



DÍOSPÓIREACHTAÍ PARLAIMINTE  
PARLIAMENTARY DEBATES

**SEANAD ÉIREANN**

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

Election of Acting Chairman . . . . .	224
Gnó an tSeanaid - Business of Seanad . . . . .	224
Nithe i dtosach suíonna - Commencement Matters. . . . .	225
Home Care Packages . . . . .	225
Services for People with Disabilities . . . . .	228
Local Authority Boundaries . . . . .	230
Rockall Island Ownership . . . . .	231
An tOrd Gnó - Order of Business . . . . .	234
Industrial Relations (Amendment) Bill 2018: Second Stage. . . . .	246
Coroners (Amendment) Bill 2018: Second Stage . . . . .	253
Adoption, Information and Tracing: Statements . . . . .	266
National Surplus (Reserve Fund for Exceptional Contingencies) Bill 2018: Committee and Remaining Stages	286
Community Participation (Disability) (Miscellaneous Provisions) Bill 2019: Second Stage . . . . .	287

## SEANAD ÉIREANN

*Dé Céadaoin, 19 Meitheamh 2019*

*Wednesday, 19 June 2019*

Chuaigh an Cathaoirleach Gníomhach i gceannas ar 10.30 a.m.

---

*Machnamh agus Paidir.  
Reflection and Prayer.*

---

### **Election of Acting Chairman**

**Clerk of the Seanad:** I have to inform the House pursuant to Standing Order 12 that both the Cathaoirleach and Leas-Chathaoirleach are absent from this meeting of the Seanad. It will be necessary, therefore, to elect a Member to perform the duties devolving upon and exercise the authority conferred upon the Cathaoirleach by Standing Orders for the period of absence of both.

I will take proposals for Acting Chairman.

**Senator Paudie Coffey:** I propose that Senator Horkan act as Chair.

**Clerk of the Seanad:** Is it agreed that Senator Horkan take the Chair? Agreed. I call on Senator Horkan to take the Chair.

*Senator Gerry Horkan took the Chair.*

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

**Acting Chairman (Senator Gerry Horkan):** I have received notice from Senator Rónán Mullen that, on the motion for the Commencement of the House today, he proposes to raise the following matter:

The need the Minister for Health to make a statement on the *in loco parentis* restriction which applies to the provision of home care packages for children with serious medical needs.

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

The need for the Minister for Health to consider increasing the GP services available to the local community of Drumconrath, County Meath, by utilising Caridas House for this

19 June 2019

purpose.

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

The need for the Minister for Agriculture, Food and the Marine to make a statement on the disputed fishing rights surrounding Rockall.

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

The need for the Minister for Justice and Equality to make a statement on the jurisdiction of the city sheriff and the city coroner in Cork since the extension of the new boundaries of Cork city on 31 May 2019.

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

The need for the Minister for Health to carry out a review of the availability of disabled car parking spaces at University Hospital Limerick.

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

The need for the Minister for Housing, Planning and Local Government to provide an update on the progress of the working group established to review sustainable rural housing guidelines following the “Flemish decree”, and to publish all reports prepared by it.

I have also received notice from Senator Paul Gavan of the following matter:

The need for the Minister for Foreign Affairs and Trade to make a statement on the peace process in Colombia and the continued assassinations of trade union, civil society and community leaders.

Of the matters raised by the Senators suitable for discussion, I have selected Senators Mullen, Gallagher, Mac Lochlainn and Colm Burke and they will be taken now. The other Senators may give notice on another day of the matters they wish to raise.

## Nithe i dtosach suíonna - Commencement Matters

### Home Care Packages

**Acting Chairman (Senator Gerry Horkan):** I welcome the Minister of State, Deputy Jim Daly, to the House.

**Senator Rónán Mullen:** I congratulate the Acting Chairman on his elevation to the position of Cathaoirleach for the day. I hope this day is reckonable for pension purposes. I welcome the Minister of State. The issue I raise today is that of the so-called *in loco parentis* restriction which, as he will know, applies to HSE home care. Essentially this means that when a child is receiving care from a nurse or other healthcare professional in his or her home, his or her parent is obliged to stay in the home for the duration of the visit or to nominate another adult to be present in his or her place. I understand that the restriction is applied as a matter of policy

within the HSE and that, as such, it could be abolished at the stroke of a pen.

This restriction has a range of negative impacts on families. It renders the whole purpose of the home care package ineffective and it engenders an air of mistrust between parents and care providers. It is as if the HSE feels they cannot or should not be trusted to be alone with the children in question. It is also insensitive because it suggests that parents are somehow negligent if they leave their children in the care of fully trained healthcare professionals and that those professionals are not sufficiently qualified or trustworthy to have children in their care alone. Each one of these practical impacts of this rule is ridiculous. It is very distressing for people. One of these impacts is to render parents prisoners in their own homes and, in many cases, to deny them a break and an opportunity to leave their home to attend to other basic family matters such as doing the weekly shopping or getting their hair done.

Groups who represent parents and those who provide care in the home, which are groups to which we should listen very carefully because they are at the coalface, are scathing about this rule. The Jack and Jill Foundation says that it flies in the face of compassionate care. Ms Eilín Ní Mhurchú, the Jack and Jill Foundation's liaison nurse in Cork has said:

It is only adding to the burden of care for these families, it is not helpful. The HSE seems so far removed from the daily lives of these families ... They are not showing care or compassion.

Until March 2018, the Government repeatedly gave the same prepared stock answer to this issue whenever it was raised, particularly in the Dáil. That answer had three elements. It first said that the restriction was justified because these home care arrangements provide clinical as opposed to respite support. Second, it said that parental presence might be necessary for “an acute emergency such as respiratory arrest, decannulation of a tracheostomy or status epilepticus”. This medical lingo was included verbatim in replies to several parliamentary questions, which suggests it is a copy-and-paste job from the HSE. The third part of the stock answer is that when the national quality assurance process is complete the national steering group for children with complex medical conditions will review the issue. The Minister, Deputy Harris, gave the latest version of this stock answer to Deputy Ó Caoláin in the Dáil last November. I hope that the Minister of State will give more than the standard reply today.

The position taken by the HSE takes a cold, formal, businesslike attitude to a situation that requires common sense and compassion on its part and on the part of the State. I note that on 27 March 2018, more than 15 months ago, it was agreed unanimously that the *in loco parentis* rule in home care contracts for sick children is causing unnecessary stress, worry and constraint on the parents of sick children. The Government was called on to abolish the clause immediately. As the Government accepted that motion 15 months ago, I ask the Minister of State to outline the progress that has been made on this issue since the unanimous adoption of that motion, whether the promised review has been conducted, and whether the HSE has or is about to adjust its position.

**Minister of State at the Department of Health (Deputy Jim Daly):** I thank Senator Mullen for raising this issue and providing me with an opportunity to update the House on recent developments. I assure the House that I am very committed to the ongoing provision of paediatric home care packages to support the discharge of children with complex needs from acute hospital services into the care of their families. Not only do such packages benefit children and their families directly but they create capacity within hospitals to treat other children in need.

We have 417 such packages in place and intend to increase the total number to 457 by the end of the year, which would represent an additional 80 packages compared to the number in 2018. To support this level of service, €28.7 million has been allocated for the provision of these packages in 2019, an increase of more than €6 million year on year.

Turning to the Senator's point about the *in loco parentis* provision, it is important to note that, first and foremost, paediatric home care packages are a clinical, not a respite care, support. While providing nursing care for the child with complex healthcare needs in the home, nursing staff cannot assume sole responsibility for a child where parents may not be available. A designated and competent person appointed by the parent is, therefore, required to be available to act *in loco parentis*. This requirement ensures a second person will be present in the event that there is an acute emergency such as respiratory arrest, decannulation of a tracheostomy or status epilepticus. Nonetheless, I am very aware that providing respite care can be an issue for parents of children with complex medical needs.

I am aware of the concerns raised in this House and elsewhere about the operation of the *in loco parentis* provision. I am, therefore, pleased to be able to advise the House that the HSE recently completed a national quality assurance initiative process for paediatric home care packages, PHCP, which, among other things, examined the question of respite care. As part of this process, new guidelines for children with complex healthcare needs, carer's break approval and risk minimisation have been developed. The new guidelines are intended to address concerns about the issue of *in loco parentis* provision by providing for a carer's break under certain criteria. This should introduce greater flexibility in the operation of individual PHCPs and has the potential to provide additional support for parents and families as part of an integrated approach to the delivery of care. It is important to stress that the guidelines have been developed following extensive collaboration with the Royal College of Nursing in the United Kingdom, the school of nursing in Trinity College Dublin and, crucially, the parents of children availing of the service. The HSE continues to work towards publishing the guidelines in the third quarter of the year as part of a suite of documents on the care of children with complex medical needs. In the meantime, I understand detailed briefings are scheduled for operational staff and that an implementation plan will be agreed with each community healthcare organisation throughout the country.

**Senator Rónán Mullen:** I thank the Minister of State for his reply. It looks as if and sounds like progress is being made. I will examine the reply with care, although I do note the stock answer reappeared. My concern is the restriction stems from a bureaucratic or status mindset that insists on a distinction being made between clinical support and normal home care support, as we understand it. The fact that it is deemed to be desirable that there be such clinical support in the home shows an excessive distinction between clinical support and normal home care support is inappropriate and possibly unethical. Part of the clinical support component is the human dimension. Care of the person is or should be incorporated in clinical support. It does not necessarily require advanced training, but it is, nonetheless, a necessary part of clinical support. If we reflect on recent controversies about Holles Street hospital and the way it treated one couple who had lost a child, we really get the sense that sometimes those delivering clinical support are overly separated from the necessary human dimension of the care they are providing. The *in loco parentis* provision sends a bad message which perhaps stems from an excessive desire to separate what is a clinical support responsibility from a home care support responsibility. One should be integrated into the other. I hope the new guidelines will make this point clearly and allow for something real and tangible in what the Minister of State described

as the carer's break in order that carers will be able to take a break in such circumstances.

**Deputy Jim Daly:** As I outlined to the House, paediatric home care packages are clinical care nursing packages designed for children with complex medical conditions who have significant healthcare needs and are not intended as respite care support. The nursing staff cannot assume responsibility for a child where the parents may not be available. A designated and competent person is required to be available to act *in loco parentis* in the event that there is a medical emergency. Nonetheless, the HSE and the Government are cognisant of the concerns raised about the matter. Of course, we wish to provide as much support as possible for children and their families. The national quality assurance initiative process for paediatric home care packages commenced in 2017 and recently completed. As part of the process, a suite of documents have been developed that set out standardised protocols and care plans. As I said, they are expected to be published in the third quarter of the year. The documentation includes the development of new guidelines for dealing with children with complex healthcare needs, carer's break approval and risk minimisation. The guidelines reflect the outcome of extensive consultations with clinical experts and parents. I hope the House will join me in welcoming the implementation of the new procedures which will enhance the quality of care provided and improve the supports for parents in caring for their children with complex healthcare needs.

### Services for People with Disabilities

**Senator Robbie Gallagher:** I welcome the Minister of State back to the Chamber and thank him for taking time out of his schedule to be here.

I want to talk about the Drumconrath healthcare facility in County Meath. Caridas House was part of the facility which was operated by the HSE. It was a residential care centre for people with disabilities. Its recent closure affords the HSE an opportunity to expand services further at the location. The facility has two or three GPs who are working full-time and provide an excellent service not only for the people of Drumconrath but also the people of north Meath generally and as far away as Carrickmacross, County Monaghan and Kingscourt, County Cavan. I am thinking about additional clinics being made available for people living in the area. For example, a public health nurse could be located there a few days a week or a social worker could be included, with mental health and physiotherapy services, among many others. I hope the HSE will take on the task of exploring what services could be put in place for the benefit of the people living in Drumconrath, north Meath and as far away as Kingscourt, County Cavan and Carrickmacross, County Monaghan. I look forward to hearing the response of the Minister of State. This is about providing additional health services for the people living in these areas.

**Deputy Jim Daly:** I thank the Senator for raising this issue and giving me the opportunity to respond on it.

The Government's ongoing priority is the safeguarding of vulnerable persons in the care of the health service. We are committed to providing services and supports for people with disabilities which will empower them to live independent lives, provide greater independence in accessing the services they choose and enhance their ability to tailor the supports required to meet their needs and plan their lives.

Significant resources have been invested by the health sector in disability services in recent years. This year alone, the Health Service Executive, HSE, has allocated €1.9 billion for its

disability services programme. As part of its ongoing service provision, the HSE will provide more than 8,500 residential places this year for families in need throughout the country. In fact, residential services make up the largest part of the disability budget.

Residential placements for adults with disabilities are considered following detailed clinical assessments made by HSE services. Access to places for those with the most complex needs are allocated on a priority basis and appropriate availability of services. Regarding the centre mentioned by the Senator, I am advised by the HSE that Caridas House is a small bungalow situated on the grounds of the health centre in Drumconrath, County Meath. In 2018 the HSE decided to review continued service provision in Caridas House based on the service experiencing challenges in meeting the needs of families and service users. I understand the rural location, small house size, perceived poor access to community activities and a lack of public transport were key factors in that regard. The decision was based on the premise that moving the residents to an alternative community residential home operated by the HSE's disability services would ensure they would maintain or improve the quality of their lives and, furthermore, that they would continue to be supported by staff known to them.

During 2018 and into this year, numerous meetings were organised by the HSE with the families of the two individuals who were resident in Caridas House to discuss the future plans for the facility and its residents. I understand that just one client remains as a resident of the facility, and in fact the person concerned is moving to an appropriate community residential home with immediate effect. It is still the case that international evidence demonstrates that the outcomes for individuals are always better in the community, and Government policy is for people with disabilities to be supported to achieve their full potential so that, where possible, they can live ordinary lives, in ordinary places, doing ordinary things.

Future plans for the building are a matter for the HSE. My understanding is that the building, when vacated, will need to be assessed by the HSE as to its suitability for any further use.

**Acting Chairman (Senator Gerry Horkan):** Before I call the Senator, I want to welcome to Seanad Éireann all our visitors from the Holy Trinity National School in Leopardstown. I am sure that the Minister and Senator Gallagher will join me in that welcome and in hoping that they have a nice day here today.

**Senator Robbie Gallagher:** I too extend a warm welcome to our visitors and hope they have a very enjoyable day.

I thank the Minister of State for his comprehensive response. We realise that things have moved on with the care facility; it has closed down and people accept that. The two most important lines come at the end of the statement and are about future plans. That is what I want to talk about this morning. There is potential for the HSE to bring additional services to that community, and I would like the Minister to stress to the HSE the importance of bringing additional GP-led services to the facility in Drumcondra for the benefit of the entire area.

**Deputy Jim Daly:** I thank the Senator for highlighting the importance of the availability of a resource such as this to the HSE, and ensuring that focus is kept not just on the ending of one service but the beginning of a new one. These facilities have cost a lot of money, and communities have invested a lot through fundraising. It is important that they are maintained into the future as part of the service delivery. I will echo the Senator's sentiments to the HSE that we would like a plan for this facility to be put in place as soon as is practicable and possible.

**Acting Chairman (Senator Gerry Horkan):** Senator MacLochlainn was supposed to be present to ask the Minister for Agriculture, Food and the Marine, Deputy Creed, about the dispute relating to fishing rights and Rockall. As neither of them is present, we will move on to Senator Burke.

### **Local Authority Boundaries**

**Senator Colm Burke:** I thank the Minister of State for coming to deal with the matter of the extension of a city boundary in Cork, in which he was very involved. There is a lack of clarity regarding the jurisdiction of the city sheriff and the coroner for the area. I spoke to the coroner last week, who advises me that his jurisdiction remains along the lines of the old city boundary. I understand that there is also a lack of clarity regarding the jurisdiction of the city sheriff. This is an important issue for him in relation to a number of matters, such as court judgments and their implementation. Is he now confined to the old city boundary, or does his jurisdiction extend to the new city boundary? The Minister of State will be aware that an additional 85,000 people have come in from the county to the city; it now takes in Ballincollig, Glanmire, Blarney and Tower. I have brought forward this Commencement matter because I am looking for clarification.

**Minister of State at the Department of Housing, Planning and Local Government (Deputy John Paul Phelan):** I am replying on behalf of the Minister for Justice and Equality, Deputy Flanagan, who cannot be in the House today. I thank the Senator for raising two issues of jurisdiction concerning sheriffs and coroners following the recent alteration in the boundary between Cork city and county. The question arising is whether this boundary change affects the respective bailiwicks of the city or county sheriffs, or the relevant coroners' jurisdictions under the provisions of the Local Government Act 2019. The Minister for Justice and Equality is responsible under section 12 of the Court Officers Act 1945 for the appointment of sheriffs. They are appointed to a particular bailiwick, or jurisdiction, which are generally understood to comprise the counties of the State and, in the cases of Dublin and Cork, county boroughs.

Section 2 of the Local Government Act 2001 is relevant. It defines "administrative area" as "an area standing established under section 10 for the purposes of local government and which is — (a) a county in the case of a county council, (b) a city in the case of a city council, (c) a city and county in the case of a city and county council". The administrative areas were established "for the purposes of local government" and for no other purposes.

On sheriffs, the Department of Justice and Equality consulted the Revenue Commissioners, who advised that "administrative area" is a defined term for the purpose of local government. It is clear, therefore, that the transfer of areas in Cork is not intended to have effect for any purposes other than local government purposes, thus the boundary adjustment has no effect on the bailiwick of the Cork city and county sheriffs insofar as either revenue or court matters are concerned.

The Senator also raised the issue of possible changes in the coronial districts in the context of the boundary change. He may be aware that changes to these districts are governed by the Coroners Act 1962, in particular section 6(3) of that Act. This provides that changes to adjoining coronial boundaries are a matter for the Minister for Justice and Equality to determine following consultation with the Minister for Housing, Planning and Local Government. It also requires the consent of the coroners for the districts. No alteration to the boundaries of the

19 June 2019

relevant coronial districts in Cork were, or are, proposed.

**Senator Colm Burke:** This causes a legal difficulty. The county sheriff is appointed as the sheriff for Cork county, but this reply indicates that the county sheriff now also has jurisdiction in parts of the city. Does the law allow that, given that it is now a totally different boundary? The State may be open to legal challenge if a person appointed as the county sheriff for Cork now has jurisdiction for part of the city. I raise this question in that context. It needs to be clarified from a legal point of view, because it will not be too long before someone living in what is now the city, and which was part of the county, will challenge the jurisdiction of the county sheriff.

I accept what the Minister of State said about the coroner, but it is unusual for someone to be the city coroner, with another coroner for the county who also covers part of the city. Those job description problems need to be looked at and clarified, but it is the legal issue that I am concerned about.

**Deputy John Paul Phelan:** I have not yet had a chance to talk directly to the Minister for Justice and Equality about this, but I understand the issues that the Senator raises. It would be desirable in the long run to bring the multiple boundaries in line with one another, and I will certainly talk to the Minister about that. As the Minister for Justice and Equality outlined in his response, which I have just delivered, there is currently no consideration of that, but I will ask him whether, in the light of the fact that he has much legislation going through both Houses of the Oireachtas, there is a mechanism for bringing into line the boundaries for sheriffs and coroners.

*11 o'clock*

**Senator Colm Burke:** The legal issue is what I am concerned about and that someone may make a challenge. The Department should get written clarification from its own point of view.

**Deputy John Paul Phelan:** I cannot answer that.

### **Rockall Island Ownership**

**Acting Chairman (Senator Gerry Horkan):** I apologise to the Minister. We skipped him earlier as Senator Mac Lochlainn was slightly delayed.

**Senator Pádraig Mac Lochlainn:** This House debated the Sea-Fisheries (Amendment) Bill earlier this year. The central premise of the Government's argument was that it was important to permit UK-registered vessels to have access to Irish fisheries right to the shoreline and to reinstate the principle of *voisinage* agreements ahead of Brexit, to build good relations with the British Government. In recent weeks, the Scottish Government has stated that Scotland will board Irish vessels and take them back to Scottish ports, and will take the owners to court, if needs be, to defend what they call their 12-mile limit around Rockall.

At the time we wondered. This is not typical behaviour of the SNP government, led by Nicola Sturgeon. Normally, it is a prudent government. However, now, several issues have emerged. The 2013 bilateral agreement, which was signed by the then-Tánaiste, Deputy Eamon Gilmore, at a time the current Taoiseach and Tánaiste were in government, with the latter having responsibility for the marine - recognises not only the exclusive British economic zone

around Rockall but also significant waters around it. They have drawn a marine boundary and signed a bilateral agreement. That agreement was never laid before these Houses. It has never been open to the scrutiny of these Houses. No fisheries organisations were consulted about the agreement. I seek legal clarification, therefore, from the Minister as to the status of that agreement, how it impacts on the Scottish or British claim to Rockall and the fisheries around it, and, perhaps, oil and gas reserves. What is the status of that agreement stands and why was it signed?

Second, why did the Minister fail to make it clear to the Oireachtas Members he briefed, having spoken to both Houses, at the time that he sought to reinstate that arrangement under the Sea Fisheries (Amendment) Bill? Why did he not make clear that at that time the Scottish Government was corresponding with him and threatening to board Irish vessels, asserting their authority over the 15-mile limit? Why did he not think it necessary to make Members aware of that at the time? Does he think that would have impacted on the decision made by these Houses? The fisheries organisations are very angry. Some say they acted in good faith when they were briefed by the Minister to support the legislation, which they did reluctantly, but now they have learned of the correspondence with the Scottish Government to the effect that Britain was reasserting its rights and trying to keep Irish vessels out of its waters, and that far from Ireland not standing up for its interests, we would give them more. It is extraordinary. We need answers.

**Minister for Agriculture, Food and the Marine (Deputy Michael Creed):** The Tánaiste received a formal letter of notice from the Scottish Cabinet Secretary for External Affairs, Fiona Hyslop MSP, on 31 May, stating that Scotland would deploy vessels in the Rockall area to take “enforcement action” against Irish vessels found fishing within 12 miles of Rockall.

Ireland’s position is that there is no basis for excluding Irish fishing vessels from the waters around Rockall as they are legitimately pursuing EU fishing opportunities and have done so unhindered for decades. We do not accept that there is any justification for enforcement action against Irish vessels fishing legitimately in these waters. The United Kingdom claims sovereignty over Rockall and a 12-mile territorial sea around it. The United Kingdom first made its claim of sovereignty in 1955 and sought to incorporate it as part of the UK in its domestic law by virtue of the Island of Rockall Act 1972.

The Irish Government has never sought to claim sovereignty over Rockall. Its position has been, and remains, that it does not accept the UK’s claim to sovereignty over Rockall, which it regards as forming part of the UK’s exclusive economic zone and, accordingly, part of European Union waters under the Common Fisheries Policy, to which the principle of equal access for the vessels of all EU member states applies. Irish vessels have operated unhindered in the Rockall zone for many decades fishing haddock, squid and other species.

I met as soon as possible representatives of the Irish fishing sector to inform them of the letter from the Scottish authorities, but also confirmed that Ireland’s position on Rockall had not changed. The industry representatives explained that Ireland’s main fisheries in the Rockall area are for haddock and squid and both fisheries are of substantial economic importance to our fishing fleet based in Greencastle, Killybegs, Castletownbere and other ports. The industry was appreciative of that engagement, but was also concerned at the possibility that unjustified enforcement action might be taken against them. The issue was not raised by me during the debates on the Sea-Fisheries (Amendment) Bill earlier this year as it was not relevant to that debate and even it had been, I do not believe that the position of Scotland on Rockall would

have, or should have, influenced in any way our determination to re-establish the longstanding entitlements of Northern Irish fishermen under the *voisinage* arrangement. This was the right thing to do in the interests of all the peoples on this island.

We have built with Scotland a strong and positive relationship to our mutual benefits over many years. I hope that we can use that close relationship to find a way to resolve these matters and to remove the unacceptable threat of enforcement action against Irish vessels.

Dialogue is continuing between the Irish and Scottish Governments and there have been close contacts at official level which are ongoing. It has been agreed that a process of intensified engagement will take place, led by senior officials from both administrations. We are hopeful that on this basis the latest difficulties can be de-escalated.

**Senator Pádraig Mac Lochlainn:** I refer to Article 10.4 of the Constitution. It is clear regarding the responsibility of the Minister and the Government to ensure that any alienation of minerals or waters is brought before these Houses, so that the Houses of the people have their say on the matter. Despite what the Minister has just told the House, in 2013, the agreement I have before me was put before Westminster. Our Government co-signed this bilateral agreement, which recognises the exclusive economic zone of the United Kingdom including Rockall and vast waters around it. This was from 2013 when the current Taoiseach and the Tánaiste were members of Cabinet, but the agreement was never laid before these Houses.

That was in contravention of Article 10.4 of the Constitution. I ask that the Minister bring that agreement for debate or ratification before these Houses at the earliest opportunity. I believe this agreement is void until he does so.

The words are there on paper. I listened to the words of the Minister and the Tánaiste, Deputy Coveney, and initially I thought they were strong words. I thought he was defending Ireland's interests and was puzzled as to why the Scottish Government was behaving in this way but it turns out that we gave them the grounds to do so in 2013. I find it extraordinary that we agreed the Sea-Fisheries (Amendment) Bill, which I accept went through these Houses democratically, but the Minister did not put the correspondence from the Scottish Government before us. They were telling us they wanted us out of what I regard as waters in which Irish vessels have the right to fish. I am not so brazen as to claim faraway territories but we must insist always on the right to fishing resources or all other resources around Rockall as shared resources. Iceland is contesting this bilateral agreement to the UN. It has a different perspective. Why are we not uniting with Iceland? Why are we not uniting with Denmark to ensure it is a shared space? My fear is that after Brexit, when EU fisheries policy no longer applies to the UK, we will have a serious problem on our hands. I ask the Minister to reflect on all of this and to realise that the 2013 agreement needs to be brought back before the Oireachtas as soon as possible for debate and democratic ratification or rejection by these Houses. I hope it will be rejected. I will strongly advocate its rejection. The Minister needs to explain further why this was not on the table when we were dealing with the Sea-Fisheries (Amendment) Bill.

**Acting Chairman (Senator Gerry Horkan):** I have given the Senator some extra time because I appreciate that this is a very sensitive matter, particularly for his local area.

**Deputy Michael Creed:** It is worth bearing a number of points in mind. The UK claims sovereignty on Rockall. We do not recognise that sovereignty. We have not claimed sovereignty on Rockall. Under the UN Convention on the Law of the Sea, a claim on sovereignty

is unable to establish an exclusive 12-mile zone around an uninhabitable island. We believe our fishermen are pursuing a legitimate opportunity to fish in that region for quotas that have been allocated to them under EU Common Fisheries Policy legislation. The Senator seems to be conflating the issue of sovereignty around Rockall with the entirely different issue of the exclusive economic zone. Rockall rests within the UK's exclusive economic zone. That issue has been negotiated. In fact, when the final draft of the exclusive economic zone agreement mentioned by the Senator was concluded, following protracted negotiations, it was much more favourable than what had originally been proposed. I think there is a degree of misinformation and conflation of issues here. The issue of the accepted definition of the boundary between our exclusive economic zone and the UK's exclusive economic zone is entirely different from the matter of an exclusion zone being in place around Rockall on the basis of sovereignty. The bottom line here is in respect of sovereignty. We do not recognise UK sovereignty. We believe we have been fishing there legitimately and continue to fish there legitimately. On the question of *voisinage*, there is no issue connecting these two matters. The *voisinage* legislation was about reinstating the right of Northern Ireland boats to fish in our inshore waters, which they had previously enjoyed. When that legislation was being considered, we enjoyed the right to fish in their inshore waters.

