



DÍOSPÓIREACHTAÍ PARLAIMINTE
PARLIAMENTARY DEBATES

SEANAD ÉIREANN

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

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SEANAD ÉIREANN

Dé Céadaoin, 10 Iúil 2019

Wednesday, 10 July 2019

Chuaigh an Leas-Chathaoirleach i gceannas ar 10.30 a.m.

*Machnamh agus Paidir.
Reflection and Prayer.*

Gnó an tSeanaid - Business of Seanad

An Leas-Chathaoirleach: I have received notice from Senator Ned O’Sullivan that, on the Commencement of the House today, he proposes to raise the following matter:

The need for the Minister for Housing, Planning and Local Government to make a statement on the housing grant application and the allowance granted to an individual (details supplied).

I have also received notice from Senator Lorraine Clifford-Lee of the following matter:

The need for the Minister for Education and Skills to make a statement on the patronage process for the new primary school in Donabate, County Dublin.

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

The need for the Minister for Transport, Tourism and Sport to make a statement on the establishment of an independent body to deal with appeals and grievances from volunteers in the Irish Coast Guard.

I have also received notice from Senator Rose Conway-Walsh of the following matter:

The need for the Minister for Health to make a statement on the availability of levodopa-carbidopa intestinal gel, LCIG-Duodopa, for patients with advanced Parkinson’s disease and on the status of the health technology assessment of this drug.

I have also received notice from Senator Catherine Noone of the following matter:

The need for the Minister for Agriculture, Food and the Marine to consider the allocation of funding to the Friends of Howth Maritime Museum to acquire the Department’s property on the West Pier in Howth, known locally as Mariners Hall.

I have also received notice from Senator Jennifer Murnane O’Connor of the following mat-

ter:

The need for the Minister of State with special responsibility for disability issues to provide an update on the provision of a new building for The Holy Angels day care centre in Carlow.

I have also received notice from Senator Michelle Mulherin of the following matter:

The need for the Minister for Housing, Planning and Local Government to consider the expansion of the Rebuilding Ireland home loan scheme to include owners of properties who lost their home during the financial crisis but have now settled their mortgage debt and are in a financial position to buy a new home and service a loan, but to whom the banks will not lend.

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

The need for the Minister for Health to make a statement on publication of the heads of the Bill to update the Mental Health Act 2001.

I have also received notice from Senator Jerry Buttimer of the following matter:

The need for the Minister for Housing, Planning and Local Government to provide an update on the Carrigaline relief road, Cork, under Project Ireland 2040.

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

The need for the Minister for Housing, Planning and Local Government to outline when the Sara Moorhead report on the role and remuneration of local authority elected members will be published.

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

The need for the Minister for Housing, Planning and Local Government to amend the Urban Regeneration and Housing Act 2015 in so far as it allows developers to move their Part V obligations from one site to another.

I have also received notice from Senator Colette Kelleher of the following matter:

The need for the Minister for Education and Skills to provide an update on access to school places for children with autism in September 2019.

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

The need for the Minister for Transport, Tourism and Sport to make a statement on the funding and expected delivery of the request by Monaghan County Council to upgrade the various roads surrounding the subsidence incident in Magheraclone, County Monaghan.

I have also received notice from Senator Mark Daly of the following matter:

The need for the Minister for Foreign Affairs and Trade to make a statement on the reason the issue of a potential referendum on a united Ireland is not included in the risk register of his Department.

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

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The need for the Minister for Transport, Tourism and Sport to make a statement on major road schemes for the N4 between Sligo and Mullingar.

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.

Of the matters raised by the Senators suitable for discussion, I have selected Senators O'Sullivan, Clifford-Lee, Conway and Conway-Walsh and they will be taken now. I regret that I had to rule out of order the matter raised by Senator Gallagher on the ground that the Minister has no official responsibility in the matter. I regret that I also had to rule out of order the matter raised by Senator Davitt on the grounds that it is a repeat of a Commencement matter raised on 28 May 2019. The other Senators may give notice on another day of the matters that they wish to raise.

Nithe i dtosach suíonna - Commencement Matters

Housing Adaptation Grant Applications

An Leas-Chathaoirleach: My fellow Kerryman, Senator O'Sullivan, is first. The Minister of State is welcome.

Senator Ned O'Sullivan: The Leas-Chathaoirleach looks shocked to see me up at this early hour of the morning.

An Leas-Chathaoirleach: It is not that. I am delighted. It is always good to see the Senator.

Senator Ned O'Sullivan: I thank the Minister of State for taking this matter. Before I was elected to Seanad Éireann, I served as a councillor in Kerry for 22 years, in which time I had the privilege of being mayor of the county.

An Leas-Chathaoirleach: With distinction.

