to balance it differently. I will be open to it. We have, however, worked exceptionally hard on the process to ensure to the best of our ability that it will tilt as much as possible in favour of the adopted person. As I said, I am a woman in a hurry, something for which I am not going to apologise as people have waited too long.

*5 o'clock*

We are lawmakers and this is our job. If this Bill needs a large amount of time in a short period, so be it. Part of the reason I say I am open on this matter is that it is important to find an interpretation of the Constitution in a way that we recognise that it is a living document. The social context now is different from the social context of 1937 or of two years ago, and I hear that. If we can find another way, so be it.

I appreciate that Senators have not much time to consider these amendments. I respect the democratic mandate expressed by the vote in the House and that Senators want and need more time. I offered a briefing before we had the amendments completed, one which would have been based on the principles involved given that we knew where we were going with them. We did not give the amendments to the Members because they were not completed. It was not as if we had not been working consistently on this for a long period. As Senator Bacik identified, I have offered another briefing for lawmakers tomorrow. I am also happy to meet advocates, one of whom I met this morning as we were preparing to appear on "Morning Ireland" together. Disappointment has been expressed about a lack of consultation on the amendments. I, too, have only received the amendments. At the same time, I do not apologise for coming to the Seanad to try to move this process forward by debating the amendments because that will help. This opportunity is helping right now to find a way of achieving the best possible outcome for a Bill that is constitutionally permissible.

I can outline in detail how we have pushed the boundaries of this Bill in some ways that are not related to Part 5, the arena in respect of which there are most objections. I want to do that but as Senators pointed out, there are possibilities and perhaps other ways. I am open to those. The Bill does not provide for all of the change that we need. I knew that before I came to the House and heard Senators' responses to it.

To respond to Senator Boyhan's question, this was my call. I wanted more time this evening and I will not apologise for that. This is an opportunity to tease through the amendments. I will start to explain them to Senators. We may not have reached the section with which people have the greatest difficulty. The Senator asked me a question and I admit it was my call. I appreciate we may have a different view on that but I need to hear what Senators think about

what we are doing. We have the opportunity to do that now. Members have said they want more time to consider them and I hear that. They have made a decision on that and we can consider the Bill now in the Chamber. We have more time to offer Committee Stage amendments before moving to Report Stage. I am conscious, however, that we are nearing the end of term and the legislation has not yet been before the Dáil. I want time to tease out these matters, especially with Senators, so that was my call.

If Senators have another way, let us begin the process of examining that. We will move through the Bill as well but let us begin the process of examining that. Senator Bacik knows as least as well as everyone else that this means we have to go back and forth to an office which will indicate whether that is acceptable. If it is acceptable, hallelujah. I have been speaking to my officials. In sentiment and in our hearts, we are with the Seanad on this and we have been working in that regard.

If we do not get this legislation through before we rise for the summer recess, I am concerned that we will place in jeopardy the time required to allow the people concerned to finally get the rights that are due to them. For this reason, I ask Senators to come with me on this as quickly as possible. As I said, there is no law in place to ground the current information and tracing service.

I listened to the comments made about Tusla, on which I could speak at length. Tusla does not have a legal foundation for what it does. One of the reasons it is becoming increasingly difficult for Tusla to provide the support and service people want from it is that the general data protection regulation or GDPR is now in operation and prevents other bodies from sharing with it information which it is seeking to help to support the adopted person. Tusla cannot move beyond that restriction until we enact this legislation. The absence of a legal basis for Tusla's role in this area is the reason for many of the difficulties people are experiencing in trying to secure the supports they need from Tusla, which many of the organisation's staff want to provide. I note the comments that Tusla will require more resources to perform this function.

We will not have time this evening to deal with transitional arrangements, which are one of the areas on which we want to put forward amendments. There are approximately 150,000 adoption records. Some of them are in Tusla, some are in the Adoption Authority and others are in other agencies or bodies. We are saying they should all come under one roof. Some of the amendments refer to how that will be done. Will the records have to be physically brought to this place or could they be scanned and brought there more quickly until eventually they will be in one place? All of that needs to be done to offer the appropriate support to which people have a right. That is another reason I am in a hurry with this Bill. If Senators have another way or other ways of moving forward, let us get to work on them as soon as possible to advance this Bill which people, including me, want and desire.