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

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

**Senator Jerry Buttimer:** The Order of Business is No. 1, Industrial Relations (Amendment) Bill 2018 – Second Stage, to be taken at 12.45 p.m. and to adjourn at 1.45 p.m., if not previously concluded, with the contributions of spokespersons not to exceed eight minutes and those of all other Senators not to exceed five minutes; No. 2, Coroners (Amendment) Bill 2018 – Second Stage, to be taken at 1.45 p.m. and to adjourn at 3.15 p.m., with the contributions of spokespersons not to exceed eight minutes and those of all other Senators not to exceed five minutes; No. 2a, statements on adoption, information and tracing, to be taken at 3.15 p.m., and to conclude no later than 5 p.m., with the contributions of all Senators not to exceed eight minutes and the Minister to be given no less than 12 minutes to reply to the debate; No. 4, National Surplus (Reserve Fund for Exceptional Contingencies) Bill 2018 - Committee and Remaining Stages, to be taken at 5 p.m.; and No. 5, Private Members' business, Community Participation (Disability) (Miscellaneous Provisions) Bill 2019 – Second Stage, to be taken on the conclusion of No. 4, with the time allocated to the debate not to exceed two hours.

**Acting Chairman (Senator Gerry Horkan):** I thank the Leader and remind Members that the spokesperson for each group can speak for three minutes on the Order of Business. Every other Senator can only speak for two minutes and address only one particular topic.

**Senator Jerry Buttimer:** I look forward to the Acting Chairman enforcing that.

**Acting Chairman (Senator Gerry Horkan):** I will do my best. I ask all Members to be relatively gentle with me on my day in the Chair for the Order of Business. I call Senator Ardagh.

**Senator Catherine Ardagh:** There is a crisis in maternity services across the country and the pace of development in maternity hospitals is very slow. There is movement on Holes Street hospital, little progress on the move of the Coombe Hospital to St. James's Hospital

and little progress on the move of the Rotunda Hospital to Connolly Hospital Blanchardstown. We have had shocking reports from Professor Malone, of the Rotunda Hospital, concerning the intolerable patient safety crisis in the neonatal unit there. It is understood that eight babies have been affected. There is a high risk of infection because of the poor infrastructure. This has caused infections and one case of death, it is understood. It is very frightening for a new mother who may potentially be attending the Rotunda in need of the services of that neonatal unit. The Minister for Health, in particular, needs to take heed of the comments made by Professor Malone.

Professor Malone is seeking a short-term solution in the form of the construction of a new west wing at the hospital. That seems a reasonable request given that the move to Connolly Hospital is 15 years away. Professor Malone went on to give a stark warning to the Minister that the potential financial liabilities for the State associated with the clinical indemnity scheme payments for damages or dead babies may be very significant, potentially exceeding the cost of the interim development at the site. The Minister needs to take heed of this. We need to spend much more money on maternity services. Women need access to early scans and blood tests. Those services are not in place at the moment. I came across a lady who was 16 weeks pregnant recently and she had not yet had a scan. I thought that was quite shocking. It is clear that public maternity services are poor. We need a proper debate and we need to move this issue on very quickly. I have said this before. We would see maternity hospitals akin to the Aviva Stadium if men were having children. Go down to the Coombe instead and what is evident is a cattle mart. There are prefabs and poor and intolerable infrastructure for the treatment of women.

I would also like to raise the issue of Facebook's new virtual currency. It plans to launch a virtual coin called "Libra". It is a type of Bitcoin and will not be regulated in this State and it will not have the protections of the Central Bank. There is, however, a great appetite for this type of currency in Ireland. We need legislation on this issue and we should consider a debate in this House on such virtual currencies as Libra coin and Bitcoin. When one sees giant companies such as Facebook entering this market, one knows these currencies are going to gain traction and affect our daily lives. Many of us will be using such currencies and we need to get ahead of this curve.

**Senator Michael McDowell:** It is now around 14 years since a Member of this House, Senator Tom Morrissey, convened a conference, A New Heart for Dublin, in Dublin Castle. My recollection is that Senator Norris chaired that conference. The proposal was that Dublin Port should be removed from its current location to Bremoore in north County Dublin. A high-rise redevelopment of the centre of the city would then take place on the lands vacated by the port. I mention this because I notice in today's newspapers that there is a reference to Dublin City Council adopting a plan to have buildings of up to 25 storeys in what is termed "docklands".

We should consider two points and this House is the proper forum to do that because this is not just a local issue. This is the capital of the country and this concerns its future. The first point is whether the docklands area should be redeveloped while Dublin's port remains in its current low-rise location immediately adjoining it. The second point, then, is whether the infrastructural decisions now being made about Dublin should take account of a proposal to build a high-rise core to the city between the Custom House and Dublin Bay. I will mention briefly in passing that Senator Morrissey's proposal was visionary at the time and is still valid. The conference in question, chaired by Senator Norris, was addressed by people such as Frank McDonald and Anthony Reddy, the architect, as well as various other people from the Dublin tourism sector. That vision for Dublin foresaw cruise ships coming into the city. We now, however,

have Dublin Port trying to get rid of cruise liners because they are excessive. It was also suggested that the industrial aspect of Dublin Port should be relocated to Bremore in north Dublin. I should also mention that this was retaliated against by Dublin Port Company in a most savage way. It put up advertising hoardings across the city to try to rally opposition to it and reported former Senator Morrissey to the Standards in Public Office Commission. It claimed that people who had participated in the conference and paid the fee were making a contribution to a political party and that the Senator had not declared this. We need those in charge, specifically the Ministers, Deputies Eoghan Murphy and Shane Ross, to come to the House to have a debate on the future structure of and planning in the city of Dublin. We need a broad-ranging debate on whether former Senator Morrissey's visionary plan for Dublin is the way forward or whether vested interests in the form of the Dublin Port Company and its desire to remain located at its current position should win out. I ask the Leader to arrange a full and participative debate that would include Members not just from Dublin but also from across the country. A clear vision should be stated by the Government as to where it sees the city of Dublin developing and how it envisages the installation of the necessary infrastructure for such development.

**Senator Rose Conway-Walsh:** I commend the Union of Students in Ireland on the presentations it is making today on the challenges facing students and their families. As we enter the time when students are finishing leaving certificate examinations, the pressure is growing on students and their families. The Union of Students in Ireland has prepared a submission with the title, *The Crisis Never Ended*. It indicates that there were 235,644 students in Ireland in 2017 and 2018 and that the number is growing all the time. Nevertheless, student grant recipient numbers have fallen by 4,022 because many families have become ineligible for student grants. This can be combined with the ever-increasing cost of accommodation and other expenses in education. We are making it extremely difficult for people, particularly those in marginalised communities or perhaps those in homes that are not conducive to students participating fully in education. We need to consider the barriers we are putting in place for all of these students. There are the parents now known as JAMs, "just about managing". A parent with a gross income of just over €39,000 and three children, one, two or three of whom are at college at the same time, will find it impossible to survive without getting further into debt. This is reflected in the number of students with mental health difficulties, the rate of which has increased by 127% since 2014. Families are under financial pressure because of the bureaucracy and intransigence in the student grant system and the low thresholds. We must examine it. Is a review being made of student grants? If so, what are the terms of reference for it? I know a parent who paid €5,000 for accommodation last year, but it is not allowed as expenditure when the application to SUSI is made in the following year. It is counted as earned income, but that is crazy because the money was not available in the household for spending. We must examine what expenditure is allowed. This is a really serious matter. I do not want to live in a state where people are excluded from education. It is not what we are about. We have always valued education and must ensure we continue to do so. Its value must be reflected in the budget decisions made this year on education and the review of the SUSI grants system.

**Senator Aodhán Ó Ríordáin:** I congratulate Irish Rail on responding to recent cases of anti-social behaviour on its services by introducing a text message alert system. It is due to come into effect in the next couple of weeks to deal with anti-social behaviour on rail services. Anybody who uses the DART, in particular, knows that it is an important transport service for the citizens of Dublin and that we must defend public transport because it is important. We must ensure we can overcome the barriers that might make people reluctant to use the DART service. It is time to have a discussion with the Minister for Transport, Tourism and Sport,

Deputy Ross, on security in the transport system. He has spoken about being in favour, in principle, of having a transport police service or a section of An Garda Síochána being assigned to transport services. I would appreciate it if the Leader facilitated such a discussion. There is a realisation in Irish Rail that there is a problem. If the Minister also recognises there is a problem, perhaps we might work together to try to find a solution and deal with the matter in the way it has been dealt with in other jurisdictions.

I commend the #SaferFromHarm campaign. Yesterday Christy Moore lent his considerable credibility to the campaign which aims to advance the cause of decriminalising drug use and dealing with addiction simply as a medical issue rather than as a criminal justice matter. I know that the relevant Minister of State will soon have sight of a working group report and we hope to discuss its recommendations. There is a growing body of opinion which realises the place for people with addiction is not a courtroom or a Garda station, that they should be helped in the medical sphere. I would appreciate having a discussion in this House on the report with the Minister of State, Deputy Catherine Byrne, in order that we can advance the cause of decriminalisation of drug use. I congratulate the Ana Liffey Project and others who are behind the agenda. To my mind, it is one of the more crucial campaigns of our time. As we are so close to making a difference in this space, I would really appreciate having that debate.

**Senator Maura Hopkins:** I refer to the 50-bed replacement ward block at Portiuncula University Hospital in Ballinasloe. The matter has been ongoing for many years. It is a shovel-ready project. It is essential that we see works progressing as quickly as possible. When I recently met hospital management, it highlighted the urgent need for the project to progress. The current ward block is not fit for purpose and the project is extremely important in improving conditions for both patients and staff at the hospital. In the previous reply I received on the matter I was informed that the Health Service Executive had indicated to the Department that tender documents were being prepared, with a view to progressing procurement and commencing an enabling works contract in 2019. I want to know at what stage the process is at, as no enabling works have taken place so far this year. I would like to see the Minister for Health, Deputy Harris, address the Seanad on the capital plan. It is crucial that we see the new 50-bed replacement ward block at Portiuncula University Hospital as part of the plan. It is important that we see progress on it without delay. Both patients and staff are operating in conditions that are not fit for purpose. We need to see progress on an enabling works contract and a budget for the capital plan.

**Senator Terry Leyden:** I support the proposal made by Senator Hopkins in respect of Portiuncula University Hospital. As chairman of the then Western Health Board, I had the honour of signing the contract to take over operation of the hospital in 2011 for £11 million. The former Taoiseach and Minister for Health and Children, Brian Cowen, initiated the purchase as it was very important that the hospital be brought under State control. It is important, as Senator Hopkins said, that it is refurbished now. It, and the other hospitals in the region, including Roscommon University Hospital, are very important. My wife Mary and I have had good experiences with Portiuncula Hospital over the years, and many very happy events have happened there. I am delighted that Senator Hopkins has raised this here today, as this is a good vehicle for raising such issues and to say to the Minister that we need fair distribution of funding to allow for the continued development of the hospital in Ballinasloe. I hope the national children's hospital is not sucking all the capital out of the Department of Health and depriving worthy projects, such the new unit that is needed in Roscommon University Hospital. We need to work together as Oireachtas Members in the interests of both the hospitals in the region.

**Senator Gerard P. Craughwell:** I agree with my colleague, Senator Conway-Walsh, about the Union of Students in Ireland. Education, and third level education in particular, is vital for both the growth of our economy and its sustainability when it comes to foreign direct investment and so on. That is not in any way to undermine the need for greater emphasis on apprenticeships, which should also concern us.

Last night I was contacted by some spouses of members of the Army Ranger wing who are about to be sent to Mali. I find the detachment going to Mali quite difficult to understand. Why are we sending 14 men to one of the most dangerous countries in the world, and to one of the most dangerous places within that country? I am not sure what 14 people are going to do there. There has been some debate about them going to do some peace enforcement, which people seem to feel is in some way contrary to this mad notion that Ireland is a neutral nation. As we know, we are not. They are going under Chapter VII of the UN Charter, which provides for peace enforcement. It was voted through the Dáil back in the 1990s, so we have no difficulty with that. However, these men are going out there having been granted an adjudication under the conciliation and arbitration scheme of €50 to €60 extra pay per week, which has not been paid to date despite being backdated to 2006. The adjudication was heard in 2010, when this economy was on its knees, but the adjudicator still felt it was right and proper to award them an extra €50 to €60 a week.

I have one final point. I am sure Members of the House have received emails from people from the-----

**Acting Chairman (Senator Gerry Horkan):** Everyone other than the group spokesperson is entitled to one topic, and the Senator has already had two, so I ask him to conclude at this point.

**Senator Gerard P. Craughwell:** I shall take the matter up next week.

**Acting Chairman (Senator Gerry Horkan):** He can even do it tomorrow.

**Senator Michelle Mulherin:** About this time last year, the Minister for Business, Enterprise and Innovation, Deputy Humphreys, announced a pilot project for work permits for the agriculture sector, consisting of 500 permits for horticulture, 250 for meat, and 50 for dairy. A year has passed and I would like to see an examination of the pilot, including its successes and what review has taken place. This stems from the fact that there are a lot of complaints about delays in the issuing of work permits to foreign workers to come here to work on farms, particularly in the dairy sector. I know only 50 visas were allocated to that sector but there seem to be inordinate delays. Farmers have scaled up their dairy farms, invested heavily, and are finding they cannot do the work. They are under serious stress and pressure as they cannot get workers in on their farms. If we are to continue to support our agriculture sector, we have to sort this out. When we look for skilled farm workers from abroad, we are competing with New Zealand, the Gulf states, and Canada, and there are no issues around getting visas and work permits in those countries, so we need to up our game. It deserves a fuller debate, and I ask the Leader to invite the Minister to the House to have a discussion about farming, farm workers, work permits, and the terms and conditions of people who are working on farms as employees.

**Senator Paul Gavan:** Last week, Senator McDowell predicted, correctly, that the need for a money message would be wheeled out in relation to my National Minimum Wage (Protection of Employee Tips) Bill 2017, and that happened last night. I will not mention all of the Bills

19 June 2019

that have had money message requirements attached to them because I only have two minutes, but prominent ones include the Control of Economic Activity (Occupied Territories) Bill 2018, the International Protection (Family Reunification) (Amendment) Bill 2017, the Petroleum and Other Minerals Development (Amendment) (Climate Emergency Measures) Bill 2018, and now last night's Bill. I was with a host of trade unionists in the Public Gallery last night when this happened. Their jaws dropped and they asked for an explanation of what this money message was. An article in *The Irish Times* last week by Eoin Daly and David Kenny got it right when it claimed that it is effectively a universal veto. It disregards how people vote in either Chamber, and if the Government does not want it to happen, it simply dispatches with democracy.

**Senator Michael McDowell:** It is also illegal.

**Senator Paul Gavan:** It is illegal, as the Senator correctly pointed out. I am calling for a debate on this but I want more than that. It is time that all of us across Opposition groups acknowledge that we cannot put up with this anymore. This is an absolute outrage. It is the antithesis of democracy, and the Leader laughing at this is disrespectful.

**Senator Jerry Buttimer:** I am laughing at the Senator and his response to democracy.

**Senator Paul Gavan:** It is absolutely disrespectful.

**Acting Chairman (Senator Gerry Horkan):** Through the Chair.

**Senator Paul Gavan:** The people in the Chamber last night-----

**Senator Jerry Buttimer:** You-----

**Acting Chairman (Senator Gerry Horkan):** The Leader will have an opportunity to respond.

**Senator Paul Gavan:** There were dozens of trade unionists in the Public Gallery of the Chamber last night who were absolutely disgusted with the cynical approach of the Minister for Employment Affairs and Social Protection, Deputy Doherty, and the Government. The Government could not win the argument or the vote, so instead it took its ball off the pitch. This is playground politics of the worst kind. I am calling on my comrades in Fianna Fáil, the Labour Party, and on the Independent benches to have a meeting to discuss this because it is not good enough. It is undermining both this Chamber and the Dáil, and it is time all of us worked together to bring it to an end.

**Senator Michelle Mulherin:** How much of that has now been spent since January?

**Acting Chairman (Senator Gerry Horkan):** I have been reminded that the money message is a Dáil procedure rather than a Seanad procedure but I acknowledge the point that it effectively-----

**Senator Michael McDowell:** There is not much point in us having Bills in this House.

**Senator Paul Gavan:** Exactly.

**Acting Chairman (Senator Gerry Horkan):** I take Senator McDowell's point, and it is well made.

**Senator Frank Feighan:** I have just read Conor Gallagher's article in *The Irish Times* today about the difficult and tragic case of Ana Kriégel-----

**Acting Chairman (Senator Gerry Horkan):** Sentencing of the individuals in that case has not happened yet, so I ask the Senator to be very careful. If he is going to pursue this, anything he says might be misinterpreted, so it might be better if he leaves it until the sentencing has been concluded. I am just asking him to be careful as to what he says.

**Senator Terry Leyden:** That is good advice.

**Senator Frank Feighan:** What I am about to say is in the public domain. The article, about a young girl who was bullied and murdered, is traumatising and moving. I pay tribute to An Garda Síochána, as well as to the families of both Ana Kriégel and the boys involved. This case has shaken this country. I do not know what else to say, but everybody should read Conor Gallagher's respectful piece today because it has certainly left me moved and traumatised.

**Acting Chairman (Senator Gerry Horkan):** I certainly sympathise with Ana Kriégel's family. I read the article myself, and it is harrowing. In my position, I want to be careful we do not say something that would have an influence on the sentencing or be interpreted in that way. I thank the Senator for his understanding.

*12 o'clock*

**Senator David Norris:** I welcome the decision of the Government not to proceed with the progress through this House today of the Adoption (Information and Tracing) Bill 2016. The decision represents a significant climbdown. The Government should withdraw the Bill at this point because it is a complete and utter mess and has met significant opposition in the House.

Senator McDowell is correct in his recollection that I chaired the conference that was convened many years ago by the very interesting and highly intelligent former Senator Tom Morrissey. I note that today the Dublin Port Company has announced an investigation into data leaks which revealed the extravagant use of credit cards at the company. Why is it pursuing the leaks instead of investigating the circumstances that gave rise to the disgraceful, luxurious expenditure of €500,000 on credit cards? It is outrageous.

**Senator Michael McDowell:** There was expenditure of €7 million on a garden.

**Senator David Norris:** The organisation should be ashamed of itself for talking about a leak. The information is in the public domain and we want to know how these things were allowed to happen.

A short while ago, Senator Bacik, a good friend of mine and someone I respect and admire a great deal, congratulated the Government on the passage of the Act that criminalised the purchase of sex. As I recall, I was the only person in the House with the guts to oppose that disgusting, smug, middle-class piece of hypocrisy. I predicted at the time we debated it that the legislation would lead to increased dangers for sex workers. In fact, violence against them has increased by 92% in the past year. The most vulnerable people have been left exposed by the provisions of the legislation. The World Health Organization, AIDS organisations and others came out against the Bill at the time, but smug, middle-class hypocrisy and voter appeal won out. It is a disgrace.

**Acting Chairman (Senator Gerry Horkan):** I welcome the delegation from the Navan

19 June 2019

Active Retirement Group who are accompanied in the Visitors Gallery by gardaí from Navan, together with Deputy Cassells and Councillor Mike Bray. The visitors are very welcome and I hope they will have a nice day in Leinster House.

**Senator Victor Boyhan:** I have two questions about the climate action plan launched earlier in the week. Senator Mulherin referred to the additional work permits we were awaiting in the horticulture and forestry sector, for which applications had been submitted. The action plan includes an ambitious target of putting an additional 8,000 ha of land under forestry per year. That is good news, but it brings with it issues related to employment, training and skills. Horticulture and forestry are two areas in which we can excel, particularly in expanding output of commercial timbers. We need to look at internal markets and internal consumption, of soft woods, in particular, and the potential to develop these areas. In the past ten years there has been massive growth in the apples and orchard sector related to cider production, particularly in Clonmel and the midlands. The experts at Teagasc tell us that they would like to see this area expand further to provide employment opportunities. However, that will require training resources and additional permits.

The action plan includes a proposal for the establishment of a just transition review group. A just transition is critical if we are to bring people along with us in seeking to achieve our climate goals. Otherwise, not everybody will be able to absorb all of the objectives and some will be left behind. In the case of persons on the edges of society, particularly those with income disadvantages, who will pay, for instance, to retrofit their homes? We can find ways to ensure nobody will be left behind, but we need to hear how it will be done. Any debate in the House on the action plan should zone in specifically on the issue of a just transition.

**Senator Ivana Bacik:** I thank the Leader and the Minister for Children and Youth Affairs, Deputy Zappone, for agreeing to a change in the schedule for our consideration of the Adoption (Information and Tracing) Bill. Yesterday many of us expressed concern that the Bill was proceeding to Committee Stage, even though we were very dissatisfied with the framework of the Minister's proposed amendments. We were told about the numerous flaws in the Bill, some of which we had identified ourselves. I am glad that the Minister consulted many of the stakeholders last night, including Dr. Maeve O'Rourke and the Adoption Rights Alliance. I am also pleased that she is consulting the Attorney General on the amendment I put forward which would change the framework within which the Bill as drafted and meet many of our concerns about the balancing of rights in respect of information and privacy. I welcome the decision to defer Committee Stage and the opportunity to discuss these broad issues during statements later.

I must respond to my dear friend and fellow group member Senator Norris.

**Acting Chairman (Senator Gerry Horkan):** Senator Norris should not have spoken on a second topic. However, since I allowed it, I will also allow Senator Bacik to respond.

**Senator Ivana Bacik:** This is my main topic.

**Acting Chairman (Senator Gerry Horkan):** Senators are only allowed to raise one topic.

**Senator Ivana Bacik:** I thank the Acting Chairman for his indulgence.

**Senator David Norris:** The Acting Chairman should harass Senator Bacik as much as he likes.

**Senator Ivana Bacik:** Of course, I take umbrage at Senator Norris's suggestion the impetus behind Part 4 of the Criminal Law (Sex Offences) Act 2017 was a smug, middle-class sense of purpose.

**Senator David Norris:** That is precisely what it was and I thank the Senator for repeating the assertion. May we hear it again?

**Senator Ivana Bacik:** The Senator may not. The impetus behind the criminalisation of sex purchase derived clearly and explicitly from a view of prostitution as the exploitation of women. It derived from a feminist sensibility and ideology.

**Senator David Norris:** The Senator did not talk to the women involved.

**Senator Ivana Bacik:** We certainly did. I was proud to be a member of the justice committee which recommended the approach we adopted in the 2017 Act. I pay tribute to the then Minister for Justice and Equality, Deputy Frances Fitzgerald, who drove the legislation, rightly, from an explicitly feminist perspective, with the focus on protecting women who were being exploited.

**Senator David Norris:** What about the 92% increase in the level of violence?

**Senator Ivana Bacik:** Ruhama and the other organisations involved in the Turn Off the Red Light coalition have strongly criticised-----

**Senator David Norris:** No. The Senator is wrong.

**Senator Jerry Buttimer:** Senator Norris should have some manners and listen to what Senator Bacik is saying.

**Acting Chairman (Senator Gerry Horkan):** Senator Bacik to continue, without interruption.

**Senator Ivana Bacik:** Those organisations have strongly and rightly criticised what appears to be a continued focus in policing on prosecuting women involved in selling sex. That is not what the legislation was intended to do. We want to see more prosecutions of clients, which was the purpose behind the law. Its objective is to tackle the demand for prostitution.

**Senator David Norris:** What about the 92% increase in the level of violence?

**Senator Terry Leyden:** This is like a meeting of a Trinity College Dublin debating society.

**Senator Ivana Bacik:** That is the only way we will address the exploitation, violence and organised crime networks which are an implicit part of prostitution.

**Senator David Norris:** There has been a 92% increase in the level of violence since the Act was introduced.

**Senator Ivana Bacik:** The Act is not responsible for any increase in the level of violence. What we do see is that where prostitution is addressed in the Swedish manner, that is, by criminalising the purchase of sex, there are better police reporting structures for those engaged in prostitution and reduced criminalisation, which is the purpose behind the legislation we introduced. That is what happened in Sweden and what we want to see happening here. The Garda needs to step up its policing of the criminalisation of the purchase of sex by focusing on the

clients. That is the idea behind this feminist legislation.

**Senator David Norris:** That is complete rubbish.

**Senator Brian Ó Domhnaill:** I encourage all Oireachtas Members to attend the briefing being given by the Irish National Teachers Organisation, INTO, today in the National Museum of Ireland. Its concerns facing into budget 2020 are all straightforward and include improving educational outcomes for children, reducing class sizes, supporting teaching principals in schools with one to four teachers and securing additional resources for the capitation grant. They are reasonable demands that would not impose a considerable burden on the education budget. I hope they can be delivered on in the autumn.

In a report issued this week the International Monetary Fund, IMF, made a concerning forecast that Ireland was entering uncharted waters in advance of Brexit and effectively heading into the winds of a recession, with a prediction that the economy could contract by anything up to 5% when or if the United Kingdom withdrew from the European Union. The IMF also refers to the need for the rainy day fund. My concern is that the Government's proposals, which are contained within legislation before the House, cap that fund at a figure in the region of €8 billion. I do not know why that is the case. I know the Minister gave his rationale but capping a rainy day fund when we are facing into a recession is not the right thing to do. We should have a debate on this matter, before the summer recess if possible. I know the Government is looking at two budgetary scenarios for October, but we are facing down the barrel of a recession, particularly in light of the way in which the Conservative Party is conducting its leadership election. It is likely that whoever is appointed as the new British Prime Minister will have to withdraw from the European Union to show that he has achieved something. I ask for a debate on that issue, if possible between now and the summer recess.

**Senator Jerry Buttimer:** I thank the 14 Members of the House for their contributions to the Order of Business. I dtús báire Senator Ardagh raised the issue of the national maternity hospital. With regard to the maternity strategy, I alert the Seanadóir to the fact that we have a national maternity strategy up and running. Significant developments in the delivery of the national maternity strategy have already occurred. I remind Senator Ardagh that €3 million was allocated to the development of maternity services in 2016, €6.4 million was allocated in 2017, €4.15 million was allocated in 2018, and an additional €3.1 million has been allocated to the national women and infants programme in 2019. This is all extra money. One point to be made in respect of our maternity services is that 15 of the 19 maternity hospitals are now able to offer routine anomaly scanning. This is an improvement and there is more to come.

With regard to the Rotunda, the Minister, the Government and all of us are fully aware of the concerns raised by Professor Malone. The Department's priority has always been the welfare of the infants affected by the outbreak of the bacterial infection. The Department has been in regular contact with the hospital to ensure that appropriate care is provided. The matters the Senator has spoken about with regard to development have had no impact on the issues relating to the healthcare-associated infection she mentioned. I will point out to her that €7 million has been invested in the last two years, comprising an allocation of €2 million in 2018 and €5 million this year. The Minister is working with the Government, the HSE, and the hospitals to ensure our maternity hospitals are fully resourced and fully staffed. I am happy to have the Minister come to the House in that regard. On the matter of Facebook's currency, I am happy to have the relevant Minister come before the House.

Senators McDowell and Norris raised the issue of Dublin Port. I suggest to Senator McDowell that he may get a more expeditious reply to his legitimate concerns by talking to the Leas-Chathaoirleach about the Seanad Public Consultation Committee doing some work on the issue. To be fair to the Senator, rather than having, as he said, a participative debate, we may need to do some more substantive work on the matter.

**Senator Michael McDowell:** I agree. That is a good idea.

**Senator Jerry Buttimer:** The points he made regarding “A New Heart for Dublin” are very relevant. These points could also apply to Cork or Galway. I very much regret that we did not choose to have a directly-elected mayor for Cork. I believe that a directly-elected mayor in Cork, Galway, Limerick or Dublin could transform and drive change in the city. It is regrettable that the leader of the Fianna Fáil Party abdicated his responsibility in Cork city and did not campaign for a directly-elected mayor.

**Senator Gerard P. Craughwell:** There must be an election coming.

**Senator Jerry Buttimer:** Such campaigning would have served the people of Cork better than playing petty partisan politics. The point the Senator makes is highly relevant to the future of our capital city. Senator Norris, who is not present but that is not my problem, raised the issue of-----

**Senator Gabrielle McFadden:** He will still get a headline.

**Senator Jerry Buttimer:** -----the use of credit cards in the Dublin Port Company. It is an independent company and the article is based on a leak. There is no suggestion of any wrongdoing or misallocation. The expenses were approved. I am not condoning the expenditure but, in the absence of the person in question, we must be careful about what we say and about how we present issues. As the Senator will know, there have been calls - which I support - for representatives of Dublin Port to appear before the Committee of Public Accounts. The Chairman of the Joint Committee on Transport, Tourism and Sport has also asked for such a meeting. I am all for accountability and transparency but we also need to be fair to people. I fully agree with Senator McDowell regarding the issue of Dublin Port. We should be encouraging cruise liners to come to our capital city because they are a source of tourist revenue and their visits are an opportunity to showcase our country and city. We should also encourage them to come to Cork, where the Port of Cork is engaged in a very strong, proactive campaign in respect of cruise liners. I would be happy to talk to the Senator about progressing the suggestions he has made regarding this matter.