Senator Ned O'Sullivan: I thank the Leas-Chathaoirleach. In that time, I was involved in any amount of housing grant applications. Although one did not always get the desired outcome, I never came up against a case as unfair and inexplicable as this one. I do not say that lightly and, as the Leas-Chathaoirleach knows, neither am I in the habit of tabling Commencement matters on individual issues such as this. The Minister of State's office has been advised of the particular and unique circumstances surrounding the application. It is my hope that he will see how shabbily the lady in question and her loving and supporting family have been treated and that he will, even at this belated stage, intervene.

The Government and everyone else in these Houses know full well that we are in a crisis as far as public housing is concerned. The programme for Government sets as a high priority people who make a genuine attempt to house themselves, and rightly so. Far too many go for

the easy option of putting their names on a housing list and waiting until someone comes along and hands them the keys. Many will refuse the first or second houses on offer for any variety of reasons until they get exactly what they want. Their houses will be fully furnished and equipped and, for the rest of their days, they will be will be maintained to the highest possible standard and the people to whom I refer will never be burdened with worries about mortgage. In the meantime while they wait, the State will assist them with all necessary supports, including rent allowance and income supplements. We all know what a burden that is placing on the Exchequer and how it perpetuates an unending cycle where demand will always exceed supply.

The lady in question chose another route - a more difficult and unselfish route. With tremendous support, financial and otherwise, from her devoted parents and siblings, she went about housing herself. She was fortunate enough to secure a suitable house adjacent to her family home. For reasons that I will not put on the record but that are known to the Department, this was crucial, because her personal circumstances made proximity to her parents essential to her being able to achieve independent, stress-free living. The house was purchased through a combination of family support and borrowing. It is a wonderful listed building and she has restored it to its former beauty completely in line with Kerry County Council's regulations, which were stringent. Prior to that, the building had become an eyesore in a lovely town that, as the Leas-Chathaoirleach knows, was this year's overall Tidy Towns winner.

The story of this application for State funding makes for sad and disappointing reading. What was sought was recognition for her efforts and the fact that, instead of being a lifelong burden on the State, she just got on with the job of housing herself. She would have been a very high priority for local authority housing at God knows what cost in perpetuity, but no. She received a grant from Kerry County Council that would be deemed meagre under any circumstances, never mind in the context of her particular life history. I have been involved in facilitating grants for housing renovations paid out to some of the State's wealthiest citizens, people for whom the grant was just a welcome bonus and not a necessity. They were entitled to it and they got it, but that is not the point. I have worked with the officials and staff of Kerry County Council my whole life. No one admires them more. They are helpful and diligent at all times, but in this case something seems to have gone radically wrong. This has given rise to disappointment on my part in our local government system, with which I have been involved all my life.

Will the Minister of State set an example? He has reply that was prepared by civil servants but it is time that people in his position stand up and reward those who, like this young woman, want to help themselves. He should find a way to address her case and afford her and her family some much-needed financial relief.

Minister of State at the Department of Housing, Planning and Local Government (Deputy Damien English): I thank Senator O'Sullivan for raising this case. I also thank him for his honest appraisal of the housing situation and how, despite being potentially complicated, it can work in many cases and help people who choose a different route and try to help themselves. There are systems and processes in place and it is important that we try to work within them. That works two ways, of course, and everyone on both sides must play his or her part. The Senator has given an honest description of the complications encountered in trying to house people. While there is still a major housing shortage, a great deal of progress has been made in every county, including Kerry, where the county council is meeting its targets, delivering many new houses, buying and refurbishing many more and bringing others back into use. There are many solutions. In every debate on housing in this and the Lower House, I stress that there is

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more than one solution and approach to the question of social housing, for example, purchasing, new builds, Part V, leasing, voids being repaired and brought back into use, the repair and leasing scheme, and the buy and renew scheme. There are many schemes, and I am glad that the majority of councils are beginning to avail of them. That is what we want to do, but it means that we will have to adapt our ways as we see different and better solutions. If they accommodate people, we will attempt them.

I thank Senator O'Sullivan for raising this case and giving me the opportunity to provide an update insofar as my Department is concerned. A representation regarding the case was received from the Senator and acknowledged by our Department in February. There has been ongoing consultation since then between departmental officials and Kerry County Council on this and many other cases. Where it makes sense and represents good value, every local authority is encouraged to acquire houses. Sometimes, people approach me about other issues, but I wanted to be clear on that point.

It is important that I indicate for the record that the detailed administration of the housing adaptation grants, including the assessment, approval and payment of individual grants to applicants, is the responsibility of the relevant local authority. While officials at my Department oversee the national budget for this programme - we have increased the budget in recent years, including for this year - and work with our local authorities to ensure all funding is spent effectively and the grants are implemented fairly and consistently, it is logical that the local authorities make decisions locally, based on the guidelines set nationally, and use their local knowledge of individual applicants and their personal circumstances. As a former councillor, Senator O'Sullivan will have tried to intervene down the years and bridge the information gap so that decision makers were not missing facts about cases.