Perhaps we can move to some of the earlier amendments that may not be as problematic as many of the issues Senators have raised. That is what I thought we would be able to do this evening.

**Senator David Norris:** I was afraid the Minister's sense of urgency was prompted by the prospect of an early general election. I sincerely hope that is not true.

**Deputy Katherine Zappone:** No.

**Senator David Norris:** I hope we will rise in the summer and come back in the autumn

and continue our work.

I completely welcome some parts of the Bill. It is an advance, of that there is no question or doubt. The removal of certain obnoxious sections is welcome, as is the compiling of archives to which the Minister referred. The idea of centralising and controlling these archives and making sure they are not subject to arbitrary or capricious decision by third parties and so on is extremely welcome. However, the Minister might take back to the Attorney General something that no Government has ever acted on, even though I have continuously promoted it. The Constitution respects the right to privacy but it also puts the public good into the fundamental document of our democracy. That is something of which we should be aware. In these cases we have an individual mother and a class of people who make up a very large group. Surely to God the public good is on the side of this large class of people as opposed to the rights of a mother. I am not suggesting the right to privacy of the mother should be extinguished. I am saying there is a valid reason for us to go along the same route as our neighbouring island has gone. We have this provision for the public good and the public good is best served by acknowledging the rights of the adoptees. I would like the Minister to take that message back to the Attorney General and say, for God's sake, that we should, for once, have a Government that acts in the light of the provisions of the Constitution for the public good.

**Senator Ivana Bacik:** I thank the Minister for her very comprehensive reply and her openness to the debate. I wish to acknowledge the spirit in which the Minister always comes to the Seanad and it is great to have her back here to debate this. The strength of Seanad Committee Stage debates is that they take place in the House. That is very important. I accept, as we all do, that there is an urgency to this Bill in the sense that people have waited so long for it. On the other hand, we have had two years and three months between Second Stage and Committee Stage and the Government amendments are coming in now, one month before the end of the session. There could have been more haste earlier, not to mix metaphors. We acknowledged the need to bring this forward which is why we did not oppose it. Senator Warfield said that we would have been entitled on the Order of Business to say that we did not want to proceed at all with Committee Stage, but we did not do that. We simply said we would like to start Committee Stage because we recognise the importance of bringing the legislation forward but we do not think we should have a five-hour debate with so little time available to be able to consider the amendments and, indeed, to consult with others on the amendments.

As the Minister said, given that we have had two years and three months since Second Stage, time has moved on and our awareness collectively has changed about the nature and the way in which adoptions were carried out in Ireland for far too long, with this culture of secrecy and of shameful things that shrouded so much of mother and baby homes. We have learned dreadful things about the practices in these homes.

Over that period expectations built up that there would be a greater recognition of the right of identity and information. The difficulties that many have with the Government amendments to the Bill is that they still appear to come to us from a fundamental presumption against an unfettered or unconditional right of access to information. Many of us are now saying that we should turn this around. Let us have a presumption in favour of a culture of openness and information and then work out a process that enables privacy rights to be asserted and protected as against that presumption. The difficulty I and others have with the provisions is that they have reversed it. They are coming from a presumption that there should not be unconditional access.

The Irish Council for Civil Liberties, ICCL, said today in response to the proposed amend-

ments, that it welcomed the removal of the obligation on adopted persons to sign an undertaking before seeking information about their identity. Senator Higgins and others have also pointed this out and the Government amendment which seeks to do this is very welcome. However, the ICCL point out that the proposed amendments would establish instead a process of searching for, notifying and giving a right to object to any natural parents of that adopted person, before any information can be disclosed. That is one way that the Government has chosen to protect privacy rights of birth parents who do not want their information disclosed.