Senators Conway-Walsh and Craughwell raised the issue of education in the context of today’s briefing by the Union of Students in Ireland, USI. There are record numbers of people in third level education, which we welcome. There are challenges in our third level sector and I am happy to have the Minister of State, Deputy Mitchell O’Connor, come to the House.

Senator Ó Ríordáin raised the issue of Irish Rail. We all congratulate Irish Rail on the innovative decision it has taken to provide a text messaging service to allow passengers to alert security to anti-social behaviour. It is important to have a more robust regime around anti-social behaviour. It has an effect on many people in different communities. It affects people of all ages including some of the most vulnerable in society. Many people now live in fear in particular parts of our country because of anti-social behaviour. We should send out a strong message that there is no need to tolerate it any longer. The Senator also mentioned the issue

of the decriminalisation of drugs. I am happy to have the Minister of State, Deputy Catherine Byrne, come to the House in that regard.

Senator Hopkins raised the issue of Portiuncula Hospital, as did Senator Leyden, who has left the Chamber. Yesterday marked the anniversary of the Senator's first election to the Dáil as part of Jack Lynch's infamous wave in 1977. I congratulate him on that in his absence. Senator Hopkins has been an advocate of the 50-bed replacement block at Portiuncula Hospital. I am happy to have the Minister come to the House in that regard.

Senator Craughwell raised the issue of the Army Ranger Wing going to Mali. As the Senator is aware the Dáil debated the matter last week. I understand the concerns about the mission expressed by many. It is not a decision a Government or Minister takes lightly or in isolation. I thank all of our troops from the Army Ranger Wing and wish them good speed and safekeeping in their mission.

**Senator Gerard P. Craughwell:** Will we have a debate here on the matter?

**Senator Jerry Buttimer:** It is not a matter for this House. The decision by the Minister is based upon advice given to him by the military, as the Senator knows quite well. Some 12 rangers are going and they will be working with a German contingent on intelligence gathering patrols. If the Senator wishes to raise any particular matters, I suggest it may be more expeditious to do so through a Commencement matter debate.

Senator Mulherin raised the issue of work permits, on which Senator Boyhan also touched. It is a matter of concern. Huge gaps need to be addressed. The Minister is working on them and I am happy to have her come to the House in that regard.

Senator Gavan raised the issue of the National Minimum Wage (Protection of Employee Tips) Bill 2017. Lest he again put up a video of me laughing, I was not laughing at the decision of the Dáil, I was laughing at the Senator's use of democracy. He can speak about playground politics but that is what he is playing here today, as he is entitled to. The matter is one for the Houses of the Oireachtas Commission.

Senator Feighan raised the issue of the Ana Kriégel case. I will not make any comment other than that we offer our sympathies to the family. Many people are traumatised by the reporting of the case. There are victims today who are bereaved and suffering. As the Senator said, the matter is still before the courts.

Senators Bacik and Norris raised the issue of the Criminal Law (Sexual Offences) Act 2017 which, as Senator Bacik said, targeted demand for prostitution. It was about the criminalisation of the purchase of sex, not the selling of sex. A broad coalition of differing groups was in favour of the change we supported in this House. It is about advocating for women's rights and women. The survey quoted by Senator Norris was done on an app and I would question its validity. All of us want women protected. None of us condones or supports any attack on women, particularly in the case of sex workers who are violently attacked. If people understand anything, they should report these crimes to An Garda Síochána as a matter of urgency. The legislation also tackles trafficking. It is also about ensuring that there is accountability. None of us wants to go back to the debate on the Bill but the points made by Senator Bacik were well made.

Senator Boyhan also raised the issue of climate action. It is my intention that the Minister

for Communications, Climate Action and Environment will come to the House in the coming weeks to have that debate if possible given the legislative timetable. I would make the point to Senator Norris, who was begrudging in his comments about the Adoption (Information and Tracing) Bill, that Senators, Horkan, Bacik and Leyden made comments about the Bill while others on the Government side also spoke privately to the Minister and I about it. As I said yesterday, I will reflect upon it. I spoke with a number of Members along with the Minister and some of her advisory staff yesterday. This is a very important and sensitive Bill dealing with competing rights. I was not being in any way adversarial but if we are to achieve what people have failed to achieve over the past 20 years, we must listen and engage further. That is what the Minister is doing. I thank the House for its co-operation, particularly Senators Bacik and Horkan.

Senator Ó Domhnaill raised the issue of the INTO briefing earlier, which is an education matter, and the budget. The Minister will publish the summer economic statement soon and we will have a debate on that in due course. Comments were made about the IMF. I am sure that as part of the debate, the IMF can be referred to as well. I thank the Acting Chairman for his willingness to act as temporary Chair today and tomorrow. I hope he has a very successful tenure in the Chair. Perhaps it might be a forerunner to future activity.

**Acting Chairman (Senator Gerry Horkan):** I will try to walk before I try to run but I thank the Leader for his sentiments.

Order of Business agreed to.

*Sitting suspended at 12.23 p.m. and resumed at 12.45 p.m.*

### **Industrial Relations (Amendment) Bill 2018: Second Stage**

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

**Minister of State at the Department of Business, Enterprise and Innovation (Deputy Pat Breen):** I am pleased to have the opportunity to commend this Bill to the Seanad. It is being brought forward as a result of a commitment given by the Government as part of the resolution of a dispute within An Garda Síochána. Following complex negotiations at the Labour Court in November 2016, resolution was found to a potentially very serious dispute within An Garda Síochána and, as part of this resolution, a commitment was given by the Government to provide the Garda associations with access to the Workplace Relations Commission, WRC, and the Labour Court. The Government agreed to the amendment of the Industrial Relations Act 1990 to provide access by the Garda associations to the WRC and the Labour Court. A high-level cross-departmental working group comprising representatives from the Departments of the Taoiseach, Justice and Equality, Public Expenditure and Reform, Defence, and Business, Enterprise and Innovation, and representatives from Garda management and the Workplace Relations Commission was set up to progress the issues identified by the Government. Two subgroups were established under the main working group. The first subgroup on legislation aimed to progress the Bill, which included amendments to the Industrial Relations Act 1990. A second subgroup examined industrial relations structures within An Garda Síochána that aided in the resolution of internal disputes, and identified and agreed procedures to provide access to the WRC and the Labour Court. My Department and the Office of the Parliamentary Counsel actively engaged in drafting the Bill in discussion with other relevant Departments, namely, the

Departments of Justice and Equality and Public Expenditure and Reform. All the Garda associations have been full members of phase 2 of the work of the subgroup and have been actively engaged in deliberations on the current proposals for amendments to the Industrial Relations Act 1990. Some of the associations, in particular the Garda Representative Association and the Association of Garda Sergeants and Inspectors, have expressed disappointment with the decision of the Government to rule out trade union status, to refuse members the right to strike and to refuse to set up a separate pay commission for members of An Garda Síochána. The Bill also forms part of the ambitious four-year plan for the implementation of the recommendations outlined in the report of the Commission on the Future of Policing in Ireland. Accordingly, this Bill recognises that the Garda Commissioner as the employer, instead of the Department of Justice and Equality, has the lead responsibility in engaging in discussions on pay and conditions for the purposes of the Bill. The legislation will be subject to a commencement order and will not come into effect until robust internal dispute resolution procedures are in place within An Garda Síochána.

There have been some calls during the passage of this Bill for the inclusion of the Defence Forces and there was strong input in this regard on Second Stage. However, while policy concerning the Defence Forces is a matter for the Minister for Defence, I understand that members of the Defence Forces have a range of parallel complaint and adjudication mechanisms in law to compensate for the limitations on their access to the normal industrial relations machinery that applies in wider society. This includes a statutory redress of wrongs process, an Ombudsman for the Defence Forces, Defence Forces representative associations, and a conciliation and arbitration scheme for members of the Permanent Defence Force.

Furthermore, I understand that only last year, the Department of Defence completed an independent review of the conciliation and arbitration scheme for members of the Permanent Defence Force. The review contains several recommendations aimed at improving the efficiency of the scheme. It is noteworthy that the review did not recommend that the Defence Forces representative associations be provided with access to the WRC and the Labour Court. Instead, the reviewer recommended that the revised scheme should be reviewed after a three-year period, as this would afford the parties an opportunity to assess the scheme's performance. It is appropriate that this time be allowed to assess the operation of the revised scheme. It is not intended to make any legislative amendment that will pre-empt the outcome of the review of the revised scheme, due to take place in 2021.

I will now outline the main provisions of this short Bill, which contains five sections. Section 1 provides for the insertion of a number of definitions in the principal Act, the Industrial Relations Act 1990. Section 2 provides for the amendment of section 3 of the Industrial Relations Act 1990 to include definitions of a "member" of the Garda Síochána, "Garda Síochána" and "Garda Commissioner". Section 3 provides for the amendment of section 23 of the Industrial Relations Act 1990, which deals with the definition of a number of terms used generally in the context of industrial relations legislation, including the definition of a "worker", which in normal course constitutes a person over the age of 15 who has entered into, or works under, a contract with an employer. In the context of this Bill and the untypical nature of the employment relationship for members of the Garda Síochána, the Bill provides that a "worker" includes a member of the Garda Síochána, that a reference to "employer" means the Garda Commissioner, and that a reference to a contract with an employer is covered by the particular terms and conditions to which members of An Garda Síochána are subject. Section 4 sets out the provisions of the various industrial relations enactments that are being actively disappled in

the context of this Act. These provisions will form a new schedule to the principal Act of 1990 and will include provisions relating to trade union law and the right to collective bargaining under sectoral employment instruments such as the employment regulation orders and the sectoral employment orders. Section 5 relates to the Short Title, collective citation and commencement.

I look forward to hearing the Senators' views and to working with them to progress this important legislation. I am proud to commend the Bill to the Seanad this afternoon.

**Senator Aidan Davitt:** I will not delay the House. I appreciate the Minister of State being here today. Fianna Fáil is delighted to give this Bill its full support today.

I have already brought up with the Minister of State a couple of issues that relate to the Bill and he has worked tirelessly to try to accommodate all parties. As he mentioned, it is disappointing that soldiers, in particular newer soldiers, feel such discrimination around pay and wages. The industrial relations machinery does not seem to be in place to fix this wrong. That is a serious concern, as the Minister of State is aware. We are happy to support the Bill in principle but perhaps the Minister of State can work further on this issue.

**Senator Gerard P. Craughwell:** The Minister of State is welcome to the House, as is the Bill. I have spoken to the various associations and they are satisfied that although it does not do everything they seek, they do not want the Bill impeded in any way and would like to see it go through.

The Minister of State will know that in an industrial dispute, we came very close to what was termed a "blue flu". It would be a sad day for Ireland if members of the Garda Síochána pulled their services over any industrial relations issue. It is good that we are now putting a mechanism in place whereby, like any other workers, its members have access to the labour relations machinery of the State and can bring their grievances there to be adjudicated by independent bodies. It is an extremely important and bold move by the Government to allow that. Since the foundation of the State, members of the Garda have not had that available to them.

The position of members of the Garda with respect to future negotiations, which also is that of one of the Defence Forces groups, is that there should be an independent pay commission outside the Public Service Pay Commission. The Public Service Pay Commission deals with everything from teachers to nurses and from civil servants to clerks in local authorities. We have to agree that people in this country who wear a uniform do a very different job from anybody else in the State and that they cannot be encompassed by the normal national negotiations. For that reason alone, I support having a separate mechanism. For example, some uniformed people feel that the public services group of ICTU would not suit their needs. They want a separate group, similar to what exists in the UK, where a pay commission looks annually at the army, air force and navy. While that commission never exceeds the percentage terms of the national pay agreement, there is some degree of flexibility around allowances, special payments and so on.

I have one difficulty that goes back to before the Minister of State's time, so I hope he will not take it personally.

*I o'clock*

I have a difficulty with an arbitrated agreement such as the one with the Army Ranger Wing that I mentioned this morning. In 2010, members of the Army Ranger Wing took a case for ar-

bitration. They were awarded an increase of between €50 and €60 a week and it was backdated to 2006. The award was made at the height of the recession and economic collapse, yet the arbitrator saw the claim as something that he should recommend. To date, it has not been paid and about €35,000 is due to be paid to every single serving member of the Army Ranger wing. It is pretty sad that we have not looked after that.

In providing access to the Labour Court and the WRC for members of An Garda Síochána, we should have gone the whole hog and included the Defence Forces. I understand what the Minister of State has said but we will revisit this matter at some stage in the future. The members of the Defence Forces, like anybody else in this country, are workers. The Chief of Staff should be the line manager for all members of the Defence Forces and there should be a resolution process under the State's industrial relations procedures and mechanisms.

The conciliation and arbitration system is under review and I await the outcome of that. It is something that needs a drastic review. When I was president of the Teachers' Union of Ireland, conciliation and arbitration was one of the mechanisms for resolving disputes but we were also a trade union in our own right and reserved the right to withdraw labour, like any trade union. Clearly, with gardaí and soldiers, the withdrawal of labour would be an extremely severe step and I am not sure that any of the associations would want that. I could go around the houses on this issue all day but I am not going to do so. The Minister of State has brought forward legislation and taken in one aspect of those in uniform. It is a pity that the legislation does not meet the full needs of the Garda Representative Association, GRA, and the Association of Garda Superintendents but the Association of Garda Sergeants and Inspectors, AGSI, is happy enough. I commend the Minister of State on bringing the legislation here and look forward to seeing the Bill enjoy a speedy passage. I hope it will be signed off before the summer break. I hope to see the two stages come together the next time.

**Senator James Reilly:** I welcome the Minister of State to the House. I also welcome this important Bill and it delivers on a commitment that the Government gave to Garda members. It is worth remembering that there are 16,990 members of the Garda, of which 14,032 are in uniform, 2,480 are civilians and 528 are in the reserve. These men and women protect us every day and put their lives on the line. It was, as others have said, very unfortunate that they felt they would have to engage in a so-called blue flu to achieve reasonable rates of pay and address their issues that had become intolerable from their point of view. I welcome the fact they now has access to the Labour Court, the WRC and all of the available industrial relations mechanisms. Obviously, State security forces cannot go on strike - State security cannot allow that - but we must show that we appreciate the very special job that members of the force do and the very dangerous risks that they take daily. Every time they respond to a call, they do not know what they will face, but they do so to protect each one of us. These people are due our highest regard as I know the Government and Minister have for them. I welcome the Bill and commend it to the House.

**Senator Pádraig Mac Lochlainn:** I thank the Minister of State for attending the Seanad to discuss this Bill. As he will recall, during this Bill's progression in the Dáil, Sinn Féin referenced its Trade Union (Garda Síochána and Defence Forces) Bill 2017 in the debate. Our Bill, if enacted, would allow members of the Irish Defence Forces and of An Garda Síochána to be classified as workers in legislation and give them the option to form trade unions. This would give them full access to the State's industrial relations mechanisms while making it illegal for An Garda Síochána and the Defence Forces to engage in strike action for reasons of public safety and national security. Rulings by the European Court of Human Rights and the Council

of Europe, the increase in industrial action within An Garda Síochána, and the continued negative treatment by the State of members of the Defence Force in terms of pay and conditions were all reasons we introduced our Bill. The continued ban in this State on trade unions within An Garda Síochána and the Defence Forces is in violation of international agreements and the fundamental rights of those employed in those sectors. The Industrial Relations (Amendment) Bill 2018 has a similar aim, albeit considerably more limited, to amend the Industrial Relations Act 1990 to allow just members of An Garda Síochána and their representative associations to access the State's industrial relations mechanisms, namely, the WRC and the Labour Court. Gardaí have waited too long to be allowed access to the industrial relations mechanisms of the State resulting in internal disputes escalating due to no forum being available to address conflicts at an early stage. Therefore, although this move is long overdue, it is very welcome.

My party also believes that members of the Garda and the Defence Forces should also be allowed to join a trade union, if they wish. Members of the Defence Forces should also be allowed to access the WRC and Labour Court in the same way that gardaí will be permitted under this Bill. Although these changes for members of An Garda Síochána are welcome, they are far more limited than what Sinn Féin had previously proposed. Therefore, we intend to bring forward amendments at a later stage to help strengthen the rights of gardaí and members of the Defence Forces.

We take this opportunity to express again our concern about the backlog of cases in the WRC. Information received by my party shows that in July 2018, there were 3,140 complaints waiting to be heard in the WRC with almost half of them waiting 12 months or more. In addition, 1,473 cases were waiting for a decision. These existing delays are a cause for concern as many of these people find it difficult to find alternative work while waiting for their cases to be heard due to their previous employment being under examination. This Bill will give gardaí access to the WRC, which of course is welcome, but undoubtedly it will add to these waiting lists. I ask the Minister of State to outline in his reply how he plans to deal with this.

On Report and Final States in the Dáil my colleague, Deputy Quinlivan, tabled an amendment that was ruled out of order. His amendment sought to change the definition of the worker, contained in section 8 of the Industrial Relations Act 1990, by deleting the words "but does not include a member of the Defence Forces or of the Garda Síochána". We believe both members of the Garda and the Defence Forces should be treated as employees when it comes to industrial relations issues. They should have access to the WRC to ensure they have a venue to bring employment related concerns and complaints. Perhaps the Minister of State could expand on why members of the Defence Forces have been actively excluded from this legislation. Why does he and the Government believe that members of the Defence Forces should not have access to the WRC?

We intend to bring forward amendments to strengthen this Bill, as we did in the Dáil. I thank the Minister of State for bringing the Bill forward as it is a step in the right direction and, therefore, we will support the Bill.

**Senator Victor Boyhan:** I welcome the Minister of State to the House. I will speak about An Garda Síochána in the context of these matters. I acknowledge that some Garda associations have expressed disappointment with the decision made by the Government not to extend trade union status to them, but the Minister has made it clear that there are serious issues with national security and the special relationship that An Garda Síochána has within this State. As Senator Reilly has said, we value them. However, words are easy to say and I do not doubt the

19 June 2019

commitment of the Minister of State. Yes, we value gardaí and yes, people want to give them fair access to industrial relations, etc. but there are security of State issues, which all speakers here have acknowledged, and that is important.

What can we say about the Bill? The Bill would give An Garda Síochána access to the Labour Court and the WRC, which is positive progress that should be acknowledged. There were unprecedented threats of withdrawal of labour by An Garda Síochána in the past that were of concern to the Government. The Government took them on board and has now come back with a commitment to give members of the Garda permanent access to the WRC and the Labour Court, which must be acknowledged as a positive first step.

It is important when talking about An Garda Síochána or any other organisation with respect to industrial relations that there are strong and robust internal systems to deal with grievances. The first place grievances should be dealt with is in the workplace or organisation, and the process always needs to be improved in every organisation. I have heard of experiences and read in the media about issues in the Garda Síochána over the past number of years but these are an internal matter for the Garda Commissioner and his staff. I take this opportunity in the House to say there are industrial dispute mechanisms and resolution capacity within the Garda Síochána in the first instance. This is positive legislation and I personally commit to supporting it.

**Minister of State at the Department of Employment Affairs and Social Protection (Deputy Pat Breen):** I thank Members for their contributions in the House this afternoon. I also thank them for their invaluable support in getting the Bill passed through the House and I hope we will be in a position next week to progress the Bill and get it passed before the summer recess.

A number of Senators expressed concern that the Defence Forces were not included in the Bill but it is quite obvious why they were not included. I remind Senators of the ruling of the European Committee of Social Rights in 2017 that Ireland was not in violation of the European Social Charter in respect of the prohibition of the right of military personnel to strike. In a non-binding ruling, the European Committee on Social Rights made that conclusion, and it is important to point it out today. I outlined to Members earlier the range of parallel complaint and adjudication mechanisms in law to compensate for the limitations in access to normal industrial relations machinery, and they include statutory redress of wrongs process, an Ombudsman for the Defence Forces, which is really important, Defence Forces representative associations and a conciliation and arbitration scheme for members of the Permanent Defence Force.

As I stated earlier, an independent review was done on the conciliation and arbitration scheme for members of the Defence Forces. That report recommended that the official side should, with the consent of the Minister, engage in discussions with ICTU to explore the practicalities of the Permanent Defence Force representative association forming affiliations with ICTU, while giving due consideration to any likely conflict that might arise between such an arrangement and the obligations of military service. I understand the matter is being progressed and dialogue has commenced between the Department of Defence and ICTU. We need to give that review process some time. I ask Senators to allow the process to happen, although we are all conscious of the important work done by the Defence Forces.

The reason Garda associations cannot bring about a strike is very simple. Ireland is unique as we only have one police force, as in many other countries there could be two, three or four different groups for dealing with traffic and other policing sectors. Were the Garda Síochána

to go on strike, there would be awful security issues, including the security of the State etc. It should be acknowledged that members of the Garda are very different and they are not like ordinary workers. The current Bill facilitates access for members of An Garda Síochána to the WRC and Labour Court. Having full access to the WRC and the Labour Court is important for anybody but for the Garda Síochána it is even more important.

I am the Minister of State with responsibility for the Labour Court and the WRC and I have seen the great work done there in speeding up the process where issues exist. The WRC now has offices all over the country, including in Sligo, Cork, Dublin and Shannon. It will shortly open a new office in Ennis for the western division. People will be able to walk in off the street and meet WRC personnel. It is very much an organisation that is available to workers and it has maintained a very good track record of dealing with industrial disputes over the two years since I took office. It is the State's industrial relations machinery for resolving these disputes.

Senator Mac Lochlainn spoke about additional resources and €1 million was allocated to the WRC in the budget this year to deal with its extra requirements, particularly as the Garda Síochána now has access to the WRC. That €1 million will go towards extra personnel and resources. Some cases are delayed in the WRC because many are complex and take time to deal with. That is often outside the control of the WRC. On average, I understand cases are referred to adjudication and dealt with within six months. Conciliation services are very responsive and parties have access to that where necessary. There have been many improvements but the WRC is a new body and time must be given to bed in. From what I have seen of the WRC so far, it is very hands-on and it has really good personnel. Its inspectors understand the issues very well. We are lucky to have such good industrial relations machinery in the State at this time.

I thank all the Members for their contributions this afternoon. This is a very important Bill and I am very anxious for it to be finalised before the summer recess. Every effort will be made, both by my Department and the staff in the Seanad, to ensure we can get that done.

**Senator Terry Leyden:** I will make a quick comment, if I may.

**Senator Victor Boyhan:** We had some efficient arrangements.

**Senator Terry Leyden:** I welcome the Minister of State to the House and thank him for introducing the Bill, which Fianna Fáil is backing 100%. We are showing our respect and support for An Garda Síochána in this Bill. I ask the Minister of State to bring it through the House without delay.

Question put and agreed to.

**Acting Chairman (Senator Robbie Gallagher):** When is it proposed to take Committee Stage?

**Senator James Reilly:** Next Tuesday.

Committee Stage ordered for Tuesday, 25 June 2019.

*Sitting suspended at 1.18 p.m. and resumed at 1.45 p.m.*

19 June 2019

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

**Acting Chairman (Senator Gerard P. Craughwell):** I welcome the Minister to the House and call on him to speak on the Bill.

**Minister for Justice and Equality (Deputy Charles Flanagan):** I am pleased to have the opportunity to speak on Second Stage of the Coroners (Amendment) Bill 2018, as now passed by Dáil Éireann. The Bill makes a series of amendments to the Coroners Act 1962 in a far-reaching and important modernisation of our coronial law. First, it will strengthen and clarify the powers available to coroners in the reporting, investigation and inquest of deaths. Second, the Bill responds to the Private Members’ Bill brought by Deputy Clare Daly regarding maternal deaths. It also addresses similar concerns that have arisen in some perinatal or infant deaths. Third, the Bill provides for a wider scope of inquiry, where necessary, at inquest and makes a range of other changes that will enhance our compliance with our obligations under the European Convention on Human Rights.

I wish to acknowledge the important contribution of Deputy Clare Daly through her earlier Private Members’ Bill on maternal deaths and thank her for the leadership she has shown on this issue.

**Senator Martin Conway:** Hear, hear.

**Deputy Charles Flanagan:** That Bill addressed the findings of inquests and inquiries in several high-profile cases that caused great public unease. Some maternal deaths occurring in hospitals that should have been reported to coroners because they raised issues of medical error and were unnatural deaths under the Coroners Act 1962 were not so reported. Bereaved families and, in some instances, even coroners experienced considerable difficulty in obtaining basic information that should have been provided to them. This was, and is, unacceptable. I am introducing these provisions to significantly strengthen the powers of coroners so that will not recur.

Deputy Clare Daly’s Bill received broad support from all sides in the Dáil. The Government agreed that I and my officials would work with Deputy Daly to progress the legislative proposals. The Bill I am introducing today, therefore, incorporates all the amendments sought by Deputy Clare Daly in respect of maternal deaths. The Bill will require mandatory reporting to a coroner, mandatory post-mortem examination and mandatory inquest in all cases of maternal or late maternal death. It will also extend the applicability of the legal aid scheme for family members at certain inquests to cases of maternal or late maternal death.

As well as addressing the issue of maternal deaths, my Bill provides for mandatory reporting to a coroner of all stillbirths, intrapartum deaths and infant deaths. As I mentioned, this responds to similar public concerns that have arisen in several cases involving perinatal and infant hospital deaths. I wish to emphasise that we are not proposing mandatory post-mortem examination or inquest in these particularly sensitive cases. Post mortem and inquest in such cases will remain, as currently, at the discretion of the coroner. The wishes of the bereaved parents are a key consideration for coroners in such cases.

The Bill also introduces, for the first time, a statutory basis for a coroner to inquire into a stillbirth where there is cause for concern, for example, arising from matters raised by the bereaved parents. These provisions fit logically into the overall purposes of the Bill, which sets out in a more comprehensive, clear, specific and stringent manner the legal framework for

reporting and investigation of certain deaths. The Bill specifies much more clearly and comprehensively the situations in which a death must be reported to the coroner. These include any death that appears to be violent or unnatural, where the circumstances may in the public interest require investigation, or simply where the death is unexpected and the cause is unknown. The Bill also inserts a new schedule setting out specific types of death that must be reported to the coroner, including, for example, all maternal or late maternal deaths and all infant deaths.

Moreover, the legislation specifies more clearly and comprehensively the range of persons who are legally responsible for reporting a mandatory reportable death to the coroner and provides for updated penalties where this is not done. I should emphasise that in the majority of cases mandatory reporting does not result in a post-mortem examination and even fewer result in an inquest. Most reported deaths are quickly cleared from further investigation by the coroner, as the circumstances of death are well known and a death certificate can be signed and issued. However, mandatory reporting does ensure that in situations of concern or doubt, coroners have the necessary information to assess whether the death is one that requires further inquiry. In a limited range of situations, which I will outline shortly, the Bill does provide for mandatory post-mortem examination, mandatory inquest or both.

Regarding post-mortem examinations, the Bill sets out in a clearer, more comprehensive and more stringent manner a limited range of situations in which a post-mortem examination is always required. These include deaths which following inquiry by the coroner, appear to be violent or unnatural, or where the death is unexpected and the cause is unknown. They will also include, specifically, any death occurring in State custody or detention, and any maternal death or late maternal death, as well as certain deaths where a post-mortem examination is already a statutory requirement. The coroner also retains a discretion to direct a post-mortem examination in other cases.

Regarding inquests, the Bill amends the 1962 Act to expressly set out the situations in which an inquest is required by law. These include where the death appears to be violent or unnatural, or to have occurred unexpectedly and from unknown causes, or in certain situations where an inquest is a statutory requirement. The Bill also specifies that an inquest must be held into any death occurring in State custody or detention and into any maternal death or late maternal death. The coroner retains a discretion to direct an inquest in other cases.