In this particular case, Kerry County Council assessed the proposal as a derelict cottage in need of significant reconstruction and funding of €13,775 was awarded in October 2018. The approach the council took in this case is in accordance with the guidelines. However, the Department always emphasises to local authorities that they should make the best judgment in each case commensurate with the level of need and the circumstances of the applicant within the guidelines.

My Department raised this case with Kerry County Council, which agreed to revisit the application to consider other possible approaches to assessing the grant application concerned while remaining within the guidelines. There is some challenge and complexity to the case. The Senator referred to the purchase of a property, which can complicate application for certain grants because there are processes to be followed. Everyone had the best of intentions in respect of the case, but matters can sometimes become a little complicated. In the circumstances and based on the discussions between the council and my Department, I can assure the Senator that council officials will contact the applicant shortly to look at an alternative way to assess the housing adaptation grant application and see if there is a way to achieve a higher level of support.

The Senator outlined the details of the case and the amount of funding required. He will appreciate that I cannot pre-empt the precise outcome, given that decisions on applications of this kind are a matter for the local authority and not my responsibility. I am not allowed to intervene on any particular case and do not have the power to do so. I assure him that the objective is to bring about the fairest possible outcome for the applicant and recognise the reality of the situation. I trust that the prospect of a better outcome will satisfy the Senator for now, while

allowing time for the council to re-examine the application. I recognise his work on this matter in recent months. I trust also that the follow-up by the council directly with the applicant will take place shortly such that the matter can be brought to a more satisfactory conclusion. There are many solutions to housing. Houses often need to be adapted because the residents may be of various ages and abilities. We try to facilitate that as we want to make the best use of our housing stock.

I know Listowel quite well. The Senator referred to it as a lovely town and clarified that the house in question is a listed building. The town was recognised at the national Tidy Towns awards and I am aware of the work done there early in the morning and late into the night by its Tidy Towns committee and many others. The preservation of houses and restoration of buildings within the town boundaries is to be encouraged. We try to facilitate such works through the many grants that are available. The grant in this instance is very often used to fund the adaptation of a house and is not essentially designed to be used for restoration. However, we try to encourage the usage of grants for various purposes. They are there to help people. We will continue to increase the number of adaption grants made available in the years ahead.

Senator Ned O’Sullivan: I thank the Minister of State for his reasonably satisfactory response, including scripted and unscripted comments, and his understanding of the uniqueness of the situation and the bigger picture. I will not belabour the matter. I know the family will welcome a review and look forward to the promised contact from the county council in great anticipation. I detect a mood change from the words of the Minister of State. We will leave the matter rest.

Deputy Damien English: I thank the Senator for raising the issue.

School Patronage

Senator Lorraine Clifford-Lee: I thank the Minister of State for coming to the Chamber to respond to this matter, which relates to a new primary school for Donabate. The latter is a town in north County Dublin with a population of approximately 8,000. I am one of the people who live there. Donabate is expanding rapidly, with a significant amount of construction taking place. There is planning permission for 900 homes, with many hundreds more to come.

Last year, the Government announced plans for a new 16-classroom primary school for Donabate to open in September 2020. The Minister for Education and Skills, Deputy McHugh, previously confirmed that the patronage of the school will be decided through a patronage process in consultation with patronage bodies and parents living in Donabate. This will allow the parents of the area to give their preference on school patronage. The three excellent primary schools in the town are an Educate Together school, a girls’ Catholic school and a boys’ Catholic school. There is significant demand for a new school, given the level of construction and the growing and very young population in the area.

The Minister previously confirmed that the patronage process would begin well in advance of the school year. September is rapidly approaching, as is the beginning of the school year. It is very important that the patronage process begin immediately because parents need time to plan and see what are the choices in the area in order to decide on their preferred schools. It can be difficult to decide what is best for one’s child and family. In addition, parents need to prepare children for entering primary school. It is a significant milestone. As the mother of a

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child who is starting primary school in September, I know that one needs to prepare oneself and one's child for that significant transition. The child needs to know where he or she is going to school and what will happen there.

I ask the Minister of State to confirm when the patronage process for the new primary school in Donabate is due to start.