There are alternative ways that could be put forward which would come from a presumption in favour of a right to access to information. I have suggested one, which I still have to flesh out, and I will be putting forward amendments to do this, including an amendment to section 1(2), to provide for a process to enable birth parents to assert privacy rights but against a provided for timeframe where there would be, by default, a right of access to information at the end of the six months. It is not so far from what the Minister is proposing but is a less unwieldy method and one that is more trustful of adopted persons. It gives a better balancing to the right of information and identity to say that we are going to make a general appeal to anyone who wishes to assert a privacy right to come to us and make their objection, otherwise we will be disclosing to anyone who comes forward, and there will not be a condition placed on the access to information.

My suggested proposal would have the very practical advantage in that it would not have the consequence that so many stakeholders have identified of the unwieldy and costly procedures which are going to be required of Tusla to go out searching for natural birth parents. The Council of Irish Adoption Agencies say that these amendments are unworkable, given the burden they would place on Tusla. The Minister has acknowledged the cost and resource implications for Tusla. Both the Council of Irish Adoption Agencies and the Irish Association Social Workers have expressed serious concerns about the cumbersome, costly and resource-intensive nature of the processes.

We all acknowledge the need to move forward with information on tracing legislation and the need to ensure, as the Minister said, that statutory basis is given for the procedures and so on. I do not want to prolong this but we are advocating alternative ways of balancing rights that are preferable in 2019 and that recognise, primarily, a right of identity and information.

**Deputy Katherine Zappone:** I accept what the Senator is saying. To be perfectly clear again, what the Senators have before them is not the only process or option that we have tried over these last two and half years, with great haste I may add. I appreciate what the Senator said but it is not that there has been a delay within that period. We have been trying various other ways, going back and forth. What we have before us is what we managed, effectively, not only to get through, but what is better than what was there before. I appreciate that this may be disputed. I am not saying there is not possibly a better way but what I am saying to the Senator is that if she thinks that there is one, and Senator Bacik put forward a very interesting proposal we did not try-----

**Senator Ivana Bacik:** I was going to ask that. That was my next question.

**Deputy Katherine Zappone:** We could call it whatever we want in the end. We need to do that work with a sense of urgency and with a full understanding and cognisance of the complexities that it will entail. The Senator is aware of that more than most because of her law background.



12 June 2019

We need to engage and to get into that work, if the Senators insist that this is not workable. We have not even had a full discussion on it yet or put forward the argument that it does not allow for that right to identity or access to information. At the same time, there has to be something in that alternative - if there are others, that is fine - that offers a form of protection of the privacy because that is part of our constitutional make-up.

Question put:

The Committee divided: Tá, 23; Níl, 14.	
Tá	Níl
Burke, Colm.	Bacik, Ivana.
Burke, Paddy.	Black, Frances.
Buttimer, Jerry.	Boyhan, Victor.
Byrne, Maria.	Conway-Walsh, Rose.
Clifford-Lee, Lorraine.	Craughwell, Gerard P.
Coffey, Paudie.	Humphreys, Kevin.
Conway, Martin.	Kelleher, Colette.
Daly, Mark.	Mac Lochlainn, Pádraig.
Daly, Paul.	Norris, David.
Feighan, Frank.	Ó Donnghaile, Niall.
Horkan, Gerry.	Ó Ríordáin, Aodhán.
Lawlor, Anthony.	O'Donnell, Marie-Louise.
Leyden, Terry.	Ruane, Lynn.
Marshall, Ian.	Warfield, Fintan.
McFadden, Gabrielle.	
Mulherin, Michelle.	
Noone, Catherine.	
Ó Domhnaill, Brian.	
O'Donnell, Kieran.	
O'Mahony, John.	
O'Reilly, Joe.	
Reilly, James.	
Richmond, Neale.	

Tellers: Tá, Deputies Gabrielle McFadden and John O'Mahony; Níl, Deputies Ivana Bacik and Lynn Ruane..

Question declared carried.

Progress reported; Committee to sit again.

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

**Senator Catherine Noone:** Ar 10.30 maidin amárach.

The Seanad adjourned at 5.33 p.m. until 10.30 a.m. on Thursday, 13 June 2019.