The Bill introduces other important reforms. It strengthens the coroner's powers to summon witnesses to an inquest, direct production of appropriate material, or enter premises and take possession of relevant documents. The Bill updates sanctions for a person obstructing an inquest, provides a modernised framework for post-mortem examinations, taking account of forensic developments, and requires family members to be informed regarding post-mortem examinations or inquests. In the light of the previous difficulties that have arisen, the Bill provides an important new power for the coroner to direct a hospital or other health institution, or a medical practitioner, to make available forthwith relevant medical records of a deceased person for the purposes of a post-mortem examination.

I should also mention a series of amendments relating to any case where the death that is the subject of the coroner's inquiry is also being investigated by the Garda Síochána Ombudsman Commission, GSOC, under the Garda Síochána Act 2005. Typically, a GSOC investigation will arise if a person dies in a vehicle collision following pursuit by a Garda vehicle, or after discharge of a Garda firearm or while in Garda custody. In such cases, the amendments recognise GSOC, rather than the Garda Síochána, as the lead criminal investigating agency. They

also provide that the assistance to the coroner normally provided by the Garda Síochána in matters such as taking witness statements and producing forensic exhibits at the inquest will instead be provided by GSOC designated officers. This reflects the existing practice. It is clearly preferable for all stakeholders concerned in the interests of ensuring a visibly independent and transparent coroner's inquiry.

The Government has agreed to priority drafting of a number of further amendments. These are being finalised and I intend to bring them forward on Committee or Report Stage. They include provisions for a coroner to seek directions from the High Court on a point of law relating to his or her functions - a consultative case stated provision. Another proposed amendment is subject to the Attorney General's advice, setting overall rules, and empowering me to make detailed regulations to guide the best conduct of a post-mortem examination for coronial purposes, and the proper and respectful storage and ultimate disposal of human tissue or organs removed for the purposes of the post mortem and retained for the inquest. Such disposal arrangements could include return to a family member for burial or cremation, if requested and appropriate. The detailed regulations will be developed together with the Minister for Health and appropriate stakeholders.

Many of the Bill's provisions build on an extensive review by my Department of the Coroners Bill 2007 which also proposed to modernise and strengthen coroners' powers but had become, in some respects, outdated. Of course, the 2007 Bill also provided for a major administrative restructuring of the coroner system. Due to the major challenges then confronting public finances, this aspect of the 2007 Bill was not progressed following Second Stage in the Seanad and now needs significant updating. However, we must continue to examine the optimum organisation of the coroner service.

Further elements of the existing law and structures will require significant improvement. Such improvement might likely involve a move away from the current multi-jurisdictional county model to a more regional one. However, no decisions have been taken. In the meantime, the Bill makes provision for a small number of immediate and necessary administrative amendments to assist coroners in carrying out their functions. This primarily concerns the Dublin district.

I will now address the main provisions of the Bill. Section 1 is a standard provision.

Section 2 provides for a number of new definitions in the 1962 Act, including "family member", "post-mortem examination", "stillborn child", and a range of situations that are defined as "State custody or detention". It also defines "maternal death", and a number of related terms, in accordance with the internationally recognised World Health Organization, WHO, definitions.

Section 3 provides an express statutory power for a coroner to inquire into a stillbirth where there is cause for concern. This addresses the question whether references in the legislation to a "deceased person" can apply to a stillborn child who has never drawn breath independently.

Sections 4 to 6, inclusive, contain a number of updating technical amendments regarding administration of the Dublin coroner district. These are necessary following the transfer, in late 2017, of responsibility for the operation of the Dublin coroner district from the Dublin local authorities to the Minister for Justice and Equality.

Section 7 inserts into the principal Act a new part IIA on reporting of death. It consists of two proposed new sections, the first of which is section 16A, which sets out comprehensively

the general types of deaths which must be reported to coroners. It should be read in combination with the new Second Schedule contained in section 34, which sets out a list of concrete examples of mandatory reportable deaths. This list expressly includes any maternal death or late maternal death and any death of a stillborn child, intrapartum death or infant death. There is a power for the Minister to amend the list of reportable deaths by statutory instrument.

Secondly, section 16B sets out comprehensively the various persons who are under a duty to report a mandatory reportable death to the coroner. Reporting does not mean the death would automatically be subject to a post-mortem examination or an inquest. A doctor reporting the death to the coroner must indicate whether he or she is satisfied, in the circumstances, to certify that the death was due to natural causes. Where no cause for concern arises, such a certificate is sufficient under the Coroners Act. The proposed section also updates the penalties for failing to report a reportable death.

Section 8 updates section 17 of the principal Act to provide that an inquest is mandatory if the person has died in State custody or detention, and in all cases of maternal death or late maternal death.

Section 9 amends section 18 of the principal Act to provide that the coroner has a discretion to inquire into the circumstances of death - and, if the coroner thinks proper, to hold an inquest - if a medical certificate of the cause of death has been provided but the coroner considers that the certificate is not completed in a satisfactory manner.

Section 10 is a significant provision that extends the scope of the inquest to include establishing “the circumstances in which the death occurred”. This is a key issue in certain inquests - for example, those occurring while the deceased was in State custody or detention - for strengthening our compliance with the European Convention on Human Rights, ECHR. However, it will remain the position that an inquest does not make any finding of civil or criminal liability.

*2 o'clock*

Section 11 requires the coroner to give at least 14 days' notice regarding the holding of the inquest to family members and interested persons. Shorter notice is permitted in limited situations as an exception if the family will not be unfairly prejudiced, for example, where the deceased is a foreign national and the coroner is facilitating repatriation of the body.

Sections 12 and 13 are further technical amendments arising from the recent administrative changes regarding the Dublin coroner district. Along with sections 14, 19, 20, 21, 23, 24 and 26, section 12 also makes provision for a designated officer of GSOC to assist the coroner in place of a garda, or recognises GSOC as the lead investigating agency in place of An Garda Síochána, in a case where the death is also being investigated by GSOC, as I mentioned earlier.

Section 14 modernises the current provision for identifying the body of the deceased person.

Section 15 amends section 30 of the principal Act, to delete the restriction that an inquest shall be “confined to ascertaining the identity of the deceased person, and how, when and where the death occurred”. This change flows from the new provision at section 10, widening the scope of the inquest.

Section 16 amends section 31 of the principal Act to include reference to the findings made

at inquest in that section's prohibition of censure or exoneration and to add that general recommendations that are considered necessary in the interests of public health and safety may be appended to the verdict.

Section 17 amends section 32 of the principal Act to add a reference to the findings made at inquest in the record of the inquest's conclusions.

Section 18 is a key section which provides for extensive reform of the Act's provisions on post-mortem examinations directed by the coroner. It replaces sections 19 and 52 of the principal Act and amends section 33, which refers to the coroner's discretion to direct that a post-mortem examination be performed. The section also proposes five new sections in the principal Act: sections 33A to 33E. Collectively, these provide for: a more detailed statutory framework where there is a mandatory post-mortem examination; a modern and more coherent process for the post-mortem examination to be performed by a pathologist under the direction of the coroner; requirements for a family member of the deceased person to be informed regarding the post-mortem examination and provided with a copy of the post-mortem report if requested; and a new statutory provision for the coroner to direct a further post-mortem examination of the body of the deceased if the coroner thinks it necessary.

Section 19 makes provision for a designated officer of GSOC to assist the coroner, in place of a garda, in a relevant death by serving witness or jury summons for the inquest.

Section 20 amends section 37 of the principal Act to provide that if a witness fails to attend the inquest without reasonable excuse, the coroner can seek a High Court order directing the witness to attend. The court can make such other orders as it considers just, including an order as to costs.

Section 21 amends section 38 of the principal Act to significantly strengthen coroners' powers regarding a witness at inquest. It will empower a coroner to direct a witness to reply on oath or affirmation or to answer a question and to direct a person to produce to the inquest documents or objects in that person's possession or control. It also allows the coroner to seek a High Court order that a person comply with the coroner's direction and ancillary orders to give full effect to the direction. The offence of knowingly giving false or misleading evidence to an inquest is updated to carry a class A fine or imprisonment for a term not exceeding 12 months.

Section 22 provides for the coroner to take evidence before the inquest from a person who is about to leave the State, where that appears necessary.

Section 23 amends section 40 of the principal Act to remove the requirement that the coroner must sit with a jury in every road traffic death. This change has long been sought by coroners. Currently the jury requirement applies even in straightforward cases where no other vehicle is involved. Coroners advise that it is increasingly difficult to empanel juries for such a large volume of cases leading to unexpected adjournments and delays in many cases, distress to the bereaved families, and inconvenience to witnesses. The coroner would instead keep a discretion to empanel a jury in road traffic cases for which it is considered appropriate.

Section 24 is another section empowering a GSOC officer to assist the coroner in relevant cases, in this case in empanelling a jury for the inquest. Section 25 updates the sanctions under section 46 of the principal Act for obstructing the removal of a body to a mortuary or morgue. Section 26 is a further GSOC amendment and allows for a GSOC-designated officer to apply for exhumation of a body under section 47 of the principal Act in the same manner as a Garda

inspector might. Section 27 provides a significant new power for the coroner, acting under a warrant from the District Court, to enter and inspect premises and to take copies or take possession of any documents or material relevant to the inquest. Section 28 is a new provision that the coroner may obtain advice and assistance from an expert, if he or she considers it necessary, on a particularly specialised subject relating to the death.

Sections 29 and 30 provide for further necessary updates regarding administrative matters following the transfer of responsibility for the Dublin coroner office. Section 31 extends the scheme of legal aid in the principal Act for a family member of the deceased at inquest, which was introduced in 2013 for certain categories of deaths, to cases of maternal death or late maternal death. Section 32 inserts a new provision such that, if a body corporate commits an offence under the Coroners Act, its officers may also be personally liable if they consented or connived in its commission. Section 33 is a further GSOC amendment. It inserts a new express provision in the Garda Síochána Act 2005 for GSOC-designated officers to assist the coroner in relevant cases. Section 34 provides for the new Second Schedule that sets out for the first time in statutory form a specific list of concrete examples of deaths that must be reported to a coroner.

Sections 35 and 36 are standard provisions.

It is my strong view that this important Bill responds to the demands of bereaved families, of interested parties, and of society in general. It will provide the coroner with a modernised and coherent legal framework and with significant new powers to ensure an effective death investigation. I hope that, with the co-operation of all sides, we can facilitate its swift passage through this House with a view to enactment before the summer recess. To this end, I ask Senators for their co-operation on this issue. I commend the Bill to the House.

**Senator Catherine Ardagh:** Gabhaim buíochas leis an Aire agus cuirim fáilte go dtí an Seanad roimhe. Molann Fianna Fáil an Bille seo. Fianna Fáil supports the Bill, which strengthens and modernises the current law governing coroner's inquests. In particular, Fianna Fáil supports the requirement that maternal deaths be the subject of an inquest. The Bill will also allow a coroner to inquire into a stillbirth where there is cause for concern raised by, for instance, the bereaved parents. Between 2011 and 2013, a total of 27 maternal deaths were recorded, of which only three were subject to an inquest. Families have spent years fighting for inquests into the deaths of their loved ones. The fact that it has proven difficult to persuade a coroner to hold inquests into maternal deaths has resulted in a lack of transparency about the incidence and causes of maternal deaths. This prevents lessons being learned that could prevent the recurrence of errors. There have also been inconsistencies in the way in which maternal deaths have been recorded in official statistics, which has led to significant under-reporting of these incidents.

**Senator Colm Burke:** That is not true.

**Senator Catherine Ardagh:** Decisions of the European Court of Human Rights have stressed the obligation of states to investigate unexplained deaths or those that occur in circumstances that involved official persons or authorities. The court has explicitly pointed out that the State's obligation can extend to deaths other than those which occur in hospitals to establish the cause of death and any liability on the part of healthcare professionals. It is clear that this legislation is required to ensure Ireland is compliant with the European Convention on Human Rights.

19 June 2019

More broadly, bereaved families and coroners have experienced considerable difficulty in obtaining basic information that should have been provided to them. The increased powers afforded to coroners by this Bill are welcomed. We support this Bill.

**Senator Martin Conway:** I again welcome the Minister to the House. I am glad that he is present for debate on this Bill because it is exceptionally important. In his opening address, he made reference to our colleague, Deputy Clare Daly. It is only right and proper that she be recognised for her significant contribution to making this Bill happen.

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

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

**Senator Martin Conway:** I have been on the Joint Committee on Justice and Equality with Deputy Clare Daly for a number of years and this issue has come before us. People who have experienced maternal deaths and who have not had the opportunity of an inquest have given testimony before the committee. This legislation, once passed by these Houses and signed into law by President Higgins, will at least mean this will not happen again. It updates and modernises the legal framework relating to coroners, which has not been done since 1962 - generations ago. Things were done in a different fashion then. There was not the type of transparency and accountability back then that society takes for granted today.

We have EU obligations, as has been pointed out. This legislation certainly brings us into line with our EU obligations. The detail in the legislation is welcome. Most, if not all, eventualities that may present themselves are covered by the legislation. It is welcome that the penalties for people who do not co-operate with inquests and coroners will be increased. Coroners will have the power to ensure that people turn up, answer questions and give evidence in coroners' courts.

It is also welcome that families will be required under the legislation to be informed when inquests are taking place. That feeds into people's involvement with the justice system and ensuring that victims are at the heart of the work we do because, unfortunately, for too long in this country, victims have not been at the heart of the justice system. In fairness to this Government and Minister, we are moving incrementally in the right direction when it comes to a victim-centred society and justice system. It is heartbreaking to hear the stories of people who have suffered maternal deaths where the reasons for the death were inexplicable. The families will live with that for the rest of their lives. The reasons why it happened are inexplicable and nobody is held accountable. As far as the families are concerned, justice has not been done and there has been no attempt to ensure that justice is done. This legislation will at least give these people some satisfaction that in the future, such situations will not arise.

I welcome the Bill. I always have great admiration for the Minister because the raft of legislation he must put through is quite remarkable. This legislation will directly impact on the lives of citizens in a positive way, particularly when people find themselves in very tragic and difficult situations. At least they will know that there is accountability and transparency and that the justice system is on their side. I commend this legislation and I am glad that, so far, there has been no opposition to it in this House. As I always suspect, this House does the right thing when the legislation is important and necessary.

**Senator Niall Ó Donnghaile:** Gabhaim buíochas leis an Aire agus cuirim fáilte ar ais roimhe i seachtain atá iontach gnóthach dó. I welcome the Minister back to the House during

what is a very busy week. I know it will be another busy week next week for him in respect of justice legislation coming before this House.

However, I seek his forgiveness. I must return to the Special Select Seanad Committee on the Withdrawal of the United Kingdom from the European Union upon conclusion of my remarks but, as Senator Conway said, there is support for this legislation in this House and I look forward to engaging on it on later Stages. I also reiterate words of thanks to our colleague on the Joint Committee on Justice and Equality, Deputy Clare Daly, who will be a member for another few weeks. She brought this issue to the fore. While I do not say this in a confrontational or combative way, in many ways, her diligence has resulted in this legislation being brought forward by the Government. That is part and parcel of our work here and it is important that we acknowledge that.

We in Sinn Féin believe it is incredibly important that the remit of inquests be extended to look beyond the medical cause and into the circumstances leading to the death. Issues relating to deaths can be tragic and it is vital that a coroner can consider these matters holistically if the case necessitates it. I am glad that this Bill will eventually extend the powers of the coroner when requesting witnesses and evidence and allow for questioning if required. The powers the Bill gives to coroners are proportionate to the job they have to do, especially in cases where a thorough investigation is needed, such as in the case of a violent death or medical misadventure. In such cases, as we have seen many times previously, such as in the cases of maternal deaths and others, coroners' powers have proven to be ineffective in investigations. The legislation seeks to give the coroner powers of warrant and search and seizure of documents and penalises those who refuse to co-operate with inquests. I am glad that mandatory reporting to the coroner will be extended where cause of death is unknown and if deaths are somewhat suspicious or unnatural such as where a death has occurred in a violent or unnatural manner, by unfair means or misadventure or in other areas.

The legislation responds to Deputy Clare Daly's Bill introducing mandatory inquests in all cases of maternal death or late maternal deaths and extends legal aid to family members of the deceased. As it stands, maternal deaths are treated as deaths that must as a rule or practice be reported to the coroner. However, inquests are not automatically granted in these cases. Between 2007 and 2013, eight inquests were held following maternal deaths. All eight cases resulted in rulings of medical misadventure. It is the duty of the State to investigate deaths that take place in suspicious circumstances or in circumstances that leave them open to question. Too many families in this State have been left facing the wall of bureaucracy on their own without any supports.

However, if we are to correct this and ensure there are mandatory inquests, we must also address the failures that lead to the need for inquests. Ireland has the lowest number of consultant obstetricians per 100,000 women in the OECD. That is one consultant obstetrician for every 597 births per annum. To illustrate how poor the service we provide to women is, the comparable rate in Scotland is one obstetrician for every 268 births. The shortcomings in maternity services are numerous and have led directly to heartbreaking incidents involving mothers and children, including, in some cases, their tragic deaths. As legislators, we must acknowledge that while it is right to ensure there are mandatory inquests in the event of maternal deaths, we must also act on the maternity strategy and other relevant measures. The national maternity strategy has no statutory underpinning and significant swathes of it have not been implemented. We must also address the issues while ensuring there are mandatory maternal death inquests.

It is unfortunate that the Bill does not appear to facilitate what has become known as Jake's amendment. That would bring about a change in coroners legislation for which Senator Mac Lochlainn has been advocating for many years. In 2013, 14-year-old Jake McGill Lynch was prescribed the antidepressant Prozac. He ended his life using a firearm. Jake was diagnosed with Asperger's syndrome and was given the antidepressant drug, despite research stating that the drug has no benefit for children with this syndrome and despite the emerging evidence of harm. The coroner in Jake's case rejected a suicide verdict. That was due to an email that Jake wrote 24 hours before he took his own life. When writing to a friend, he conveyed his concerns about the medication he was taking and said that he was feeling worse because of it. The Bill introduced by Senator Mac Lochlainn some years ago proposed to amend the Coroners Act to make it possible to return a verdict of iatrogenic suicide, which is essentially suicide brought on by side effects of prescribed medication. Despite many assurances to Jake's family from a number of Ministers for Justice and Equality, the Bill does not cater for the measures it wishes to see included. Sinn Féin will submit an amendment on Committee Stage to introduce the measure and we look forward to engaging and working with the Minister in that regard.

That will not be the only way in which we will seek to strengthen this legislation. I am sure many will agree with us that provision for a coroner to inquire into a stillbirth where there is cause for concern, for example, arising from matters raised by the bereaved parents should be put on a statutory footing. We also believe it is essential that this legislation should provide for the Minister to make regulations on the proper storage and family management any material removed for the purposes of a post-mortem examination, including return to a family member where requested and appropriate, and to provide power for the coroner to direct a hospital or other health institution to make medical records of the deceased person available for the purposes of a post-mortem examination. Those are a number of areas in which we will seek to be constructive. We, along with the Minister and other colleagues, will seek to strengthen this legislation. We support the aims and objectives of the Bill and I thank everyone, including the Minister, who in one way or another have been raising issues concerning inquests into deaths in this State for many years. This legislation is a result of their tireless pursuit of justice on behalf of the bereaved families.

**Senator Colm Burke:** This legislation is very welcome and the changes are necessary. I have one issue, however, which I raised a number of years ago. It is about inquests being held in a timely manner and I am not sure, having examined the Bill, whether this issue is contained within it. We have been talking about maternal deaths and, when I raised this issue a number of years ago, it followed a maternal death into which, even after 18 months, an inquest was not held even though all the relevant examinations had been done. The maternal death was no fault of the hospital but the delay gave the impression that the hospital had something to hide. Despite numerous requests to the coroner, there was a substantial delay. Have we provided for this? It is a very important issue.

A section in the Bill gives power to certain people to look for an inquest but this power is not given to members of the medical profession who may require an inquest. A form can be filed under section 33A(2), which states that it shall be the duty of a coroner to exercise his or her power to direct a post-mortem examination in every case in which a member of the Garda Síochána, a member of the Defence Forces, a duly authorised officer of a statutory body or a designated officer of the GSOC, requests him or her to do so but it is not required where a medical practitioner so requests him or her. Section 33A(3) does provide for this requirement but I ask the Minister for clarification on the matter. Would it be appropriate to look at whether

a post-mortem could be required to be held where a medical practitioner requests one? I was recently asked for advice in a case where there was clear evidence that a person who gave birth to a stillborn child had been seriously assaulted. The Garda got involved and I welcome the provision in the Bill for an inquest to be required in such cases.

I also believe the provisions will require additional supports for coroners because there is a lot of work in this area. Perhaps some of the delays in holding inquests are as a result of insufficient support mechanisms. Now that we are expanding their role and giving them more powers, it is important to make sure coroners have adequate supports so that they can hold inquests in a timely manner. It is also important that all the other necessary investigations, by the Garda and by medical professionals etc., are dealt with in a timely manner. I had another case in which an inquest was delayed for more than 18 months because of an ongoing GSOC inquiry. It was only by making representations for the inquiry to be concluded that the inquest could be held. A young person had died and the parents were left in limbo for more than 18 months. We need to make sure that inquests are not delayed *ad infinitum*, especially where a family has suffered a bereavement and wants an explanation, which they can only get through an inquest. Until all the evidence is made available, there are only uncertainties. I ask the Minister to deal with this as it is an important issue in regard to this legislation.

**Senator Ivana Bacik:** I welcome the opportunity to speak on this important and long overdue Bill, for which I offer my support and that of my Labour Party colleagues. I also acknowledge the people in the Gallery to hear the debate. As the Minister said, the Bill serves a number of purposes. It will provide a long-overdue modernisation of our current coroners system and will update and modernise the legal framework for coroners, in addition to ensuring that a wider scope of inquiry will be available to coroners and enhancing our compliance with the European Convention on Human Rights.

I acknowledge the important work that coroners do. Coroners themselves have been looking for this legislation and, while they have carried out their functions to the best of their ability, it has been in the context of a very dated legal framework. They have shown sensitivity over many years in the way they have dealt with bereaved families. Coroners systems are about addressing the concerns of bereaved families and that makes this a particularly important and sensitive Bill. I note Vicky Conway's very good and comprehensive piece on this Bill in *The Irish Times* of 17 May in which she made it clear that inquests must prioritise the needs of bereaved families, something the Department's working group noted in 2000 when calling for fundamental reform of the law on coroners.

I also acknowledge the great work of Deputy Clare Daly on her Private Members' Bill, whose provisions this Bill incorporates, specifically regarding maternal deaths. I pay tribute to Deputy Daly who, for many years, highlighted this by tabling parliamentary questions and working with interest groups and bereaved families to ensure that it would be something for which this legislation would provide. I acknowledge the work of Dr. Jo Murphy-Lawless from Trinity College Dublin, whom I have known for many years and to whom I am grateful for contacting me personally about this legislation, which her work also fed into. She co-ordinates the Elephant Collective, a group that was set up in response to concerns about maternal deaths. The group has done an exhibition called Picking up the threads: Remaking the fabric of care. Dr. Murphy-Lawless is a real testimony to Trinity College Dublin and I wish her the very best on her retirement.

I also acknowledge the families who have been so affected by maternal death and who

19 June 2019

worked so hard with Deputy Clare Daly to bring the legislation to this stage, in particular the families of Tania McCabe, Evelyn Flanagan, Jennifer Crean, Bimbo Onanuga, Dhara Kivlehan, Nora Hyland, Savita Halappanavar and Sally Rowlette, all of whom died in maternity care between 2007 and 2014 and whose families have worked to ensure better legal frameworks of support for families in such circumstances.

I acknowledge the work of the Association for the Improvement of Maternity Services, AIMS, which has worked hard on this issue for many years. This legislation is hugely important, especially for the families of women who have died within maternity or maternity care services. The legislation will also provide for the mandatory reporting of all stillbirths, intrapartum deaths and infant deaths in that context to a coroner. This is not just about the deaths of women but also the deaths of children. That is a hugely significant factor and it is very important that we legislate for it. Unfortunately, we know of a significant number of maternal deaths, on which there should be a focus, as well as on the importance of the legislation in enhancing public trust and confidence and the confidence of women in maternity care services in Ireland. That confidence is not helped by responses such as that of the national maternity hospital which suggested in 2018 that a Health Information and Quality Authority, HIQA, review following the untimely death of Malak Thawley was unjustified, might undermine clinical and public confidence and that its effect on national maternity services could be counterproductive. That was an unfortunate response because, as the chairpersons of AIMS, Ms Krysia Lynch, has noted:

Women deserve to know they will receive the best possible care with skilled, highly trained professionals looking after them, who can cope with any eventuality in the maternity continuum. They also need to be assured that when mistakes happen, they will be fully evaluated and compared to a national independent standard and that any learning can be transferred to other units.

This legislation and its provisions on maternal deaths should be seen in the context of a long history of the disregard and ill-treatment of and injustice for women and children within the healthcare system. We are finally moving out of that context. I again acknowledge the work of both this and the previous Government in seeking to improve conditions for women and children. However, it is worth remembering that in the past women in Ireland's maternity services were faced with scandals about which we only now know, including the symphysiotomy and hepatitis C scandals, the current revelations about cervical cancer screening and the bigger picture of the eighth amendment which we have, happily, repealed.

This discussion and context came to the fore again this week when we learned of how Majella Moynihan had been treated by the Garda two decades ago, which we are also discussing in the context of our debate in this House on the Adoption (Information and Tracing) Bill 2016. We will have an opportunity to speak to the Minister for Children and Youth Affairs, Deputy Zappone, about that Bill later and I am working with her to ensure it will be improved on. We need to reflect on the history of the unjust treatment of women in healthcare services and this legislation will mark a major improvement in that regard. I acknowledge and reiterate what Deputy Clare Daly said in the Dáil when she noted the need to bring forward this Bill without delay. She also expressed some concern that the amendments the Minister proposed to bring forward on Committee and Report Stages in the Seanad would delay the Bill. Neither I nor my party will be putting forward amendments, as we wish to see this Bill brought into law as soon as possible. I am sure that view is shared across the House. If Government amendments are brought forward on Committee or Report Stages, we all hope they will not delay the passage of the Bill into law and that it can be dealt with before the summer recess, as Deputy

Clare Daly had hoped. I know that the Minister also shares that hope.

I again refer to Vicky Conway's article in *The Irish Times* because inquests and a robust coroner service clearly play important roles in preventive healthcare. Inquests prevent future deaths because a key point of them is that by understanding what has caused a death within a system, they can make preventive recommendations. The World Health Organization reports that 80% of maternal deaths, that is, mothers who die within six weeks of childbirth, are preventable. Inquests can provide both the public and bereaved families with greatly enhanced information on how to prevent such deaths in the future.

I commend the Minister for introducing the Bill, as well as all of the campaigners who have helped to bring it to this stage. I look forward to its speedy passage into law.

**Minister for Justice and Equality (Deputy Charles Flanagan):** I thank Senators Ardagh, Ó Donnghaile, Colm Burke and Bacik for their contributions and acknowledge their support for this important measure. I am grateful for the many expressions of support received and will certainly bear the various points raised by Senators in mind as I proceed, between now and Committee Stage, to address some further amendments and observations. I welcome the general agreement on the need to proceed swiftly to enactment of this important Bill as we modernise the Coroners Act 1962. I was particularly struck by the supportive words of Senator Bacik.

The reforms provided for in the Bill are needed to better serve citizens, clarify and strengthen the powers available to coroners and better support compliance with the State's obligations under the European Convention on Human Rights. Like Senator Bacik and others, I acknowledge the work of coroners throughout the State which is often or always performed at times of great sensitivity and challenge, as well as their often under-appreciated role in society. That is why I am keen for the Bill to ensure coronial law will better fulfil what is an essential and basic purpose in many respects -the provision of the best possible explanation for next of kin and, beyond them, society at large when a death gives rise to concern, doubt or uncertainty.

It is useful to recall the main reforms provided for in the Bill. It will strengthen significantly and modernise the powers available to coroners in reporting on, the investigation of and holding inquests into deaths and, in particular, provide for mandatory reporting to a coroner of a clearly specified range of deaths, including deaths in State custody or detention and all maternal or late maternal deaths, stillbirths and infant deaths. It will also provide for mandatory post-mortem examinations and inquests into all maternal or late maternal deaths and deaths in State custody or detention. It will clarify and expand the categories of persons who have a duty to report such deaths and it will be an offence for such a person not to do so. This will ensure proper and transparent scrutiny of deaths.

The Bill will update and modernise the provisions for post-mortem examinations to take account of forensic developments and current practice. It will strengthen the powers of the coroner to summon witnesses to an inquest and to direct a witness to produce documents and evidence or answer questions. It will give the coroner a new power, enforceable on application to the High Court, to direct a hospital, other health institution or medical practitioner to produce the appropriate medical records of the deceased for a post-mortem examination. The coroner will also be granted the power, acting under a warrant from the District Court, to enter and inspect premises, take copies or possession of any document or material that might be relevant to the inquest and provide for a wider statutory inquiry, where necessary, at the inquest. The purpose of an inquest will now go beyond establishing the medical cause of death. It will also

establish the circumstances in which a death took place. The Bill will require information on the post mortem and, on request, a copy of the post-mortem report to be provided for the family of the deceased. It will require advance notice of an inquest to be given to the family members of the deceased person. That was one of the issues raised by Senator Colm Burke. It will also extend the current legal aid scheme for the next of kin at an inquest to cases of maternal or late maternal deaths.

A number of points and queries were raised. I again thank Senators for their contributions. Senator Colm Burke raised a query about a medical practitioner requesting an inquest. This engagement on the part of a medical practitioner will take place earlier in the process. A doctor who may, for example, have been involved in treating a person prior to death will make immediate contact with the coroner after death. The doctor will state whether he or she can certify the death as being natural. This process, expressly provided for in the Bill, arises where, for example, a doctor is unable or unwilling to certify the death. This, of course, will give rise to a situation where further inquiry will be made by the coroner. In the event of the doctor having any concern, the coroner will normally direct a post mortem. If the post mortem does not, at that stage, resolve any concerns or uncertainties arising, then an inquest will be directed by the coroner.

The Senator also raised the important issue of delays. He is correct that there are often circumstances in which families or interested parties find it difficult to accept a lengthy lapse of time. Oftentimes, that gives rise to a greater level of upset, stress and trauma. Every effort is made by coroners to ensure that such inquests are held within a reasonable timeframe. However, among the amendments I intend to bring forward on Report Stage is one that will make further provision regarding adjournment of inquests, including where there may well be criminal proceedings. An amendment will address the need for the coroner and particularly the bereaved family to be kept fully informed of the progress of proceedings. If there is a reason or justification for an adjournment or time lapse, that will be made clear to the interested parties, particularly the family of the deceased. There will, of course, be a need to avoid any delay that could be regarded as undue or which gives rise to further difficulties. We will come back to that point on Committee Stage.

In conclusion, the Bill introduces a range of clear reforms to strengthen the powers of the coroner, to help reinforce investigations of deaths and inquests. It will ensure clarity for responsible persons, including hospital authorities, in ensuring that those deaths reportable to the coroner are reported and in a timely manner. The changes will support the development of transparent and accountable oversight for investigating certain types of deaths and will support timely and coherent provision of information to bereaved families by the health and other authorities.

In my introduction, I acknowledged the contribution of Deputy Clare Daly over and above others. There were others who contributed in the Lower House. I also acknowledge what Senator Bacik has said about some of her colleagues and, indeed, the expertise of Senator Colm Burke. I am happy to repeat the acknowledgement of Deputy Clare Daly in particular.

This important Bill responds to the demands of the next of kin, concerns expressed in this House, in Dáil Éireann and in society in general and I hope, with the co-operation of Senators, that we can facilitate passage of the Bill before the summer recess. I do not wish to take anybody short but I formally notify Senators that I have requested early dates for Committee and Report Stages, perhaps next week and the following one. As Senators will know from my engagement on the Judicial Appointments Commission Bill, I am entirely in the hands of the

Senate on these issues. I am determined that the Bill is prioritised and would like it to proceed in early course.

Question put and agreed to.

**Acting Chairman (Senator Paudie Coffey):** When is it proposed to take Committee Stage?

**Senator Colm Burke:** Next Tuesday.

**Acting Chairman (Senator Paudie Coffey):** Is that agreed? Agreed.

Committee Stage ordered for Tuesday, 25 June 2019.

*Sitting suspended at 2.46 p.m. and resumed at 3.15 p.m.*

### **Adoption, Information and Tracing: Statements**

**Acting Chairman (Senator John O'Mahony):** I welcome the Minister.

**Minister for Children and Youth Affairs (Deputy Katherine Zappone):** I thank Senators for agreeing to allow a deferral of Committee Stage of the Adoption (Information and Tracing) Bill 2016 today so that I could come before the House to make a statement about adoption and hear their views. Having met advocacy groups, lawyers and social workers in my Department yesterday evening as another part of my ongoing consultation with key stakeholders on this Bill, I believed it would be more helpful for us to have an exchange of views about some of the challenges of the legislation before we proceed with Committee Stage. Members will be aware that this Bill was published towards the end of 2016 and I brought it into the Seanad in May 2017. The Bill seeks to put in place a comprehensive statutory scheme for information and tracing and deals with identifying and non-identifying information. It also provides for relevant records to come into the custody of the Adoption Authority of Ireland and for the creation of a searchable electronic database for those records.

In applications for the release of identifying information, important rights are engaged relating to privacy and identity. Legislation must provide a mechanism for balancing these rights in individual cases. The balancing of these complex and competing rights has been a considerable challenge and has delayed the progress of the Bill, which as I said before was published in 2016. Subsequent to that time my officials and I, along with the Attorney General and his officials, have been working consistently to prepare Committee Stage amendments in light of strong criticisms from advocates, adopted persons and others of the ways we sought to reconcile the competing issues of privacy and identity.

I will share some of my personal views with the House. As part of my engagement with the Attorney General and his office, I wrote a lengthy letter to him on foot of my involvement in an international conference on transitional justice, which took place in Boston. International and Irish experts, some of whom are adopted, took part in an extensive debate at the conference on Ireland's adoption regime. I outlined to him my strong view that we needed to adopt a different approach in the amendments to the Bill that were being prepared for Committee Stage. The views expressed by adopted people about their life experiences and their interaction with State and church officials and agencies, particularly with regard to their efforts to seek information that is absolutely core to their identity, were deeply disturbing to me. I said it was my consid-

19 June 2019

ered view that the approach in the Bill, while not intended to be so, would extend into the present the harm that adopted people, through legal or illegal means, had experienced in the past.

In my letter to the Attorney General, I outlined a number of principles for my Ministry, three of which I will mention. First, to put it simply, the right of the child to identity needs to be recognised as weightier than the right to privacy of natural parents or guardians, or indeed the adopted parents of the child. I do not suggest that the latter right should be disregarded, but that it should not be given priority in the balancing of rights. Second, I believe family rights trump the right to privacy. Third, the rights of an adult in 2018, who was a child when he or she was adopted, should be contiguous with a child's right to identity.

I noted in my letter to the Attorney General that I believe the Constitution is a living document. I argued that as the social context changes, our understanding of the common good can change. We should be free to ground ourselves in the present social context to interpret a Constitution that lives. I made the point that the *I O'T v. B* case was decided in a legislative vacuum because there was no statute expressing the view of the Oireachtas on where the balance between privacy and identity rights should be struck. I believe it is open to the Oireachtas to strike a different balance from that struck by the Supreme Court in the particular circumstances of the *I O'T v. B* case, as long as this balance does not interfere disproportionately with either right. As courts defer to the balance proposed by the Oireachtas in questions of contentious social policy, such as this one, I suggest that Oireachtas legislation, in which we articulate our view of where the balance lies and how to give effect to both rights, would enjoy a strong presumption of constitutionality. I said many things in my letter and I have put a few of them on the record of the Seanad today.

I received a lengthy letter from the Attorney General in light of his extensive personal engagement with this Bill and with his officials. The views expressed in that letter helped us to develop the Government amendments that were prepared for Committee Stage. As Senators are aware, the amendments in question propose the removal of the compelling reasons provision and the requirement that an applicant must sign an undertaking not to contact his or her birth parent to access information. For many adopted people, these were two of the most offensive aspects of the Bill as passed on Second Stage. We heard, we listened and we were able to change our approach. I am aware that the amendments proposed to section 5, with the intention of taking another approach to the balancing of rights, are not acceptable to many people. I have received hundreds of emails and spoken to advocates and some Members of the Oireachtas. I continue to listen and to hear. I asked Senator Bacik to develop the views she outlined in this Chamber the previous time we met into a Committee Stage amendment that we could consider as another way forward. She has done this, and I am most grateful to her for that.

**Senator Ivana Bacik:** I thank the Minister.

**Deputy Katherine Zappone:** I provided the Senator's amendment to the Attorney General and his office and requested urgent advice on it to be able to offer a summary of that advice in this Chamber today. A summary of the Attorney General's approach begins with the need to balance rights on an individualised basis for the possible, and doubtless small, number of cases in which a birth mother asserts her right to privacy. That is very important. I have got the Attorney General's advice back with great urgency. I spoke to him this morning when he was in The Hague.

There are two parts to the amendment proposed by Senator Bacik. She suggests in the first

part of the amendment that, rather than Tusla contacting all birth parents to ascertain if they have any concerns about the information being sought, provision should be made for an opt-in mechanism that would allow birth parents to register their objections to the release of information for a specified period. On first sight, there appears to be no legal obstacle to having an administrative process that allows birth parents to opt into a process rather than having to opt out. At this point, there does not appear to be a difficulty in principle with this aspect of the amendment. However, a detailed scheme of opting in would require further advice from the Attorney General's office to ensure the rights of all parties were adequately protected in its operation. I think the advice that has come back on this part of the amendment is significant.

The second part of Senator Bacik's amendment provides that if an application is received in respect of a person who has concerns about the information being sought, an information meeting will be held at which the applicant will be informed of the registered objection of the birth parents, and then the information will be released. I am advised that this part of the amendment does not adequately protect or vindicate the rights of birth parents in that it allows them to register their objection without providing for a mechanism to enable it to be considered. I have clear legal advice that there must be some mechanism to balance the rights of applicants and birth parents on a case-by-case basis. To achieve a constitutionally sound Bill, there must be some determination against criteria on the competing rights of the applicant and the birth parent.

I will conclude my opening remarks by suggesting a way forward to continue to make this law. I wish to listen intently to the views of Senators. My officials are listening too. The Attorney General and his officials will take note of every word. I would like to meet political parties and Independents to discuss and engage further on these difficult, sensitive and technical matters with regard to the rights of natural parents and adopted people. I would like to meet stakeholders, including the representative groups of adopted people, social workers and natural parents, to hear their views on our efforts to amend the legislation. In light of these various consultations, I would like to see whether we can build on and refine Senator Bacik's amendment to come up with something that is acceptable to the Attorney General, stakeholders and lawmakers. At that stage, I would like to resume Committee Stage in this great Seanad. I want to develop the law in this area with Senators and our colleagues in the Dáil. I believe this is possible and necessary, now more than ever.

**Senator Catherine Ardagh:** I would like to share time with Senators Leyden and Gallagher.

**Acting Chairman (Senator John O'Mahony):** Is that agreed? Agreed.

**Senator Catherine Ardagh:** I thank the Minister for agreeing to adjourn the Committee Stage debate on the Adoption (Information and Tracing) Bill 2016, which was to resume today, and thereby ensuring we did not have to divide the House. I welcome her decision to pause the legislative process so that all of us can take time to give the Bill further consideration and engage in further consultation with stakeholders. Like the Minister, Senators have been contacted by many people - I will not say we have been bombarded because that would be the wrong word - who have written eloquent letters to us. I am not talking about the standard email we tend to receive from an email address. We received genuine and heartfelt emails, correspondence and calls to our offices. There are many concerns, not just on the part of adoptees but also of birth parents. Some of those latter concerns have not been vocalised. Perhaps the people concerned are of an older, less tech-savvy generation. We feel that their voices also need to be heard in this debate.

The balancing of these rights is a huge responsibility. It is a huge challenge for the Seanad. This is really delicate legislation. We have not had such delicate legislation in this House since legislating for abortion. It really sets our minds racing. Many of us find it hard to know where the balance lies. It is a huge challenge but it is on us as legislators to think about it a little bit more carefully. The Minister decided to pause this Bill because of the huge sentiment and the huge moral issue on which we are all going to have to decide. I look forward to engaging with my colleague, Senator Bacik. We have had a cursory look at her amendments. They seem very sound. We will be working along with my colleague in the Dáil, Deputy Rabbitte, who has put a lot of work into engaging with the Minister's office on this issue. Hopefully we will all be able to work together. This is something on which we need to legislate. It has gone on too long. We need to ensure that people have access to their records. DNA ancestry databases remind us that science will move on a little bit quicker than we do. I know many people who have found relatives through the DNA ancestry databases. This legislation might not be applicable to everybody if they are able to go down other avenues, which is a good thing in my own opinion. I want to thank the Minister. I look forward to working with everyone across the House on this legislation.

**Senator Terry Leyden:** I welcome the Minister, Deputy Zappone, to the House. From my experience with her in Seanad Éireann and in the Council of Europe I can certainly hear her voice in the speech she has made. She has come up with a very balanced speech today. I welcome the fact that she is going to give time for people to consider this matter. For people who are watching this broadcast I, like the Minister, want to acknowledge the number of emails we have received. Some of them are very personal and I feel the Minister was listening to them. We are very pleased with that because it is a very serious situation. Rights are involved on both sides. With all we have gone through in this country a child who has been adopted must have a right to know who his or her natural parents are, whatever measures the Minister is proposing. Those measures seem sound and will be considered by Fianna Fáil.

Some of the messages received were very personal and provided a lot of information. Birth mothers are not in a position to communicate with us because their information is so personal and so sensitive that to disclose their identity to Members of the House, they would have to trust in our confidentiality. Confidence is generally kept here, but once that information is out there it can be a problem. I hope they can establish a confidential line of communication with the Minister and her officials and that their rights will be looked at very carefully.

Life has moved on. DNA information is now available. A second cousin can now be identified. The birth mother may never provide that information if she does not want to be traced, but a relation can provide information and as a result people are now discovering quite a lot of information about themselves. I would like to compliment the Minister on the respect she has shown to this House. It is not appropriate for us to pass this Bill and for the Dáil to amend it. The Minister knows this from her vast experience in this House, during which she contributed so much to Bills. I am really grateful to her for showing such respect to the Members of this House as her former colleagues. I hope this will progress in due course and that it will be resolved to the satisfaction of everyone. Difficult though it is, it is very important.

**Senator Robbie Gallagher:** I welcome the Minister to the House this afternoon to discuss the Adoption (Tracing and Information) Bill 2016. It is hugely important legislation on an emotional issue for those caught up in it. I am encouraged by the Minister's introductory remarks this afternoon. She has opened her door to everybody and to all views, which is to be welcomed. This issue has been hanging around for many years. There is no point in trying to

railroad something through here that does not have universal acceptance, not just from people in this House but from other stakeholders that have very important views to articulate on this issue. It is clear from the number of emails we have all received that many outstanding issues have yet to be addressed. Amendments will be required to address those issues, but anyone listening to the Minister's remarks would have to be encouraged by them. I compliment her for her stance on that and for the respect she has shown to the Members of this House, as Senator Leyden noted. I know her door is open to everyone and I look forward to reaching a conclusion that will be satisfactory to those most affected by this issue.

**Senator Marie-Louise O'Donnell:** I thank the Minister for being here. I am very grateful for what Fianna Fáil and Senator Leyden have said, that the Seanad is a fine place to try to work this out. We have the time and the legal knowledge and we have a different kind of energy, which could help to find the solution to this. Having been a Senator, the Minister knows that. It is not a good thing for us to simply let it be worked out in the Dáil. It would be very good for us to try to find a way forward with this very delicate and human Bill that is to the satisfaction of everybody. I know the Minister is a great believer in argument and she will accept this completely on those terms but I find the Bill fundamentally flawed and I cannot and will not back it in its current form.

The first flaw we must get over is that this Bill must not confuse information with tracing. That is a major flaw. It confuses the rights to identity, that is, giving adoptees their information, with their desire to meet or not to meet their biological parents. Most research shows that adoptees are looking for information, not to knock on the doors of their natural parents. Somewhere in the Bill, outside of what is written, is an atmosphere of demonisation of adoptees, as if they are out to cause harm or harm will somehow be caused. I know the Minister does not mean that but it is there somewhere. It is as if adoptees mean to somehow disrupt the lives of their birth mothers, fathers or siblings. This is untrue, it is very dangerous and it is a discriminatory belief.

The first report I have the privilege to mention to the Minister is that of the collaborative forum of former residents of mother and baby homes. It states that the Bill, in common with all of its predecessors, conflates the right to personal information with the right to trace, which applicants have never claimed existed nor have they ever asked for such a right to be created. Despite this, we are bringing it about as if they did. The report goes on to stress that the applicants have merely sought their own identities and information, which are rights enjoyed and guaranteed to all citizens but denied to them due to the circumstances of their birth. The report reiterates that rights to identity information are a fundamental right.

It may interest the Minister to know that in the 1990s, many organisations provided a means of finding birth parents or adopted children. This started in 1985. People have been using many of these organisations and processes for years. There have been no lawsuits and no harm has come about as a result.

The second point I would like to make is very relevant today. I was delighted to hear the Minister say she would contact the stakeholders throughout the world of adoption, which is a big world. I am sorry that did not happen before because we might not now be in this impasse. I include Fianna Fáil in that reflection. I know it has been very difficult for adoptees. They were very gracious to those of us who met them recently, as was their office. Generally speaking, however, there could have been a little more contact. That is just my opinion.

My third point concerns Tusla. As the sole agency, it is not equipped to carry out what the Bill suggests it should carry out. The Minister knows this and referred to it in her speech. Tusla is unregulated under the Adoption Act 2010. Some 15,000 people, including birth parents and adoptees, are already on a contact register maintained by the Adoption Authority of Ireland. I refer to the national adoption contact preference register, NACPR. It is my belief and that of the collaborative forum of former residents of mother and baby homes that the NACPR should be relaunched on a statutory footing and rebadged to allow registrations for all. Tusla should be ruled out from managing that database. That is a radical thing to say. I do not mean that in a personal way but in respect of the Department. I note the Minister's answer to Deputy Micheál Martin today regarding the provision of extra money to Tusla. There is a serious problem regarding how Tusla is going to have the resources and money required to carry out this task. I note the Minister's answer and that on the time limits as well.

All current information that the Adoption Authority of Ireland holds on the 15,000 people who are already registered will be lost or laid dormant as people are forced to reregister. Those on the current register, both natural mothers and adoptees, put their names on that list in good faith and gave that decision the consideration required. It was not a decision they came to lightly. Under this Bill, it is now being suggested that they start all over again. If the current NACPR were to be placed on a statutory basis, active tracing and provision of information to those requests would begin immediately. Tusla has undermined the civil registration system. It has done that while lacking the talent, experience and requisite expansive and expensive training to do that task itself. Tusla is not regulated for adoptive services, yet the Bill suggests that it set up a quasi-legal process to argue the case for and against the release of information. That is flawed, unfair and costly and will cause undue delays.

Tusla does not have the staff, the administration nor the training required. It has neither the *gestalt* nor the Jungian theory to be able to decide, therapeutically, which information to give out and which to withhold. I understand that social workers, by their very nature, are very well trained, well meaning and do outstanding work. It is an enormous task, however, and one too great to ask. How will social workers be able to fulfil that task without the benefit of substantial resources in the areas of time, space, technology, training, expertise, communication and specialisms? We are really talking about the need for a new agency. I reiterate that Tusla is not regulated for adoption services by the appropriate State regulator. In this case, that is the Adoption Authority of Ireland. Tusla's adoption services would, therefore, be unregulated.

When adoption agencies withered on the vine and bowed out of the adoption process, for very natural reasons, the HSE nominated Tusla as the body to which all files should revert. Tusla is now the second biggest holder of adoption records, numbering 120,000. This aspect of the Bill cannot have been thought through. It is too huge and profound a task to ask of an agency which is already engaged in so much other incredible and important work with young people. There has been much talk about the whole area of the natural mother's right to privacy. Privacy can be negative or positive. The Minister raised this herself. Why does the natural mother's right to privacy supersede the adoptee's right to privacy or identity? Why is the adoptee vetoed by the mother?

This Bill is forcing natural mothers to know of their adopted child's efforts to seek information, whether they wish to know or not. If adoptees were trusted by the State to be able to source their records for their own personal use or reason, then the natural mothers would never need to know of this development. That would allow for lives to go on without the initiation of any tracing or reunion. Whether tracing or reunions happen are completely separate issues.

The process I have suggested would protect the privacy of the natural mother and the adopted child. It is possible to do that, but certainly not in this Bill as it is now. The Minister has acknowledged that. The greatest abuse of the right to privacy is brought about by the interference of the State. No one in this country needs to be reminded of what happens to women and children when the State interferes.

I have read hundreds of emails from representative bodies such as the Adoption Rights Alliance, the Adoption Authority of Ireland, Aitheantas-Adoptee Identity Rights, human rights lawyers, legislatures, sociologists, mothers and adoptees. Two phrases keep coming to mind that encompass the despair of this whole world. Those are the “architecture of containment” and “living bereavement”. It is sometimes not easy to understand what people mean when they say they do not know who they are. We talk about transcendence and we make statements concerning being able to walk in the shoes of other people or understanding the feelings of others. That is not the case. We really do not know how people are and how they feel when they do not know who they are and cannot find out. The absolute isolation of that is mind-boggling. All of these barriers are placed, for the best reasons in the world, in front of people when they try to do something about that situation.

We need to keep that in our minds. I suggest that the Minister consider three points. Information should be given out by independent archivists to every person requesting it. Applicants would get their personal data after an information session where they would be informed of how the NACPR works, as well as the responsibilities and opportunities it places on everyone. Family tracing would be an optional service after that and it would be a service well resourced and staffed with trained, expert social workers. That is why I suggest-----

**Acting Chairman (Senator John O’Mahony):** The Senator is in full flow but she is over time.

**Senator Marie-Louise O’Donnell:** I will sit down soon. One point is salvageable in the Bill and we must not forget it, and that is the Government’s right to compel former private adoption agencies to hand over their records to the national database.

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

**Senator Marie-Louise O’Donnell:** That is a measure I support fully and I thank the Minister for that. It is the only one, however. I cannot support the rest of the Bill. I have faith in the Minister as a woman, as a former Senator and as a Minister. We are not, however, going to let this go.

**Acting Chairman (Senator John O’Mahony):** I thank the Senator. I call Senator Feighan. Before he starts, I welcome the group from Limerick City Council to the Chamber.

**Senator Frank Feighan:** I welcome the Minister to the House to discuss this important Bill. I also feel that the agreement to allow the deferral of the Committee Stage of the Adoption (Information and Tracing) Bill 2016 today is very welcome. It shows that there is cross-party support. I thank all of the members of the public and all of the various agencies involved on their engagement. Many of us in this House were not aware of the considerable debate in this area. It is nice to see the people taking the time to engage with us. It is also nice to see that, cross-party, people have listened. That is the right way forward.

The matter of adoption is a sensitive issue and one that we must carefully consider. There

has been much debate about the contents of this Bill. That has focused on the balance between the right to privacy and the right to information on identity. I hope and believe that this Bill will strike the correct balance between these rights. Nobody wants to see a return to the past where the adoption process was shrouded in secrecy. I believe this Bill will allow us to move forward in providing information to adoptees. Much more consultation is needed.

I also welcome the fact that the Minister spent time considering this Bill in conjunction with the Attorney General to determine the best and most efficient way to expand access to information for adoptees. That is to deliver a comprehensive and much-needed Bill. I understand that the Attorney General is in The Hague. It is nice to see that it is possible to get information turned around, even given that situation. Sometimes we complain about various Departments, but I would not, however, like to be in The Hague on other business and then have to try to deal with this issue as well. This shows that at least something works in government. This is an issue that is probably way above my pay grade.

I turn to the issue of whether this matter should be put to referendum. However, it was determined that this legislation would provide the quickest resolution of the matter. Like most referenda, a constitutional referendum has the potential to be a painful process for those directly involved. I believe the adoptees do not want to be the subject of a national referendum debate on such a deeply personal and emotive issue. When the question is put to the people in a referendum, sometimes it is not that question that is answered. We have seen what happened in the Brexit referendum. People may not like the Government or somebody might make a persuasive argument and use the opportunity to vote on a different issue. This is the right way to go forward.

I also welcome the fact that concerns raised by individuals and organisations are being addressed by the Minister. I thank Senator Bacik for bringing forward proposals that have been taken on board, most notably through the removal of the provision that some adoptees had to sign an undertaking that they would not attempt to contact their birth parent. Instead all birth parents will be contacted to clarify the position regarding contact.

Concerns were raised about the role that Tusla would play under the legislation, and Senator Marie-Louise O'Donnell articulated that point well. However, I believe that Tusla will be equipped and ready to carry out its duties when called upon. Setting up a different agency may not be the correct approach but I am willing to listen to all views. I agree with the Senator that we must ensure that Tusla has the ability sanctioned by law to gain and share information but it also needs people on the ground. The agency needs the resources to deal with this very difficult issue. I have full confidence in the Minister and I know that concerns regarding this Bill are being treated with utmost respect and consideration. This is reflected in the passage of the Bill through the Seanad.

I also recognise that this Bill has been needed for 20 years. It will allow for the first time a statutory basis for information and tracing methods for all parties. This is needed and wanted by many people on this island. I hope that the deliberations by all sides in the coming weeks will give us a Bill will stand the test of time.

**Senator Fintan Warfield:** I welcome the Minister to the House. I also welcome the fact that the Bill has been removed from the schedule today. This is a recognition of a clear message from Members that it is not sufficient to provide a clear indiscriminate pathway for adoptive persons and birth parents seeking truth and, even with the proposed amendments, it is still

steeped with hurtful stigma. This well of misinformation, mistruth and the guarding of people's rights to their identity is a stain on the State's past. Not only did the church co-ordinate on this, but the State was complicit in hiding the evidence. Not only should the State be beholden to its responsibilities in this regard, it should do its utmost to reconcile the damage it has done and not serve to compound the hurt with overbearing litigation and an ongoing denial of identity rights.

While the Minister has addressed the fact that the Attorney General is insisting on the right of refusal of the birth mother, it is clear that this is discriminatory to adopted people and it writes into statute a clear and unequivocal stigma that says to adopted people, many of whom have spent a lifetime of being let down by the State, that it does not trust them with information pertaining to their own identity and personal data. While I do not believe that is the Government's intention, the Bill needs to be reconsidered in respect of balancing the rights of privacy and the right to one's identity. The Minister's Department has been working on this tirelessly to try to seek the best balance but for those of us who take their lead from the voices of those affected by the Bill, we cannot currently endorse it as it stands. We welcome the Bill being put on hold.

I reiterate that birth registrations have been a matter of public record in Ireland since 1864. The general data protection regulation, GDPR ensures that a person has a right to their own personal information. There is no substantial data to suggest that there is an issue of adoptive people knocking on the door of his or her natural mother's home, without due consideration and there is no substantial data to suggest that there is an imbalance of adopted persons seeking their birth mothers and not *vice versa* or that there is a requirement to place the birth mother's refusal and only hers in law, which prejudices adopted people. We cannot support the dynamic proposed in this legislation that would only further prolong the hurt and discrimination against adopted people by the State and Sinn Féin cannot support a Bill that contains these proposals.

However, we have taken our lead from adopted people. I welcome the Minister's commitment to continue to engage more with the stakeholders. I have not seen the amendments proposed by Senator Bacik.

**Senator Ivana Bacik:** They have been circulated.

**Senator Fintan Warfield:** I am aware that alternative legislative proposals are being considered by representatives of adopted people. We will give all of these proposals our full consideration over the coming days and weeks. We are conscious that we are against the clock and that *www.ancestry.com*, *www.23andMe.com* are currently doing the work that the State has not done and they are doing so in a supportive atmosphere. More crucially, those who were adopted need to have unfettered access to medical information regarding their birth and their heritage now more than ever. This is urgent and vital.

**Acting Chairman (Senator John O'Mahony):** Senator Kelleher has eight minutes.

**Senator Colette Kelleher:** I wish to share my time with Senator Alice-Mary Higgins

**Acting Chairman (Senator John O'Mahony):** Will that be four minutes each?

**Senator Colette Kelleher:** Yes

**Acting Chairman (Senator John O'Mahony):** Is that agreed? Agreed.

**Senator Colette Kelleher:** I thank the Minister. It is great that we are listening to each

other today. The Minister's statement was most encouraging and our debate is in the context of the Adoption (Information and Tracing) Bill, which is rightly getting a great deal of our attention. The Bill itself is an existential matter for people who were adopted, either by force, legally or illegally. It is about identity for the adoptees and their children's children. In that balancing equation, that group of people also need to be taken into consideration by the Attorney General and others. Of course, we need to have due regard and compassion for the natural mothers as well.

Serious issues have been raised by a range of different people and groups, including adoptees themselves, the Adoption Rights Alliance, Council of Irish Adoption Agencies, Aitheantas, Irish Association of Social Work, and Irish Council for Civil Liberties. Like the Minister, we have received hundreds of emails on this Bill. There is a fundamental concern that Senator Marie-Louise O'Donnell outlined in detail about the conflation of information and tracing. They are not the same and need to be separated. That is one of the fundamental jobs we need to do in improving the Bill. Advocates such as Mairead Enright, Maeve O'Rourke and Fred Logue have flagged key issues to which we should pay attention. The Adoption Rights Alliance cited their deep opposition to the Government's approach in a letter circulated to Members yesterday, which I am sure the Minister has seen. The letter raises the restrictions on access to birth certificates; the censorship of files; and that no rights to information provided for natural mothers or relatives of the deceased are provided for in the Bill. Only last week, Mairead Enright reminded us that we need to consider this Bill in the context of "reproductive justice" in Ireland, the lack of which was so painfully and so graphically recalled again last weekend by Majella Moynihan, in case we have forgotten. That is the context in which this Bill is being debated.

*4 o'clock*

Ms Enright also raised concerns about Tusla, about which Senator Marie-Louise O'Donnell spoke at length. She said it was not clear how adopted people's rights would be safeguarded by the process, especially given Tusla's poor history. It is vital to pause and tease out the role and functions envisaged for Tusla in the Bill and its suitability, capability and competence in performing them.

It is welcome that yesterday the Minister met some of the stakeholders and listened to their concerns and that she met Senators last week. However, complex issues related to the Bill need further reflection, dialogue and consideration. I am grateful that the Minister and her officials will continue to engage with and listen to the individuals concerned. Will the findings of the collaborative forum on mother and baby homes which presented its work to the Minister in December 2018 be published? That would be useful to us as Senators to make the Bill as good as it needs to be.

We need to pause. There were pauses in the development of the domestic violence legislation that helped to improve it. The offence of coercive control was put in the Statute Book because we had paused and thought the matter through. We will do the same in dealing with this important Bill. It is important to give Senators and advocacy organisations time to come forward with concrete proposals such as Senator Bacik's proposal for opting in and others in development by the Adoption Rights Alliance and others. There are also good things in the Bill such as the strengthened powers of the Adoption Authority of Ireland. We need to keep the best, but we also need to make changes on the points raised with us.

I thank the Minister for listening. We can and will have a good law for adoptees. This is

a pause, rather than a stop, which will enable us to make better law for adoptees, their children and their children's children, as well as natural mothers.

**Senator Alice-Mary Higgins:** I concur as this is an opportunity to make better law. It is also an opportunity to genuinely engage on and shape the Ireland in which we want to live by addressing the many injustices that occurred in the past. I again acknowledge in the Minister's statements the principles to which she spoke. We are living in an Ireland that has acknowledged a child's rights by popular mandate. It is an Ireland in which the understanding of the common good is very different. We are recognising a systematic injustice that was done to women for decades and trying to change it. I hope the introduction of open adoption might be another way of reflecting the new Ireland of openness, without stigma and discrimination.

I will respond specifically to the question posed by the Minister in the limited time I have available. It is welcome that progress seems to have been on the first part of Senator Bacik's proposal. It may end up nuanced, but there is the idea that we do have deep concern for people and their ability to trace their birth mother and father. The Minister said there must be some mechanism, but we have the seeds of such a mechanism. That mechanism is set out in data protection legislation and reflected in EU Regulation No. 2016/679, the general data protection regulation, GDPR. It is EU law and recognised in the Constitution just as much as any other constitutional provision about which we have sometimes spoken. In some case it has supremacy. The GDPR is either compatible or incompatible with the Constitution and it seems that we have determined it is compatible. The issues of privacy and the pre-eminence of the right to an identity are reflected in Article 15 of the general data protection regulation which enumerates the right of persons to their data and personal information. It also mentions that consideration should be given to the rights of others. A process has been set out in the Data Protection Act 2018 which transposes the regulation into Irish law. This is not incompatible with the information session idea or proposals put forward by Senator Bacik. We might need to be clear that there would be a moment for the consideration of rights that would be reflected in the way an information session might be conducted, for example. It is the case in other areas - there are many areas in which such balancing occurs in the GDPR - that "suitable and specific measures" or "proportionate actions" should be prescribed or set out in law. For example, it is a fundamental principle that the denial of a birth certificate to somebody is not a proportionate action and should not be recognised as such in any case. There might be other measures that are proportionate and appropriate that could be reflected within an information session. That is perhaps one way of making the mechanism or consideration visible and it can be in line with this process.

The GDPR is important for another reason, that is, the deep concern reflected in the Bill, as it stands. Every individual, whether he or she is seeking information or another party, already has legal recourse or a pathway set out by the GDPR and the Data Protection Act 2018 if he or she is concerned that the balancing was not made appropriately in terms of protecting his or her rights. The mechanism involves going to the Data Protection Commissioner and the path to be followed is set out. I know that it is no longer the proposal, but I am deeply concerned that the Bill, as it stands, seeks to actively confer jurisdiction on the Circuit Court, with the process being at odds with that undertaken by somebody concerned about personal data under data protection legislation. There is a conflicting process.

One of the concerns of the individuals affected about which they feel passionately is that they want to move past a climate of distrust where people feel they really have to fight for vindication of their rights. It is about moving to a position where the State will seek to make

reparations and see what it can do to deal with that deep sense of justice of the citizens affected, something that was spoken about eloquently. There are tools in place to do this. We can move forward in a constructive way. I look forward to further engagement with all stakeholders, including birth mothers and others affected by this issue, as well as those people who have been adopted.

**Senator Ivana Bacik:** I wish to share time with Senator Ó Ríordáin.

I welcome the Minister. I also very much welcome the deferral of Committee Stage and its replacement with statements. I thank the Minister for her very full opening statement to us in which she set out her views. I wholeheartedly agree with the content of her letter to the Attorney General as she explained it to us, particularly her view on the balancing of rights, her reading of the *I O'T v. B* case and her view of the Constitution as a living document. I am also very glad to hear that the Attorney General's preliminary advice, as I understand it, is that there is no difficulty in principle with the amendment I have put forward.

For the assistance of colleagues, I will confirm the text of the amendment I put forward, about which I spoke in this House last week and which I subsequently developed. I thank those to whom I spoke about the drafting and preparation of the amendment, notably Dr. Maeve O'Rourke, Ms Susan Lohan of the Adoption Rights Alliance, Mr. Liam Herrick from the Irish Council for Civil Liberties, our drafter Mr. Finbarr O'Malley in the Labour Party and Deputy Joan Burton, all of whom were very helpful to me in giving my initial idea a little more substance. It is now amendment No. 71a which was circulated to all colleagues as part of an additional list of amendments earlier this week. It seeks to insert a new section 23 which reads:

In page 20, between lines 28 and 29, to insert the following:

**“Rights from birth**

**23.** (1) This Act is based upon the principle, recognised in the United Nations Convention on the Rights of the Child, that every child should have as far as possible the right from birth to know his or her parents and to preserve his or her identity, including nationality, name and family relations.

(2) In keeping with this principle, notwithstanding any other provision of this Act, where an application is made for provision to the applicant of information referred to in *section 22#*, including the birth certificate of the applicant, there shall be a right of access to such information, including the applicant's full original birth certificate, whether the applicant is a person whose adoption was effected before or after the date on which this Act comes into operation.

(3) Notwithstanding *subsection (2)*, upon commencement of the Act the Minister shall make provision by way of regulation for a six-month period of extensive advertising and outreach in order to ask for any birth mother who may have given a child up for adoption previously to come forward to the Agency if they wish to assert an objection to the disclosure of the birth certificate of that child or other relevant information identifying of them as birth mother, based upon their privacy rights, and the advertising and outreach shall specify that such birth mothers may at any time after registering an initial objection within the six-month period come forward to withdraw such objection.

Subsection (3) is the core of the opt-in procedure I am proposing as a replacement for the

opt-out procedure. As I see it, the strength of this proposal is that it still provides a mechanism for individual birth mothers to come forward and assert their privacy-based rights. The Minister sought to achieve such a balance.

As I said last week, as others have said and as we have heard in the extensive correspondence from adoptees, the previous set of amendments was insufficiently cognisant of the information and identity rights of adoptees, and the right of the child to his or her identity as set out in the UN convention. Those amendments placed too great an emphasis on the privacy rights of birth mothers, many of whom, as we have heard in correspondence, do not want to assert privacy rights, have never been given any such undertakings and often signed up to conditional consent that was coerced out of them. We have heard even more distressing disclosures about the Majella Moynihan case. Senator Kelleher is quite right when she says that reproductive justice for women is the context in which we are debating all of this. I am glad it seems that subsection (3) will pass muster constitutionally. It is clear that it will need to be tweaked. I am glad to hear that the idea of opting in will pass. As I said last week, it is based on previous precedent, notably the residential institution redress procedure, in which the State invites applicants to participate. I have been told since our last debate that our approach is also based on practice in other jurisdictions and on the way we advertise the national contact preference register. I think there is a robust precedent.

I understand from the Minister's statement that the Attorney General does not believe the next provision in my amendment, subsection (4), would pass muster. Subsections (4) and (5) provide:

(4) If such objection under subsection (3) is made to the Agency by a birth mother, it shall be registered as an objection by the Agency, so that if any applicant seeks provision of section 22 information, including their birth certificate, in circumstances where such provision would disclose the identity of that birth mother who has asserted an objection, the applicant shall be informed of the objection and shall attend at an information meeting to be facilitated by the Agency, at which the information shall be discussed with them and provided to them.

(5) Where no such objection is made to the Agency within the specified six-month period, any applicant who seeks disclosure thereafter of section 22 information, including their birth certificate, shall be provided with such disclosure by the Agency.

The key difficulty we need to address in respect of subsection (4) is the need to meet the Attorney General's request for us to come up with an additional condition on access. The Labour Party cannot support a Bill that seems to be premised on placing an undue emphasis on privacy rights and an insufficient emphasis on rights of information and identity. The key challenge is to find a middle way. Senator Higgins has helpfully set out an alternative proposal that falls between the information meeting, which is the sole condition we are proposing on an applicant's right of access to information, and the very cumbersome and labyrinthine procedure of hearing and determination before the Adoption Authority of Ireland and then the Circuit Court. I think there must be a middle way. Perhaps the existing GDPR and Data Protection Commissioner process represents such a way. We will work and engage with the Minister constructively to ensure this Bill meets the requirements of adoptees, birth parents and other stakeholders.

I am grateful not only to the people I have named, but also to the Minister and her officials, whom I have met and communicated with on a number of occasions since we last discussed

these matters in this House.

**Senator Victor Boyhan:** Hear, hear.

**Senator Ivana Bacik:** I am also grateful to the Tusla officials whom Deputy Burton and I met yesterday. They helpfully explained to us how the information and tracing process is being carried out at present. They told us that the lack of a statutory basis for this work is frustrating for everyone who is trying to provide information. I think we all understand that. We understand the need for legislation of this sort. We understand the positive aspects of this law, some of which have been mentioned by Senator Kelleher. For example, the Bill will require private agencies to disclose information. Much of this crucial information is still being held by private adoption agencies.

It is clear that much of this Bill is positive. Although it is sorely needed and eagerly awaited, we cannot support it if it continues to overemphasise privacy rights above identity rights. If the first part of my amendment - subsections (1), (2), (3) and (5), which form the bulk of the opt-in process - is accepted, I think that will resolve the issue for most people. The reality is that very few birth mothers will assert privacy rights. I understand from Tusla officials that some birth mothers may do so, but the number will be small. In most cases, no objection will be registered. Many birth mothers have already sought this information. Not all adoptees want information. I think we can craft a mechanism that will cater for the small number of cases that will not be resolved by the unconditional right of access provided for elsewhere.

Deputy Burton and Ms Anne O'Meara have worked on a Bill to provide for redress for illegal adoptees. I understand there are 148 such adoptees. I ask the Minister to see whether it is possible for her to find a way of accepting the Informal Adoptions (Regularisation) Bill 2019, which has been proposed by Deputy Burton. The position of this small but important group of people needs to be resolved.

**Senator Aodhán Ó Ríordáin:** Beidh mé an-ghairid. Ba mhaith liom an Aire a mholadh tar éis an méid oibre atá déanta aici. Is léir go bhfuil sí ag éisteacht linn. Ba mhaith liom an Seanadóir Bacik a mholadh freisin. Is léir go bhfuil fadhbanna móra ag baint leis an mBille seo. Táimid ar fad tar éis na mílte litreacha a fháil uathu siúd atá uchtaithe agus ó dhaoine eile atá fadhbanna acu leis an mBille. Ní féidir linn tacaíocht a thabhairt don Bhille mar atá sé faoi láthair. Tar éis an mhéid atá cloiste againn ón Aire, tá sé soiléir go bhfuil sí sásta éisteacht linn agus oibriú linn. Tá sí ag éisteacht leis na hoifigigh atá timpeall uirthi. Tá súil agam go mbeimid in ann an reachtaíocht seo a neartú, a fheabhsú agus a chur chun cinn ionas go mbeimid ar fad bródúil as an bpróiseas seo.

**Senator Jennifer Murnane O'Connor:** I thank the Minister. I agree with the previous speakers. It is crucial that we pause the Bill now to give all the relevant stakeholders an opportunity to have their voices heard. This is about information, which is very important to people. It is important that we strike a balance. We need more time because there is not enough balance in this Bill. If pausing this Bill today makes for better legislation going forward, it is the right thing to do. I welcome this debate. We have a journey. It will be a good journey because we need to strike a balance here. I thank the Minister for pausing this Bill today.

**Senator Victor Boyhan:** I thank the Minister for coming to the House. I want to endorse what other people have said. I thank the Minister's officials. I have always found them to be courteous and helpful. I know something of the enormous amount of work they have put into

this legislation. I sometimes think we always forget the backroom people. They are more central than we think. I want to acknowledge that they are there.

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

**Senator Victor Boyhan:** It takes a courageous and brave Minister to put the foot down. I love the word “pause” that has been used by Senator Kelleher and others. As Senators, we have decided today to defer this matter. I want to join others in making the point that the Minister has shown great respect to the House by coming in here and setting out her intentions. That is not something we can always say in politics and in this House. The Minister has shown great respect to the House. I think we will get a pathway that enables us to find a resolution. We have received hundreds of letters and telephone calls from people who want to tell us about their personal experiences. We all know where we have come from. We see the child from where we stand and in the context of our experiences throughout life. We bring our past experiences with us. We always want to cling on to our identity, to who we are and to where we have come from. It is important for many reasons for us to be able to do that. I believe we will have a pathway to a Bill and to good law. I think that is really important. I will work with the Minister to get this law. I know all of us will do so.

I would like to echo some of the points that have been made by my colleague, Senator Marie-Louise O’Donnell. She touched on some core issues, including the capacity of Tusla. There are issues with our experiences and those of the public with regard to Tusla and what it stands for. We need confidence in any system that is going to have to do this job. The Minister’s decision to pause this process is an important one. While I do not think we should pause for too long, I do not think we should move too fast either. There is a balance here. It is better to get this legislation right. I want to acknowledge the work of Senator Bacik. I was at the meeting in the Minister’s office where she teased out some of the aspects to it, which was constructive. That is the great thing about this House, as Members have vast experience and different backgrounds and traditions, as well as different expertise to draw on, to get this right. It is important.

I like the words used by the Minister when she said, we heard, we listened and we were able to change our approach. That is not a bad thing. That is a really good and sound quality. We stopped, we had regard to the correspondence and the communications and we listened. More importantly, we are going to take action and there is a certain empathy in all of this and a greater understanding. I like the Minister’s tone that we are going to make laws together. I like the tenor, tone and the pace of this correspondence and I can see it is very much the Minister’s words that are jumping off the page, it is her voice. That is really important. I know that the Minister has put a significant amount of her personal commitments into this to see it right. I do not doubt for one moment the Minister’s commitment. I sat down with a number of women the other day, who were all quite emotional drinking coffee in the restaurant and they talked about the Minister and her legacy. I understood what they meant and they meant that in a positive way. They have great expectation of the Minister. I do not want to be overstating but there is an expectation of her, as an Independent Minister with a good track record in the heart of Cabinet in the heart of Government and the Minister, more than anybody else, is expected to deliver. Yes, we have had a blip and we have a pause, but I think we will get this right.

Let me say “well done” to those who sent emails, who rang and who engaged with Members, because this is participative democracy working at its best. We are all involved. Is that not a great thing to be able to say? We are involved, we have taken a conscious decision to pause and to listen. I wish the Minister well and I think we will work with the Minister and her

19 June 2019

officials to get good strong legislation. The great pity of all of this would be to throw it all out. Many people sent me one-liners, stating “please reject the Bill”. I will not reject a Bill. We need a Bill and we need to address this issue in legislation. We need to tap into the best ideas but we must get the best advice and must be prepared to listen to that advice. We have to operate within the constraints of the Constitution and we have to listen to the advice of the Attorney General. Within all of that mix, hopefully we can get a sound strong Bill because I for one do not want to go out of here, rejecting legislation. We need to improve it and polish it up and go forward. I wish everybody well and I hope we can come to a satisfactory Bill that will serve the people that most need it.

**Acting Chairman (Senator Maria Byrne):** I thank Senator Boyhan

I wish to welcome some more members from Limerick City and County Council sport and social club to the Gallery. They are very welcome.

**Senator Lynn Ruane:** With the permission of the Chair, I wish to share my time with Senator Black and to give her three minutes.

**Acting Chairman (Senator Maria Byrne):** Is that agreed? Agreed.

**Senator Lynn Ruane:** I thank the Chair. I thank the Minister for her presence in the Chamber this afternoon. I welcome the fact that the Bill has not returned for Committee Stage and that instead we are instead having statements on adoption, information and tracing.

On a purely practical level, I certainly did not feel I had had enough time to review the more than 150 amendments from Government and Opposition and the really significant rewriting of the Bill that was proposed.

I certainly had not had enough time to review the significant amount of correspondence received directly from adopted people who expressed their concerns and anxieties and suggested the changes they sought and needed to see to feel recognised, supported and respected in any real way by a law that is supposed to be designed for them.

It was quite stark to have read and reread the points made by adopted person after adopted person who got in touch with us in the past week to the effect that they would rather have no law at all in preference to the law the Government was proposing. Even just on that basis, it would justify taking some time to pause and reflect on the Bill, its provisions and the balancing of rights that are at its very heart; that balance between the adopted person’s fundamental right to their identity, to knowing themselves and documents about their own lives and the right to privacy of a birth parent.

I recognise the work that the Minister has done during the past three years and that she has done her best to make progress within the confines that she perceives. However, for me the main problem with the Bill is that it still confuses information about the adopted person and tracing, as other Senators have mentioned, which is about contact and relationships. They are far from being the same thing and yet in this Bill, they are treated as being the same and without distinction.

That is far from the only problem, which include the restrictions on information, which are unlike those imposed on any other citizen, the absence of a single mention in the Bill of the Data Protection Act 2018 or of the general data protection regulation, GDPR, and the continuous phi-

losophy throughout the Bill, which states that adopted people cannot be trusted with their own identities. Should we consider, in the rewriting of the legislation, the Data Protection Act 2018 after GDPR, then I believe the adoption agency would be the data controller.

It is also of extreme concern that we have not seen the published full report from the collaborative forum on the mother and baby homes. This is a representative group of both adopted people and birth parents with directly relevant experience and views on this Bill, who I understand make direct criticisms of the Bill in the report and yet we cannot read them. At an absolute minimum, this Bill should be postponed until we can hear what that report has to say.

As tough as it may be to hear this, many Members and I think we need to withdraw the Bill. On a purely practical level, the Minister has proposed a significant rewriting of the Bill on Committee Stage, and in her memorandum to Senators, she is planning more on Report Stage. The absolute minimum the Minister could do would be to introduce a new Bill with all those changes made in order that we could assess it as a whole on its merits. However, as the Minister will know from her meetings with advocates for the adopted - I really welcome that she took the time to do this - even the substantially rewritten Bill she is proposing is still discriminatory, it is still stigmatising and it still targets adopted people as different and untrustworthy.

I know the Minister must act in accordance with the advice of the Attorney General, but it is clear to Members in this House that the right balancing of rights to privacy and information established in the *IO'T v. B* case has not been struck. I know also that the Minister states that our Constitution puts us in a different category from other common law countries and that we cannot look to the UK for inspiration. However, the provisions the Minister has proposed to balance these rights are not the only option.

Senator Bacik has proposed an amendment and the Minister has obviously spoken about that amendment, and I hope that if the Minister is not looking at rewriting the Bill, she will work with Senator Bacik's amendment.

I also believe the model in Northern Ireland where everyone receiving information is given a one-to-one information session beforehand and informed of their rights and responsibilities is worth looking at, where adopted people can be treated as adults and with respect. I welcome the Minister's comments to that effect. I believe there are other ways that we could draft a better way to do this but it will require flexibility on the part the Minister and from the Attorney General, as well as an openness to give up on the approach with which we started.

In light of our history in this country of illegal adoption and incarceration, we have a moral responsibility to do this properly and to give a cohort of people who have been marginalised and mistreated by the State a chance to find their truth. We have to get it right for them.

**Acting Chairman (Senator Maria Byrne):** Senator Black has three minutes.

**Senator Frances Black:** I thank the Minister for coming into the House today. It is welcome that the relevant legislation has been removed from the schedule for this afternoon. I thank the Minister for that. It is important that we get an update from the Minister on the Department's position and proposals.

The major level of public interest in this Bill is testament to how important it is to so many people and that we are dealing with extremely sensitive issues concerning people's identity and personhood. Along with Senators Marie-Louise O'Donnell, Kelleher and Warfield, I met

some of the individuals affected by the legislation last night. I found their case very compelling. I want to thank them, together with Dr. Maeve O'Rourke, for putting their case to us in such great detail. While I understand the need for a balancing of rights, ultimately I share their concerns about the current proposals. We have to ensure that any system we put in place and any restrictions constructed within it are necessary and proportionate. That is a crucial test that should be applied to every proposal before us. We will have an opportunity to debate the 160 or so amendments in detail on Committee Stage.

Let me highlight a number of important points in advance of that. On a point of principle, in general we should be clear that privacy is not just about somebody's capacity to keep to him or herself or to keep his or her information unknown. It also relates to someone's capacity to know the most sensitive essential details about his or her own private life and identity. Privacy rights, in that sense, can be both positive and negative. This point has been lost somewhat in the debate so far.

Second, my reading of the current proposals is that they seem to be establishing almost two separate systems. The provisions we are debating will apply historically, but persons adopted after the legislation is enacted will actually be able to receive their full files when they reach adulthood. As such, it seems that we will be discriminating between persons who have been adopted before and will be adopted after the Bill is enacted, which means that there will be two very different processes used in accessing information. I would like to hear feedback from the Minister on this and whether any legal advice has been sought on the matter. It seems that if we accept, in principle, that there is a right to information, all adopted persons should be able to access that right on equal terms.

I will talk about the legal process. This is an issue we face regularly, in that crucial aspects of the legislation are the subject of competing legal advice. Proposals are being made on the basis of secret advice provided for the Cabinet by the Attorney General. While I appreciate that this advice is private, given its importance in dealing with the matter at hand, more could be done in providing summary details. If there are legal concerns, let us tease them out transparently. I urge the Minister to consider this before Committee Stage.

**Minister for Children and Youth Affairs (Deputy Katherine Zappone):** I am grateful for the reflective, passionate, heartfelt, well informed and well studied responses of all Senators. I have listened carefully and taken notes, while others have done so on my behalf. I will review what Senators have said because it is quite profound. It is rooted in their different professional expertise and also their way of listening to the people who have spoken or written to them. Each Senator does this differently and there is diversity in what they have said. It is a significant aspect for me, as Minister, as I try to make this law. I hope they know this and thank them for it.

I could not possibly respond on all of the different issues Senators have raised, but we will, no doubt, have time to do so as we move through the process, perhaps when we come back to take Committee Stage, or in other exchanges we will have inside or outside this Chamber, to which I look forward. I am wide open to the criticisms of Senators at whatever level. Several themes have come through in what has been said by Senators which I do not need to mention because we have heard them. When remarks become thematic and advocates emphasise the same things, it means that they are the issues to which we need to pay attention when we are considering whether to come back to the House with a new law or amendments to this one. That is my responsibility. It is great to hear those themes.

I want to say a couple of other things, rather than come back on the issues that have been raised, because, as I said, we have other ways of doing so. I want to share two pieces of information from the perspective of Tusla as it is important that people be aware of them. Some Senators will know this already. I do not think it will come as any surprise to Senator Bacik because she has spoken to Tusla, but it is important for us, as law makers, to know what is going on.

I will mention a couple of things about the impact of the general data protection regulation, GDPR, in the provision of an information and tracing service. I referred to this issue in my comments when I was here last, but the Bill is vitally needed to provide Tusla with the statutory legal basis it requires to deliver an effective information and tracing service. The data protection legislation and the GDPR have seriously curtailed Tusla in this work. Let me give some specific examples because I asked my officials to work on the issue and talk to Tusla about it. First, Tusla can no longer access information held by other data controllers, including those in the United Kingdom. I am informed by it that the number of people it cannot locate has increased since the introduction of the GDPR. The reason is other data controllers such as the church and the HSE are prevented from sharing information with Tusla as there is no legal basis for them to do so. The GDPR brings with it significant penalties for data controllers in breach of their duties. At an operational level, this that means Tusla can no longer gain access to records such as baptismal certificates, a matter to which I have referred. The archbishop told me this directly in my office with some of his people. They are not happy about this and would like to be able to access these records. I understand church parish offices were a key source of information, as baptismal certificates show a child's name at birth and the mother's maiden name. That is one example.

Under the GDPR-----

**Senator Alice-Mary Higgins:** I apologise for interrupting, but the public good is a legitimate ground as set out in the law. I want to make that point in case it is useful.

**Deputy Katherine Zappone:** I will take note of it. Under the GDPR, consent must be given for the release of information. Explicit consent must be obtained from a third party before his or her personal information can be shared. This means that, as things stand, if Tusla is unable to locate the birth mother, for example, the requested information cannot be released to the adoptee. The Bill provides that where a birth parent is unlocatable, the information can be released.

Tusla cannot release non-identifying information. It is hampered by the GDPR, even in the release of third party information, although, on the face of it, it is non-identifying, for example, general information on a person's county of birth, occupation, hair, eye colour and so forth. Prior to the introduction of the GDPR, Tusla provided general information for applicants. For example, an adoptee could have been told that his or her birth mother had brown hair and blue eyes and come from Galway. I understand that was really important; of course, it was. It would be important to me if I was in that position, but that information is no longer being provided. I could give more examples, but I wanted to share those examples from the recent past with the Seanad to show that, without a law, current efforts to provide an information and tracing service in Tusla are being hampered.

I have heard the questions and concerns about confidence in Tusla. My view is that some of it is related to the resources it will require when this law is in place. That is critical and it is

important that we all continue to say it.

Some Senators referred to the following, as I did. It is important for me, as Minister, to seek and rely on the advice of the Attorney General. I have a lot of information, from a constitutional perspective, that I could lay out for Senators if it is important, although, because they are law makers, it is not as important. Under Article 30 of the Constitution, the Attorney General is the legal adviser to the Government on matters of law. The Attorney General advises the Government and is the chief law officer of the State. Article 15.4.1° of the Constitution states, “The Oireachtas shall not enact any law which is in any respect repugnant to this Constitution or any provision thereof”. The Attorney General provides me with advice in that regard and, as Minister, I am duty bound to follow it. That is why we try to continue to engage with the Office of the Attorney General in a way that, while respecting it, we still put forward views, arguments and the concerns of other law makers and advocates directly to it. The Attorney General allows them to feed into the way in which he interprets the important issues he must consider in this case. When I spoke to him this morning he said that he would continue to do that. He knows what we are doing right now and it is very important. As I said before, he is paying attention.

The last thing I am going to say concerns time, rhythm and taking one step at a time. It is not a straightforward path. How do we get the rhythm right?

**Senator Victor Boyhan:** Tell us.

**Deputy Katherine Zappone:** It is never easy whatever path we are following to major significant social change. I know that. Sometimes we get it right and sometimes we do not. What is important is that we continue to try to get the rhythm right. That was what I was thinking when I woke up this morning. Having been informed that the Seanad wanted to defer this Bill but would consider it again, I wanted to convey the fact that I had heard the message. I thought we should do that, but perhaps we could do it in a way that would also be constructive and that would allow me to come here and have this kind of exchange. I am most appreciative of the Senators allowing me to do this. I thank the Senators. I again acknowledge the work of Senator Bacik and those who engaged with her work. That allowed me to bring something new to this debate today. I acknowledge all of Senator Bacik’s colleagues, especially those who contributed to the amendment. I met some of them last evening as well.

It is very heartening for me to hear what the Senators are saying. As we continue to try to get the rhythm right, I cannot promise there will not be another blip. We will try not to allow that to happen, however. I know how emotional this is for all of us and how important trust is for all of us as well. Even if it appears that we may not be listening to or considering what is said, I hope people will find it within themselves to trust that that is still going on. I hope we can find ways to modulate that emotion so we can continue the work of the intellect. I hope we can also do that in a fashion that will allow us to call on the expertise of our legal eagles and, most especially, the expertise and experience of the adopted persons and the natural parents, as well as their families, their children and their children’s children. I will be issuing invitations tomorrow to all of the different groups I mentioned in my opening statement to start that process. I hope we can move as quickly as we can while at the same time getting the rhythm right. I thank the Senators.

**Acting Chairman (Senator Maria Byrne):** That concludes the statements. I thank the Minister for her contribution. I ask the Acting Leader to propose the suspension until 5 p.m.

**Senator Frank Feighan:** I propose that we suspend until 5 p.m.

**Acting Chairman (Senator Maria Byrne):** Is that agreed? Agreed.

*Sitting suspended at 4.43 p.m. and resumed at 5 p.m.*

### **National Surplus (Reserve Fund for Exceptional Contingencies) Bill 2018: Committee and Remaining Stages**

**Acting Chairman (Senator Gerry Horkan):** I welcome the Minister of State, Deputy D’Arcy, to the House.

Sections 1 to 12, inclusive agreed to.

Title agreed to.

Bill reported without amendment and received for final consideration.

Question proposed: “That the Bill do now pass.”

**Senator Anthony Lawlor:** This is important legislation which will secure our future, maintain the economic stability that we have brought to the country and protect against potential shocks. I have one quick request for the Minister of State. I ask that the Department, when it is spending this money, would report to the Seanad as well as to the Dáil.

**Minister of State at the Department of Finance (Deputy Michael D’Arcy):** This Bill delivers on a commitment in A Programme for a Partnership Government to establish a rainy day fund. The Government’s primary rationale in establishing such a fund is to enhance the resilience of the economy and the public finances to withstand future economic and fiscal shocks. Our economic history, especially more recently, highlights the importance of creating a fiscal safety buffer to help absorb the shocks that will inevitably come in the future while at the same time ensuring the long-term sustainability of the public finances. Our recent and continuing strong economic performance has given us a valuable opportunity not just to address the remaining effects of the crisis but to make prudent provision so we can alleviate the effects of a future crisis. The rainy day fund is intended to be used as a defined purpose instrument to address severe unanticipated events as opposed to the normal fluctuations within the economic cycle. This approach will align itself with the current EU fiscal framework rules under the Stability and Growth Pact. In the event of a crisis we do not intend to have to rely solely on the rainy day fund but it is an important source of access to liquidity in such a situation.

Given the priority that the Government and many Members of both Houses of the Oireachtas attach to the fund, it continues to be our intention to have the Bill signed into law as quickly as possible. The practicalities of commencement mean that in accordance with section 12 of the Bill, the Minister for Finance would need to issue an order to commence the Act before it can come into operation. Commencement requires that the necessary delegation order be made to the NTMA and the investment guidelines for the fund be ready, along with the NTMA confirmation that it is ready to make the transfer of money or assets from the Ireland Strategic Investment Fund, ISIF. While there is currently no timetable for the first payments into the fund, it is envisaged that they will take place towards the end of this year.

19 June 2019

I thank Senators for their attention and engagement throughout the passage of this Bill.

**Acting Chairman (Senator Gerry Horkan):** Obviously while in the Chair I am completely impartial. That said, I delivered a Second Stage speech on this legislation last week and welcome its passage through the Houses.

Question put and agreed to.

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

**Senator John Dolan:** I move: “That the Bill be now read a Second Time”.

I welcome the Minister of State at the Department of Health, Deputy Finian McGrath, to the House. I want to thank my Seanad colleagues and particularly those who were supportive in ensuring that we have a presentable Bill this evening. I thank my Civic Engagement colleagues, Senators Kelleher and Ruane, for doing the honours on First Stage. I also owe thanks to those who now need to see these changes and the many others affected by this. In particular, I want to mention the Oireachtas Office of the Parliamentary Legal Advisers, OPLA, for translating my objectives into a format fit for consideration by both Houses of the Oireachtas. Like the John West advertisement from many years back, “What John West rejects makes John West the best”, we too rejected many drafts to get to the Bill that is before the House. We are offering it as a clear and balanced Bill, in keeping with Ireland’s ratification of the UN Convention on the Rights of Persons with Disabilities, UNCRPD, and which serves progressive inclusion of people with disabilities while not trampling on the rights or freedoms of others. In the past, and even still, the rights of people with disabilities were and are often overlooked and that is putting it mildly. Adjustment is necessary and this Bill is our best effort to put before the House a measured prescription to right some of these wrongs and best of all, to give people with disabilities and their families fair play, not only in the playground, but also through the provision of safe and comfortable public sanitary facilities, fully accessible public bus travel and access to critical social services.

Playgrounds are dealt with in sections 1 and 2. Currently, many families cannot enjoy a trip to the playground together as children with disabilities are often excluded from play with their siblings and peers due to the lack of accessible and inclusive play equipment in their local playground. This Bill will provide the opportunity for side-by-side play with family, friends and peers. It requires local authorities to follow the principles of universal design. This will also apply to plans or initiatives which include playgrounds or play equipment as part of any approved scheme or part of a scheme for a business improvement district, BID. The principles of universal design are not new, and I am happy to see that the Minister, Deputy Zappone, is utilising them for early learning and care settings to make these settings more inclusive and welcoming for all family members and staff.

Section 3 concerns advocacy. The Bill ensures that advocates supporting people with disabilities to allow them to gain access to social services have statutory powers through the appointment of a director of personal advocacy, as legislated for in the Citizens Information Act 2007, but I am sad that this has not been commenced.

On transport, covered in section 4, the National Transport Authority can at present give a

licence to a private bus operator to operate on a public scheduled route, but private bus operators are not required to meet the same accessibility standards as public bus operators, such as Bus Éireann.

Section 5 covers changing places and accessible change facilities. This section is to improve the current accessibility building standards as they do not meet the needs of people with a profound disability. This Bill changes the current standard so that a changing place is provided in addition to the usual toilet facilities. The alternative to not correcting the standard is to say to parents and carers that it is acceptable for them to continue to change their children, teens or adults on a toilet floor, which we consider to be abhorrent. Currently in Ireland, there are just 11 registered changing places, eight of which are in Dublin. There are 1,300 in Britain and 27 in Northern Ireland. I will put on the record the changing places currently in place and those planning for the next stages: the National Gallery of Ireland, our neighbour here; Áras an Uachtaráin; IKEA; the Irish National Heritage Park, County Wexford; Trinity College Dublin; the Lime Tree Theatre, Mary Immaculate College, Limerick; the Irish Human Rights and Equality Commission; the Marlay Park craft courtyard, Rathfarnham; Dundrum Town Centre; Athboy Convent community centre, Athboy, County Meath; and terminal 1 of Dublin Airport. Naas community library, Clare county library, Dublin Zoo, Fairview Park team room, St. Anne's Park, Raheny, the new student hub at University College Cork, and the national children's hospital have made commitments.

This Bill is grounded in the reality that many people with disabilities are left out of equal participation due to a number of barriers. Public benefit and the public good will be better served by the adjustments that this Bill proposes to make over time. While the four areas to be advanced in the Bill are practical and tangible, there is more going on. First, the Bill will change the culture and attitude. Sometimes that starts on the streets, as with Rosa Parks when, in effect, she said, "To hell with sitting at the back of the bus just because I have black skin." Today, I hope we will make progress in this House because we get it that people cannot experience the public realm or be on the bus with dignity without the proposed changes. We, as Senators, know that the simple human dignity of people needs practical support.

The Nazi regime was able to exterminate up to 300,000 people with disabilities with ease. These innocent victims came mainly from Germany and Austria, yet for the extermination of people of the Jewish faith, nearly a decade had to be spent by the Nazis stripping them of their humanity in a number of ways. The Nuremberg laws took a number of years to complete. A critical part of that programme included measures to humiliate people publicly. Public humiliation came before quiet extermination. Let me be very clear: in no way has it been the instinct of any Irish Government to be a willing party to such a policy. My point in raising this is that public affirmation and celebration of participation in the community are the most potent antidote to the slippery road of "special and separate" and "other", which easily leads to the view that those with disabilities are different. That is so far from what our Dáil unanimously signed up to on 7 March 2018 when it agreed to ratify the UN Convention on the Rights of Persons with Disabilities. In May 2017, the year before, I wrote to the contestants who wished to step into the shoes of the Taoiseach, Deputy Enda Kenny, and simply outlined that the promised ratification of the convention had not taken place. The reply, which came a few days later, was positive. The Taoiseach committed to ratification by the year's end. The Dáil then delivered on it in March 2018.

This Bill is an opportunity for this House to breathe life and outcomes into those decisions by making it easier for people with disabilities and their families to do ordinary things in ordi-

nary places in a respectful and dignified manner. This is a powerful message for inclusion. On 14 June 2017, the Taoiseach informed the Dáil while concluding his statement on the nomination of Ministers that, as Minister of State, Deputy Finian McGrath remained Minister with responsibility for disabilities across several Departments and that the Government was renewing its commitment to ratifying the convention in that year. He said there would be a genuine partnership Government working to improve the lives of all our citizens and all parts of the country. This Bill provides a practical suite of measures to demonstrate that people with disabilities are included, and it supports individuals throughout the country. All of us, as Senators, have an opportunity this evening to act in partnership to support those in our communities who need to benefit from these measures.

Last week, I, as CEO of the Disability Federation of Ireland, was honoured to be part of Ireland's delegation to the UN Conference of States Parties to the UN Convention on the Rights of Persons with Disabilities. I spoke in the general debate. I noted that Departments and public bodies in Ireland and elsewhere are not designed well or practised enough to operate horizontally to maximise person-centred outcomes. This Bill, involving three Departments, brings this issue to light. I said that results for people with disabilities are often modest by comparison with the efforts made. I then said: "Ireland is serious about implementation and wants to make progress." Therefore, it is in the hands of my Seanad colleagues to ensure this Bill passes through this House and that it is subsequently enacted. This will allow the Minister of State, Deputy Finian McGrath, to go back to the UN next June and report the enactment of this legislation, along with other measures.

This leads me to my second point. This Bill challenges the traditional way in which legislation is approached. Bills so often focus on one Department. For decades, we have had the mantra of person-centred public services. This Bill builds on legislative foundations already in place, without which we could not have constructed this Bill. Universal design, as defined in the National Disability Authority Act 1999, and the Local Government Act 2001, the Planning and Development Act 2000, the Public Transportation Act 2009 and the Building Regulations 1997 are the taking-off points for this Bill.

What this Bill does is change the perspective by starting with the day-to-day lived experience of people with disabilities. Its core is to make the path towards equal, easy and valued participation in the public realm a reality. This reinforces the worth and role of people with disabilities. The three parties involved, namely, the Department of Employment Affairs and Social Protection, the Department of Housing, Planning and Local Government, and the Department of Transport, Tourism and Sport, will all, of necessity, have a contribution to make. Having said that, this Bill needs to be dealt with as a whole, whereby the four elements are threaded together from person and community-centred perspectives. In that context it is significant and welcome that the Minister of State, Deputy Finian McGrath, who has the disability brief and participates at Cabinet, is taking this Bill.

This Bill is not just about people with disabilities and their families. It is also about the rest of the community. It is equally about not having to be ashamed or embarrassed that our brothers and sisters in the family that our State strives to be under our Constitution do not continue to be outside ordinary participation in ordinary places.

I anchored this Bill in the commitment of An Taoiseach when he was appointed. Let me now go back a century:

The Irish Republic fully realises the necessity of abolishing the present odious, degrading and foreign Poor Law System, substituting therefor a sympathetic native scheme for the care of the Nation's aged and infirm, who shall not be regarded as a burden, but rather entitled to the Nation's gratitude and consideration. Likewise it shall be the duty of the Republic to take such measures as will safeguard the health of the people and ensure the physical as well as the moral well-being of the Nation.

This is from the fifth of the eight paragraphs of the Democratic Programme announced in the Mansion House during the first sitting of our First Dáil on 21 January 100 years ago.

We have an opportunity in this centenary year to honour the clear and simple intent of those Members of the First Dáil and, in so doing, honour the dignity and simple humanity of some of our citizens in this Republic.

**Acting Chairman (Senator Gerry Horkan):** Who is seconding the Bill?

**Senator Colette Kelleher:** I am.

**Acting Chairman (Senator Gerry Horkan):** Does the Senator wish to share time?

**Senator Colette Kelleher:** I am sharing with Senator Ruane. I am honoured and delighted to second this important Bill and congratulate my colleague, Senator Dolan, for his work, with others, in bringing it before us. The Bill is to facilitate and enable people with disabilities to fully participate in their communities and do ordinary things in ordinary places, such as to be able to travel or go to the toilet and get changed in dignity. These are things that we take for granted. The Bill would make good on the promise of Ireland's ratification of the UN Convention on the Rights of Persons with Disabilities, UNCRPD.

All his life, Senator Dolan has pushed the boundaries and confines of what people deem "good enough" for people with disabilities. He contracted polio as a child and recalls wearing an ugly caliper, a special boot on his leg and being referred to as "the boy with the limp". As a young person, he did not allow his physical disability to stop him from climbing Galtymore Mountain or running the local youth club. He never accepted less than full citizenship and full participation for himself, and he has never accepted less for people with disabilities. For him, there are no limits or barriers that cannot be broken down or broken through. Like Senator Dolan, the Bill is high minded, practical and borne of lived experience. It is about very basic things such as a changing room for people who need it which is properly kitted out with hoists in order that people can have the dignity of cleanliness as they go about their shopping, visit to a hospital or whatever it is they want to do. Shockingly, yesterday we heard that there are only 11 such changing rooms nationally. They are not even provided in hospitals where children with disabilities and life-limiting conditions spend much of their lives. The Bill proposes that all new builds have such a changing room. It was great to hear Senator Dolan list the locations where there are plans to put such facilities in place, but we badly need to catch up.

The Bill is about children being able to play together. In London in the 1990s I was lucky enough to be a trustee of the Markfield project, an integrated play project for people with disabilities, their siblings, neighbours and friends which was brought about in order that all those children and mine could play together. There was an equal play playground down the road. If it could be done in London in the 1990s, we can do it today. Closer to home, at the briefing yesterday in the audiovisual room a woman named Lynn spoke movingly about the South Beach playground in Greystones and the sheer joy of her daughters, Ellie and Daisy, at being able to

play together side by side for the first time in a public space and what that meant to them. The Bill is about children with disabilities being able to playing with other children without being isolated, segregated or ostracised and all the horrific consequences of that as Senator Dolan alluded to with reference to the Holocaust.

I can speak with great authority about private buses as I travel by Aircoach to Dublin each week. These private buses are not accessible, as I learned at first hand when I had a protracted calf strain. I was not even using a wheelchair. Without access to such transport services, people are prisoners in their homes.

The Bill addresses advocacy by ensuring there are personal advocates to support people with disabilities. This measure was provided for in the Citizens Information Act 2007 and, ten years later, it was part and parcel of my Adult Safeguarding Bill 2017. However, it has not been implemented. The Bill is about making it a reality. All members of all political parties agree that it is right to have access to independent advocacy, but we do not have it. Let us bring it on. I am delighted to second the Bill. With the leadership of Senator Dolan, we shall overcome.

**Senator Lynn Ruane:** I will not flatter Senator Dolan to the same extent Senator Kelleher did.

**Deputy Finian McGrath:** Senator Ruane is dead right. He is getting too much praise.

**Acting Chairman (Senator Gerry Horkan):** He needs to be able to get his head through the door.

**Senator Lynn Ruane:** Widen participation is right. This is probably the last time that the six Members of our Technical Group will all be present in the House to speak on legislation. I acknowledge Senator Grace O'Sullivan on this last occasion of us working as a team, in this House at least. I thank the Minister of State for his attendance.

I congratulate Senator Dolan, his office staff and the advocates involved on bringing the Bill forward. It is well drafted and thought-out cross-departmental legislation that will have a real impact on the lives of people with a disability and their families. Cross-departmental thinking and implementation of policy is key to ensuring our cities and society are universally accessible. We must move from the current situation whereby people with a disability must adapt to the environment around them to an inclusive mindset and design whereby our cities adapt to all citizens. Each section of the Bill makes a giant stride towards that accessibility.

As Senator Dolan outlined the Bill in detail, I will focus on two parts of it. One is the section which seeks to provide for changing places. Quite simply, toilets and changing facilities that meet the needs of our citizens are a basic human need. There is so much we take for granted, such as trips to the local shopping centre or the cinema. Most of us will never have to consider what we will do if we need to use the bathroom while we are out. However, access to what we consider normal everyday life is curbed by the lack of accessible changing places for many looking to enjoy a day out in their communities with their families. Imagine only being able to leave the house for as long as one - or one's child - can hold one's bladder, and the panic of trying to get home in time to use the bathroom or changing facilities. Everyone should and can be an active citizen and participate fully in their lives, society and community. We have the opportunity through this legislation to move from the mere promotion of participation to the reality of participation of all within a community. At a briefing in the audiovisual room yesterday, I was struck by the contribution of a person who stated that their only choice was to leave

their child completely soiled or to change them on a bathroom floor. That is no choice at all.

As a mother, when my daughters were young many of our days were spent at the playground. Several times a week, especially during the summer months, we spent hours in a playground. Often, the playgrounds were covered with pebbles beneath our feet. At the time, I gave no thought to the impact that would have on others, but I remember the sweat and tears involved in dragging a light pram across the pebbles. I now think of the families who are expected to be able to bring their children into playgrounds that have wood chippings or pebbles. I hate to think of a situation whereby one of my girls would be completely excluded from play as a result of a lack of universal design in her surroundings. Play is a key part of a child's development and that includes the falls and tears that happen, as kids learn on a day out at a playground. Most children progress from swings into which they are locked to big kids' swings where they have to hold on tight. Our play should only ever be impacted on by our age, but kids living with a disability have their play impacted by far more than that. Through the Bill, we have an opportunity to ensure as a society that we are not impacting on a child's development and that relationships with other kids are not affected by not moving forward quickly with universally accessible design of our play areas.

**Senator Martin Conway:** I commend Senator Dolan and his Technical Group on bringing forward this very interesting and important legislation to put some meat on the UNCRPD. It would be remiss of me not to congratulate Senator Grace O'Sullivan on her stunning achievement. I met her on the day of the count and it was looking good at that stage. I am delighted for her. She will be an outstanding member of the European Parliament for the people of Ireland South, Ireland and Europe. Well done to her. It is good to see that all members of the Technical Group are present to support the Bill. The Minister of State, Deputy Finian McGrath, informed me that the Government will not oppose the Bill, which is very welcome because it will take many steps to create an equal society where everybody is respected and there is equality of opportunity, access and participation, which is what we all want. As somebody with a disability, I am delighted that the Minister of State, Deputy Finian McGrath, and the Government, a party of which I am a proud member, are not opposing this very important legislation. It is starting here in the Seanad I have no doubt it will pass through the House because Senators see the bigger picture and understand the context and reasoning behind this. However, it will not become law unless it passes through the Dáil as well. I sincerely hope some group within Dáil Éireann will champion this Bill, and that we will see it signed into law by President Higgins.

There are many aspects to the Bill, but I refer specifically to the issue of universal design. We should all aspire to universal design, which removes obvious barriers for people with disabilities. It means a wheelchair user does not have to come up a ramp at the side of the building to gain access but goes in the front door, the same as everybody else. The National Disability Authority, NDA, and its universal design team should be credited, as they have done a substantial amount of work both in policy and in producing toolkits to enhance, enable, and equip building designers to create buildings of universal access. Any message that can be delivered from this House in that regard is positive.

I refer to the sports capital grants, and the equipment grants in particular. I was delighted to see the Cara Centre in IT Tralee received in excess of €100,000 in funding to produce accessible kits which it will distribute to various leisure centres with which it works to enable all children, irrespective of their ability or disability, to participate in leisure activities, particularly swimming but also other sports. Every young person should be able to live an active, fit and healthy life.

I am in total unison with Senator Dolan in what he is trying to achieve. As somebody with life experience of disability, though it sometimes goes unnoticed as I tend not to speak about it, I have some authority in this regard. I absolutely support and encourage what Senator Dolan and his colleagues are trying to achieve in this Bill. I sincerely hope the ensuing debate will be informative and I will encourage the Government to enhance the Bill where it sees that it can do so.

**Senator Victor Boyhan:** I welcome the Minister of State to the House, and acknowledge and thank him for the enormous amount of work he has done in, and focus he has given to, the disability sector. No one doubts his commitment. He has to operate within the constraints of scarce finances and resources but he has nevertheless been an amazing champion and advocate for this sector. We all acknowledge that, and I want to say that to the Minister of State himself. I also thank Senator Dolan and his group, which proposed it, for this legislation. The Senator has made it much easier for us because he designed a very nice infographic to accompany the Bill, and not many people come up with infographics as detailed as this one. It says a lot about the clear messages within the Bill. We have to be very clear in politics and we must be clear about what we are doing, especially when we are pushing for new policies. I like the way this has been dealt with it. The Bill takes a few issues and themes such as playgrounds, universal design, bus accessibility, personal advocacy, which is a very important aspect of this Bill, and accessible changing facilities, and works through them, and that is the way to do it. If we want to get things over the line, we have to pull out the priorities and get them over the line, and Senator Dolan has done well in that. It is an important piece of work.

For many years, I was a director for Irish Guide Dogs for the Blind, and our slogan was “independent mobility with dignity”. There was an emphasis on mobility and dignity because the people our charity dealt with were predominantly visually impaired. Those two straplines came about because we engaged with our clients and the people who used our service, and dignity was a recurring theme. Senator Kelleher referred to people wanting to do ordinary things in ordinary places, and that is profound. It is a simple message, but people cannot always do ordinary things in ordinary places. She also touched on the issue of full citizenship. Everybody is entitled to be full citizens, to go to their place of work or place of worship, to engage with their families and friends, and to be able to do that at all times, while having access to the services they need. I will not rehash the issue of changing facilities, but I have heard some terrible stories about the lack of important facilities for people with disabilities, which nobody should be denied. That is important, and this is important legislation.

I also acknowledge Senator Dolan’s work in the Disability Federation of Ireland, DFI. A good thing about him is that he has come into politics and Seanad Éireann and retained a sharp focus on disability rights and advocacy, while also doing other things. Parliamentarians must stay focused on some key issues, and he has done that. Some of the key objectives of the DFI refer to access to education, finding and keeping jobs, having sufficient income to stay out of poverty, and choosing where one wants to live and with whom. That is important, as is access to buildings, shops, community facilities, and art and sport facilities. We take all of that for granted. I can think of one theatre not too far from here that cannot be entered without encountering steps and obstacles. Access to transport is also important. Transport allows us to travel far from home and all citizens are entitled to that. The Minister for Transport, Tourism and Sport, Deputy Ross, might look at that, because it is a funding issue, though Dublin Bus has done a lot regarding access to buses. Access to assistive technologies and healthcare is also important.

Senator Dolan has thought this through. He has brought his expertise and skills from the DFI to this Bill. He has worked with his own group and people, he has stayed focused, and he has pushed us to this point. I wish him and his staff well, because they are close to my office so I see how hard they work at this every day. I commend Senator Dolan and his team. He deserves every success with this Bill.

**Senator Alice-Mary Higgins:** I welcome the Minister of State to the House. I am happy our group is collectively supporting Senator Dolan and putting this Bill forward. I commend Senator Dolan. There is much about this Bill that reflects his specific approach, and also reflects the original thematic focus and vision of the Seanad. The idea was that a frame would be applied to legislation from all Departments and areas, and that Senators would bring a thematic frame and perspective to that and thereby deepen and improve legislation wherever it may come from or go to. Senator Dolan combines clean philosophical principles with a deep practicality, and that is reflected in this legislation. This legislation is also true to the Civil Engagement group, and the perspectives and approaches we have endeavoured to bring to it. The very first Private Member's Business moved by our group was a motion on disability and housing policy, which was another proposal of Senator Dolan's. It is always about ensuring there is joined-up thinking and a wider frame. That joined-up thinking may be between Departments, as seen in this legislation and when three of us sought to bring together different committees to look at how disability and employment, education and health knit together. The Bill brings together four Departments, and shows great restraint in that regard because there is the potential for many more Departments to be included in this Bill. However, it has tried to show a window of what is possible.

That joined-up thinking is not just between Departments. We are trying to join up rights and the vindication and delivery of rights. Ireland has signed up to the UN Convention on the Rights of Persons with Disabilities. We recognise that that is an important, landmark decision, and I commend the Minister and all who were involved, in particular the disability advocates, on bringing Ireland to a point where we have ratified that. However, how do we make a bridge between the rights now recognised and ratified in law and the delivery of those rights? How do we bring them into effect? This Bill is a very useful contribution towards that. I am hopeful that we will see plentiful Government legislation over the next six months reflecting these newly recognised rights, which must come with new responsibility, resources and mechanisms. We wait with great anticipation for the Government to bring forward legislation to give effect to those other rights in the UN convention and to detail our responsibilities under that.

Connections must be made between Departments and between rights and delivery but the most important connection set out by the Bill is that between citizens; between all who share our country, our public spaces and our communities. This is not simply a Bill for persons with a disability. This is a Bill to benefit communities. Under the UN sustainable development goals, disability is mentioned 17 times. This is progress from the millennium development goals, where disability was invisible. It is now mentioned multiple times, including in goal 11, regarding sustainable communities that are inclusive and in which everyone can participate. Communities are better when everyone participates. Communities and cities need that, as part of the life of our nation. I highlight that this Bill is not simply about individual's rights but about the transformation of society in an appropriate way: it is about better communities.

I will address briefly a few specifics, the first of which is the question of universal design. On a pragmatic level, I recently had visitors to Ireland and, having done their research and planning, the main discussion was how they could bring their child to Ireland given the lack of

changing facilities. They outlined that, when compared with the UK and other places, Ireland has an extraordinary lack of appropriate changing facilities. That is a huge issue and an anomaly. The Bill provides practical measures to address that. Indeed, it is somewhat restrained. It identifies certain relevant buildings but I imagine, and hope, that we will continue to expand on that; as the Bill sets out, certainly new buildings will need to have those services and support.

Importantly, the Bill identifies places of public assembly, where more than 2,000 people gather. Think of the percentage of persons with a disability anywhere that 2,000 citizens are gathered. What is the percentage for every 100 persons? Is it 12%?

**Senator John Dolan:** It is 13%.

**Senator Alice-Mary Higgins:** If it is 13 for every 100 persons, consider what it must be for 2,000 persons. In any large place of public assembly, we should see that reflected.

I will move on to another key point: playgrounds. The Democratic Programme of the First Dáil has been mentioned very eloquently. Within that is the first duty of the State to children. Surely it is the case that children must be able to play together and form connections. That first duty in the Democratic Programme must be reflected.

I could talk at length about buses and public procurement policy. It has been made clear and is acknowledged in the public procurement legislation I have brought forward that the public duty on equality and human rights must extend to contracts signed by the State with private providers. We cannot have a slippage of standards where a service is outsourced.

Finally, the Bill provides for personal advocates to support persons with a disability around access to services. Personal advocates are not simply giving support to an individual. As has often been the case, the challenge is to identify the gaps, flaws and shortfalls in our services. We are seeing an expansion of our services and of participation. It is a public good when individuals, generously in many instances, take a case to seek to access services; they do us all a service. In that regard, this is perhaps a small step to what we should be seeing: the optional protocol on the UN Convention on the Rights of Persons with Disabilities that would allow all individuals to take cases.

This is a positive, thoughtful, generous and reasonable Bill. The Minister is not opposing it at this stage, but I hope he will be able to fully embrace it and use it as a template for further legislation, as we seek to make the UN convention a practical reality.

**Acting Chairman (Senator Gerry Horkan):** Before I call Senator Grace O'Sullivan, I want to congratulate her while she is in the Chamber. There have been a lot of congratulations while she was not here, and if I was not in the Chair I would probably say even more. I hope she will not be a stranger to these Houses when representing all of us in Europe.

I also want to welcome all those in the Public Gallery. I know that with us today is Deirdre Donnelly, the Leas-Chathaoirleach of Dún Laoghaire-Rathdown County Council, along with many other advocates for this topic. They are all very welcome.

**Senator Grace O'Sullivan:** Thank you very much, Acting Chairman, for your kind words. I am delighted to see so many in the Public Gallery for this important legislation, rightly named the Community Participation (Disability) (Miscellaneous Provisions) Bill. The phrase "community participation" should have an equal rights element and so I commend Senator Dolan and

the Civil Engagement group, and support what Senator Higgins said. For three years in Seanad Éireann, the function of this group has been to support the rights of all Irish people. I now have the great honour and responsibility of representing Ireland South in the European Parliament. I will do that within the framework of caring for and thinking about all people in Ireland South, in Ireland and in Europe, in particular people with disabilities. My daughter, Emer, is almost 28 years old and is missing part of a chromosome. She describes herself as a person with “special abilities”, and that is how I see her. I have always fought for her rights and will continue to do so. I commend the Civil Engagement group, which, for three years, has fought for rights on behalf of all people in Ireland. Its members have done that with such goodwill; like those in the Public Gallery, they are advocates.

Unfortunately, I did not have the honour of signing this good legislation, because I was down in the count centre in Cork. I had to be here physically to sign it, and I could not be.

**Acting Chairman (Senator Gerry Horkan):** You are here to support it today.

**Senator Grace O’Sullivan:** I am here to support it. I will be only an extension of Seanad Éireann in the European Parliament, and will work as closely as possible with all my colleagues in the civil engagement group, in particular to progress the rights of the vulnerable and people with disabilities and special abilities, and to support the rights of people in general.

**Acting Chairman (Senator Gerry Horkan):** I thank Senator Grace O’Sullivan. This may be one of the last times I will be able to call her “Senator” O’Sullivan, for the moment anyway.

**Senator Grace O’Sullivan:** I will be here next week.

**Acting Chairman (Senator Gerry Horkan):** Soon it will be Grace O’Sullivan, MEP. It is on the record that she has said she will be an extension of Seanad Éireann in Brussels. We may hold her to that. We might have to visit her of course. That is a separate matter.

**Deputy Finian McGrath:** Does Senator Black want to comment?

**Senator Frances Black:** Is there time?

**Acting Chairman (Senator Gerry Horkan):** There is time if the Senator wishes to comment, though she did not indicate.

**Deputy Finian McGrath:** I would like to hear everybody.

**Senator Frances Black:** I want to commend my colleague, Senator Dolan, on this fantastic legislation. Senator Dolan has worked tirelessly on this issue since he was elected in 2016. It truly is an honour to be part of this group. I also want to give credit to my colleague, Senator Grace O’Sullivan, with whom I absolutely loved working. She will be sadly missed. I have no doubt about it.

Yesterday I was also at the briefing that was held by Senator Dolan. I was so moved by all of the stories. I wanted to stay for longer but unfortunately I had to leave a little early. Hearing some of those stories, it was shocking to think that people do not have basic human rights in this country. It really shocked me. I am sorry to say that I was not aware of how bad it was. I welcome this legislation. One young woman - I do not know if she is here today - asked us to close our eyes and imagine what it would be like to be in a wheelchair. This woman lived in

Donegal. She said that things are okay in Dublin. One can get around or get on the Luas or a bus. Thankfully she changed things in Donegal with the fight that she had in her. She told us to imagine trying to get out of the house in a wheelchair, going to a bus station and being unable to get on the bus. That is taking place all around Ireland, which is really sad. This amazing young woman changed the bus route. She is now able to go from Derry to college in Sligo because she fought, perhaps with the Minister of State's help and certainly with that of Senator Dolan.

I want to commend my colleague. This is fantastic legislation. I am honoured. I thank my colleagues for asking me to be part of it and I hope it gets full support today.

**Minister of State at the Department of Health (Deputy Finian McGrath):** I am delighted to have the opportunity to contribute to the debate on the Community Participation (Disability) (Miscellaneous Provisions) Bill 2019. Moreover, I am delighted to have sat here and listened to the views of the Senators. I must pass on my compliments. It is their last time together as a group. I congratulate Senator Grace O'Sullivan and wish her well in Europe. It is very important that we have a voice for disabilities at European level. I also want to commend and thank Senators Ruane, Kelleher, Higgins, Conway, Boyhan and Black. I also welcome councillor Deirdre Donnelly, with whom I was glad to speak at a disability meeting before the local elections.

The important thing today is that a group of Senators and a councillor actually understand the disability issue and understand what the debate is about. I thank and commend them for that. I particularly commend Senator Dolan for putting the spotlight on disability. I mean that, even though I had not heard about the Galtymore story before.

**Senator John Dolan:** That is a true story.

**Deputy Finian McGrath:** Is it true? Can I check it out? I congratulate the Senator on climbing Galtymore.

I also welcome all of our distinguished visitors from right across the board; I welcome those who are at local authority level like Councillor Donnelly, people directly involved in the disability organisations, as well as parents, families and those providing support.

I support the aim of the proposed legislation, which is to facilitate the inclusion and full participation of people with disabilities and their families and friends in their communities by enabling greater access to public spaces. As presented by Senator Dolan, the Bill has four key aims. It aims to do the following: require local authorities to apply the principles of universal design to the provision of playgrounds and play equipment; require the National Transport Authority to require private operators operating on a public route to maintain or enhance accessibility for people with disabilities; and to appoint a director of personal advocacy, as provided for in the Citizens Information Act 2007, to support people with disabilities in accessing social services which are necessary for full participation and inclusion in the community. This morning I attended the graduation from Limerick Institute of Technology, LIT, of 37 young graduates, each of whom has a physical or intellectual disability. The key thing was advocacy, as mentioned in this legislation. I want to commend the LIT president, Professor Vincent Cunnane, Ms Martina Neylon and all the staff who are doing fantastic work on pushing the issue of advocacy and rights of people with disabilities. I thank them for delivering on access to their third level institution, which is a very profound thing. The fourth aim of the Bill is to require changing facilities to be provided in relevant publicly accessible buildings which are newly

built or undergo material alterations.

The Senator seeks to achieve these aims by amending the Local Government Act 2001, the Planning and Development Act 2001, the Public Transport Regulation Act 2009 and the Building Regulations 1997. The Bill also provides for the commencement of certain provisions of the Citizens Information Act 2007. I know that all Members of the House will agree that we must do our utmost to support and promote the inclusion of adults and children with disabilities in society through participation in cultural life, travel, recreation, sport and leisure activities. These are vitally important pursuits for everyone, but for persons with disabilities they provide particular opportunities for physical and mental health, the development of stronger self-esteem and the forging of life skills. The Government recognises this and is committed to ensuring the participation and inclusion of persons with disabilities in the lives of their communities by maximising the accessibility of public places, increasing our financial investment and promoting opportunities for people with disabilities to participate in recreational, cultural and leisure activities.

Senators will be aware that the national disability inclusion strategy is the key framework for policy and action to address the needs of people with disabilities. The strategy, which is coordinated by the Department of Justice and Equality, takes a whole-of-Government approach to improving the lives of people with disabilities. It does this in a practical sense and also by creating the best possible opportunities for people with disabilities to fulfil their potential. The strategy contains 114 measurable and time-specific actions, implementation of which is overseen by a steering group chaired at ministerial level. The actions are also tracked against a set of 62 indicators identified by the National Disability Authority. This implementation work is ongoing.

As many of my Senator colleagues have mentioned, transport is one of the key themes in the strategy. In this regard the Department of Transport, Tourism and Sport is committed to implementing 15 specific actions that will support the overarching objectives in its remit. These include ensuring: that the planning and design of public buildings and public spaces is informed by engagement with people with disabilities and other users across the spectrum of age, size, ability and disability; that persons with disabilities are able to access buildings and their facilities on the same basis as everyone else; and that persons with disabilities can get to and from their chosen destination independently, without driving a car, in transport that is accessible to them.

The strategy also contains a chapter on person-centred disability services. One of the pivotal goals described is for persons with disabilities to “participate in the everyday life and activities of their communities”. In this regard the Department of Transport, Tourism and Sport and Sport Ireland have a specific commitment to “foster disability awareness and competence in voluntary, sporting, cultural and other organisations... [and] ensure that disability inclusion is fully integrated into funding programmes, monitored and linked to further funding”.

*6 o'clock*

The Departments of Transport, Tourism and Sport and Arts, Heritage and the Gaeltacht and Sport Ireland are also committed to ensuring that new buildings and facilities for arts, sports and leisure are based on universal design principles. Furthermore, under the strategy, the Office of Public Works, all Departments and public bodies are working to bring all public sector buildings into compliance with the revised 2010 Part M accessibility standards by 2022. As chair of

the inclusion strategy steering group, I am working to ensure these commitments are met.

Of course, it is not just the Government that is seeking to improve the lives of people with disabilities and, in this context, I turn to the content of the Bill. While the Government does not oppose the Senator's Bill, there are issues with it, which I will now address. As it would involve considerable Exchequer funding, it will require a money message from the Government if it is to progress. Section 1 seeks to amend the Local Government Act 2001 to require that the principles of universal design be applied to the provision of playgrounds and related equipment by local authorities. In a similar vein, section 2 amends the Planning and Development Act 2000 to ensure that when planning authorities are preparing development plans, as required every six years, those plans shall include objectives for the preservation, improvement and extension of amenities and recreational amenities in accordance with the principals of universal design. This is a laudable goal and we should do everything in our power to facilitate access to playground and public amenities for children with disabilities.

However, there is an issue with the Senator's approach, namely, that there are currently no standards to guide and measure the achievement of universal design for playgrounds and equipment. In short, the Bill requires facilities to be provided in adherence with a particular standard but in the absence of that standard to measure whether those services and facilities are being properly provided. It is essentially a case of putting the cart before the horse. The NDA intends to commence work on developing guidelines and standards for universally designed playgrounds and playground equipment later this year. These standards, when completed, will provide us with a template from which to work. However, the next step should be to implement these standards in pilot areas before jumping towards a statutory provision, which is premature at this point.

While the lack of standards is one issue, another obstacle is likely to arise with regard to the procurement of universally designed playground equipment. It is pointless to provide for specialist facilities if the appropriate equipment cannot be sourced. This is also a difficulty that will be reviewed. This, in turn, leads us to resourcing implications. If the Bill were to be enacted as is, it would have a significant financial impact on the provision of community play amenities by local authorities.

Section 3 amends section 13 of the Public Transport Regulation Act 2009 to ensure that where an operator's licence to provide a public bus service has been granted, amended or renewed, the NTA shall impose conditions that the operator cannot diminish access to the service being provided. The amendment refers to maintaining or enhancing but not diminishing access to public bus services by people with disabilities. The Bill's intent, again, is positive, but this issue warrants more detailed examination as to feasibility. The wording of the section is ambiguous and unclear, insofar as it does not define the term "access". As currently worded, the term "access" could be broadly interpreted as anything from physical access to buses, frequency and scheduling of services, locations of bus stops or even alterations to the cost of fares. In short, a definition of the term "access" is required in the interests of clarity and for the amendment to be workable and measurable. This would warrant more detailed consideration and further work on definitions before the Bill would be in a position to progress.

Section 4 provides for the amendment of the Citizens Information Act 2007 to ensure the provision of a personal advocacy service for qualifying adults, taking into account the financial resources of the Citizens Information Board, either six months or earlier after the passing of the Bill. As Senators will be aware, one of the functions of the board is the provision of advocacy

services to individuals, in particular those with a disability, to assist them in identifying and understanding their needs and options and in securing their entitlements to social services.

The board also funds and supports the National Advocacy Service for People with Disabilities, which provides an independent confidential and free advocacy service that works exclusively for adults with disabilities and adheres to the highest professional standards. In 2018, the service dealt with almost 4,000 cases, of which 914 required full representative advocacy casework and 3,001 received information, advice and once-off interventions. I understand that the budget allocation to the service was €3.1 million in 2018 and the allocation for 2019 is €3.25 million. Furthermore, proposals have been developed and are being considered to strengthen the national advocacy service by affording statutory powers to the service's advocates. The Senator proposes in the Bill to appoint a director of personal advocacy. That would give rise to further costs without necessarily improving advocacy services for persons with disabilities.

Section 5 seeks to amend Part M of the building regulations 1997 to ensure that changing place facilities are provided instead of disabled access bathroom facilities in all publicly accessible buildings. This will require their inclusion in newly built buildings or via modification to existing facilities. While the Bill highlights a significant gap in the current minimum requirements for sanitary facilities under Part M of the building regulations 2010, the manner in which it approaches the issue is problematic in that the Bill proposes to amend the building regulations directly. The purpose of the building regulations is to set out high-level objectives, whereas technical guidance document M provides for the provision of individual standards, requirements and specifications. It is, therefore, inappropriate to amend the regulations directly. Instead, technical guidance document M should be amended and updated with specific requirements.

The Bill raises significant implications for existing public buildings, in particular older ones. In general, the building regulations apply to the construction of new buildings and to significant changes to existing buildings. Otherwise, the building regulations do not generally apply to buildings constructed prior to 1992. However, section 25 of the Disability Act requires public bodies to apply Part M retrospectively to public buildings. Section 25 states that where Part M is amended, public buildings shall be brought into compliance with any amendments not later than ten years after the commencement of that amendment. This change would have implications for public bodies that own, manage or control those public buildings, as they would need to bring them into compliance within ten years. In a large number of cases, it may not be possible to modify existing or older premises to provide for changing place facilities. The Bill is silent as to what should be done in those circumstances and this is a matter that would require detailed examination as to feasibility and cost implications.

Another issue also arises with regard to retrofitting existing premises with changing place facilities. In certain cases, it may not be possible to meet requirements by installing hoist systems as specified in the Bill. In those instances, it is not clear if the use of mobile systems would be acceptable under the Bill as drafted, or if the Bill might require an amendment to permit the use of mobile systems.

Section 5 is broad in its application of the requirement to upgrade public buildings. However, the Bill as drafted and its interaction with our existing legislative framework would require the upgrade of a very wide range of facilities in public buildings. Senators will appreciate that this measure would have significant cost implications for the State. As such, we need to undertake a proper examination of these implications before advancing further with the Bill.

19 June 2019

I want to be clear to the House that the Government does not oppose the Bill. Yesterday, I was very supportive of it in Cabinet. We are committed to providing the utmost support to people with disabilities. However, there are significant technical and practical issues with the Bill that will need to be considered and worked out in detail. That is what we intend to do.

I want to mention some of the points raised during the debate.

Senator Grace O'Sullivan mentioned her daughter and the Ability programme in particular. It is important to note that we introduced the programme a couple of months ago, in line with the UN convention. Under this programme, 2,300 young people with disabilities have access to, and are involved in, training, employment and education. When talking about people with disabilities we often ignore, as the Senator rightly points out, the ability of many people who have a specific disability.

Senator Black mentioned the stories heard yesterday. I agree with her. The particular case of that young person in Donegal is unacceptable. There are other such cases out there. I hear those stories every day in my job. It is my job to try to fix those situations.

Senator Conway referred to meeting the goals of the UN convention. As far as I am concerned, ratifying the UN convention was only the start. We are now into the issues. That is my objective. Under the social care part of this year's budget, €1.904 billion is allocated to services for people in the social care area, including people with disabilities. That is an increase of 7.5%. Do I need more? Absolutely. Am I constantly looking for more? Yes.

Senator Higgins mentioned the issue of sustainable communities. She also talked about children's rights under the Democratic Programme of the First Dáil.

I thank Senator Dolan for his work on this issue, on which I will work with him closely. I will also work with colleagues in the Seanad. They have my support. There are some amendments to be made in the future. We have to bring people with us. We have to change the mindset in many Departments, as a number of colleagues mentioned. The overall thrust of the legislation is positive. I welcome the debate. Once again, I thank all the Senators who contributed. They understand the issue of disability from their own practical experiences. In my experience as Minister of State over the past three years, Senators have made a massive contribution to the debate about achieving an inclusive, modern, progressive Ireland. That is the way forward. We need to start focusing on people's ability and on their rights as equal citizens in our society. That is my objective.

**Acting Chairman (Senator Gerry Horkan):** The Minister of State had been allocated 15 minutes but he spoke for almost 22.

**Deputy Finian McGrath:** I am sorry, I apologise.

**Acting Chairman (Senator Gerry Horkan):** I gave him plenty of time.

**Deputy Finian McGrath:** I thank the Acting Chairman. I did not realise.

**Acting Chairman (Senator Gerry Horkan):** I indulged him a little bit. Senator Warfield would like to say a few words before I go back to Senator Dolan.

**Senator Fintan Warfield:** I apologise to the Acting Chairman, the Civic Engagement Group, Senator Boyhan, and those in the Public Gallery for my diary mishap. I had noted on

my phone that this debate was to begin at 6 p.m.

**Acting Chairman (Senator Gerry Horkan):** The Senator is welcome to contribute any-way.

**Senator Fintan Warfield:** I thank the Acting Chairman. I commend the Civic Engagement Group for leading on this Bill, particularly Senator Dolan who always champions the rights of people with disabilities in these Houses. The State ratified the UN Convention on the Rights of Persons with Disabilities in March 2018. This provides a framework for signatory states to deliver rights and empowerment to people with different ability. This Bill aims to advance the work of the convention in delivering rights, particular from the points of view of accessibility and inclusivity, in both the public and private sector. This is vitally important for many reasons but at its core is the message that we value our citizens with disabilities, take their needs extremely seriously, and acknowledge that we all have something to gain from the delivery of rights and empowerment for people with differing abilities. All of our society will reap the rewards and will profit from the inclusion of as many people as possible.

The first area the Bill addresses is that of inclusive playgrounds. If it is passed, as I hope it will be, local authorities will be legally required to apply principles of universal design. This concept aims to create inclusive environments that are accessible to as many people as possible. Many environments are currently not inclusive for families as they still not accessible for children with disabilities. We have even seen scenarios in which private corporations have been relied upon to sponsor disability-friendly playgrounds. That is not sufficient and it is definitely not sustainable. Local authorities should be equipped to deliver these essential amenities.

The Bill also addresses issues with bus accessibility. I recall that when the BusConnects proposal was first floated, I had conversations with Senator Dolan about the needs of people with disabilities being left behind. Under this new legislation, when local authorities are granting, amending, or renewing a licence to a private bus operator on a public route, they will be obliged to ensure that operator will meet the same accessibility standards as a public operator. This means that a private operator must either maintain or enhance accessibility for transport users but cannot diminish it. Currently, private transport providers can be given a contract to operate bus routes but do not have to meet the same accessibility standards as public providers. The private sector cannot be left off the hook in terms of accessibility and inclusivity. No route should be privatised in the first place but, as it is happening anyway, private operators must be required to meet or exceed the standards of public operators.

Sadly, we cannot even say that the public sector is the gold standard. The issue of the bus fleet in Waterford has been consistently flagged by Sinn Féin. A new bus fleet introduced in December has proven to be less accessible than the one taken out of service, which was ten years younger. This situation is incomprehensible. It was raised at the Joint Committee on Transport, Tourism and Sport last July and has been raised in the Seanad, in the Dáil through parliamentary questions and Questions on Promised Legislation, and in the media. Mr. Hugh Creegan, CEO of the NTA, indicated in a recent response to Deputy McDonald that a pilot programme would be undertaken in conjunction with the Irish Wheelchair Association to investigate what changes, if any, have been made. Where is that pilot? Has any progress been made? We have a situation in Waterford now where older private transport is more accessible than brand new public transport. Surely we have moved on from such bad policy decisions.

The third main provision of the Bill relates to personal advocacy, which gives a voice to

people who ordinarily would not have one. Advocacy provides autonomy and empowerment and assists in independent living. It affords individuals the ability to make decisions for themselves. This Bill will empower a disabled person's personal advocate to be his or her legal voice when seeking social supports and services. This is a big step in terms of respecting the autonomy of persons with disabilities.

Finally, this Bill deals with accessible change facilities. It will legally require public buildings which are newly built or undergoing material alterations to provide fully accessible changing facilities. Current facilities in many public settings, including even accessible toilets, are not adequate to meet the changing or, in some cases, sanitary needs of families. Toilets need to become changing places where dignity and respect can be afforded. This provision within the Bill allows for this.

These changes, if enacted, would make a serious difference to the lives of many of our citizens. However, it should be noted that better inclusion would make a positive difference for everybody. We have so much to gain from proper inclusion of people with disabilities, if only we can structure society to be more accessible to them. This Bill is a good example of a cross-party initiative and of a cross-party group working together to deliver and afford rights. I am proud that the colleague on whose behalf I am speaking, Senator Devine, co-signed the Bill. The Government has much more to do on disability issues in general and I hope it will support initiatives such as this legislation to ensure that action happens. I again thank the Acting Chairman for allowing me to contribute.

**Acting Chairman (Senator Gerry Horkan):** It was no problem.

**Senator Fintan Warfield:** I again apologise to everyone here, including those in the Public Gallery.

**Senator John Dolan:** If I had known that I could have received such applause and positive affirmation, I would have cobbled together a Bill years ago.

**Acting Chairman (Senator Gerry Horkan):** As the Senator will be aware, applause is not allowed in the Chamber, but I take his point.

**Senator John Dolan:** A famous Tipperary hurler, Babs Keating, once said that one would want to be careful about a clap on the back because it is only a couple of inches from a kick up the behind.

**Senator Martin Conway:** The Senator would never get that.

**Senator John Dolan:** I wish to thank all contributors. I am embarrassed by the compliments they paid me. I think it is simply my work and my duty to do this - no more, no less - but I am appreciative and I thank people.

I will miss Senator O'Sullivan greatly. She has been a tonic to us all. We have spoken about disability in the European Parliament at the interparliamentary group and so on. I gave credit to Rosa Luxemburg when I meant to Rosa Parks. I apologise to both.

The Minister of State said that he supports "the aim of the proposed legislation, which is to facilitate the inclusion and full participation of people with disabilities and their families and friends and their communities by enabling better access to public spaces". Sin tosach maith. However, I thought and felt that as he went on, the water got colder and I had a sense - and

we will test this out - that it was a case of live horse and one will get grass when he said, “We must check this out, we must check that out,” and that there would be a significant cost on the Exchequer. That is okay because he should show us the colour of the money and what that cost is. If he is able to say to the House that there will be a significant cost, he should tell us to the nearest billion euro or whatever it will be.

He also stated, “The Government is not opposing the Senator’s Bill, there are issues with it which I will now address. As it should involve quite considerable Exchequer funding,” but what is that cost, where will it be? He referred to a money message but I never heard of that before in relation to anything going through this House.

**Senator Lynn Ruane:** Ha!

**Senator John Dolan:** The Senator should not laughing. The Minister of State said, “While the lack of standards is one issue, another obstacle is likely to arise in the procurement of universally designed playground equipment.” I have a sense, and it is up to the Government to convince myself and others that I am wrong, that one obstacle after another is being gratuitously thrown out.

The amendment to the Citizens Information Act proposed to have something commenced that these Houses and the President passed 12 years ago. I acknowledged, as has the Minister of State, that there is a service in place. There is not a big money deal here. The cost of a director of advocacy was mentioned, which I find frivolous.

Returning to transport, the NTA currently may set out accessibility standards under the current legislation but the problem is that a decade or so ago the authority said that it might do something and set out accessibility criteria for private buses, so how does it now become a problem that there may be a cost implication? It has been dealt with. Where does the money message apply in that respect? The NTA has been given the green light; the problem is that the officials have not got off their bums and done it. Two years ago, they told the country that there was no diminution in service when they were making savings in Bus Éireann and they took public buses off three routes and only left the private services. There was no diminution in service except for people with mobility, hearing and visual impairments. Those people were the butt of this. Where do we stop talking about what we are going to do and tackle the issue of vindicating people’s rights?

The Minister of State stated, “While the Bill highlights a significant gap in the current minimum requirements for sanitary facilities under Part M of the building regulations 2010, the manner in which it approaches the issue is problematic in that the Bill proposes to amend the building regulations directly.” I will tell him what is problematic from the perspective of people in this State: they cannot with dignity change a child or an adult who needs it. Perhaps I lack imagination but I cannot for the life of me see that this is a life and death issue for the State in terms of funding. The Bill does not say that when it becomes legislation in the morning that all these measures must be implemented immediately.

I said at the start that what makes John West the best is what John West rejects. We have gone through five or six iterations to come up with a balanced and thoughtful approach. I do not say we have it right. I look forward to Committee Stage soon. There is no reason to fail to do that. If it does not happen soon, what will have been done is that this Bill will have been kicked out of play. We can say that if we do not get the evidence that the Minister of State says is there.

19 June 2019

He should put it up in front of us and let us deal with it. Some people were almost critical but I did not go further. This Bill is very measured. The Government must come out and back up the points made here. It is totally unfair to people who struggle with these issues.

The Minister of State acknowledged rightly Councillor Dave Quinn, who was recently elected to Dún Laoghaire-Rathdown County Council, and Councillor Francis Timmons.

**Acting Chairman (Senator Gerry Horkan):** I thank Senator Dolan and welcome Councillors Timmons and Quinn, one of whom was recently re-elected and the other newly elected who are here with the leas-chathaoirleach, Councillor Deirdre Donnelly.

Question put and agreed to.

**Acting Chairman (Senator Gerry Horkan):** When is it proposed to take Committee Stage?

**Senator John Dolan:** Next Tuesday.

**Acting Chairman (Senator Gerry Horkan):** Is that agreed? Agreed.

Committee Stage ordered for Tuesday, 25 June 2019.

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

**Senator Martin Conway:** At 10.30 a.m. tomorrow.

The Seanad adjourned at 6.28 p.m. until 10.30 a.m. on Thursday, 20 June 2019.