Minister of State at the Department of Education and Skills (Deputy John Halligan): I thank the Senator for raising this very important matter. I will respond on behalf of the Minister who cannot be present. It gives me the opportunity to set out for the Seanad the position with regard to the patronage process for the new primary school in Donabate, County Dublin. As the Senator may be aware, in April 2018 the Government announced plans for the establishment of 42 new schools over the next four years, namely, 2019 to 2022, including a new 16-classroom primary school to be established in 2020 to serve the Donabate school planning area. The announcement followed nationwide demographic exercises carried out by the Department into the future need for primary and post-primary schools across the country. The four-year horizon enables increased lead-in times for planning and delivery of the necessary infrastructure.

A patronage process is run after it has been decided, on the basis of a demographic analysis, that a new school is required. The process is open to all patron bodies and prospective patrons. The preferences of parents of children who reside in the school planning areas concerned for each patron, together with the extent of diversity currently available in these areas, are key to decisions in respect of the outcome of the process. The patronage process for new schools is overseen by an external independent advisory group, the new schools establishment group, NSEG. Following its consideration of the Department's assessment reports, the NSEG submits a report with recommendations to the Minister for consideration and final decision. The assessment reports and NSEG recommendations for all such patronage processes are made available on the Department's website. An online patronage process system, OPPS, has been developed by the Department to provide objective information to all parents which will allow them to make an informed choice about their preferred model of patronage for their child's education. Parental preferences were previously collected based on direct engagement with patron bodies.

The patronage process for the new schools to be established in 2020, including the new primary school to serve the Donabate school planning area, will commence later in 2019. The Minister asked me to highlight that the patronage process for the remainder of the new schools will be run at a later date which will be significantly ahead of their due opening. Updates on further patronage processes will be announced on the OPPS website and the Department's website.

11 o'clock

The patronage process for the new schools to be established in 2020, including the new primary school to serve the Donabate school planning area, will commence later in 2019. That will be the first school. I have answered the Senator's question to the best of my ability. I thank her for the opportunity to respond to her question.

Senator Lorraine Clifford-Lee: I thank the Minister of State, but he did not answer my question as I wanted to know exactly when it will start. However, if it is to commence before the end of the year, that is something of a timeline. It is worth bearing in mind that the choice is very important for parents in the area. We need adequate school provision but also choice

within that provision. I realise the Minister of State cannot tell me when in 2019 the process will begin, but can he indicate how long the process takes?

Deputy John Halligan: I have been told that the patronage process for most of the other schools will begin in 2020. The Minister told me that this school will commence later in 2019. To be honest, I do not have a definite date but over the next couple of days I will speak to the Department to see if I can get dates for the Senator, which is important for her. While I have referred to 2019 and 2020, I am assured that it is 2019. I spoke to officials in the Department this morning. I will speak again to the Department's officials over the next couple of days and I should be able to give the Senator a date. I will give her whatever information they give to me.

Senator Lorraine Clifford-Lee: I thank the Minister of State. I will follow up with a letter to remind him. I appreciate his support in this matter.

Coast Guard Services

Senator Martin Conway: I thank the Minister, Deputy Ross, for coming to the House to deal with this matter personally. There were scheduling difficulties in the last couple of weeks in arranging for that.

The Minister will be well aware of the motivation for tabling this Commencement matter. The Irish Coast Guard does extremely valuable work. The more than 700 volunteers who operate in the various Coast Guard stations around the country do vital work in supporting the emergency services. They are available and on call 24-7, but they are not paid for doing the work as they are volunteers. However, these people could find themselves on a search and recovery mission for days, at which point they must take leave from work. They are using up their annual leave and in some cases are taking unpaid leave.

Not all the 700 people are necessarily happy with the manner in which the Coast Guard does its business. All of them are very dedicated and proud of the work they do, and the connectivity they have with the sea and with helping people is extremely admirable. On many occasions they take their lives into their hands when they go out on both search and rescue and search and recovery missions. My reason for tabling this matter is that every organisation has grievance mechanisms to deal with grievances and when the mechanisms in the organisations do not work there is usually an independent process as a last recourse. People who are not satisfied they are getting a fair hearing within the structures that are available can appeal to the independent body. Most people who are in employment are able to appeal to outside bodies.

I am asking for a structure to be established under the auspices of the Department of Transport, Tourism and Sport whereby the few volunteers in the Coast Guard who have grievances and who are not satisfied with the manner in which their grievances have been dealt with can appeal to an independent body overseen by the Department. I recommend that this be established and that it be headed by a retired High Court or Circuit Court judge. The body would also be tasked with recommending improved practices in the Coast Guard. I also recommend that this body should look at cases which have concluded where volunteers are not satisfied with the manner in which they have been dealt with. There has already been a case where a volunteer ended up going to court and being reinstated by the court. We do not wish to see that type of thing. It was reported in the media recently.

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Essentially, I wish to enhance and improve the Coast Guard and to provide a mechanism within the Department of Transport, Tourism and Sport in which volunteers in the Coast Guard can feel confident that their grievances will be properly investigated and adjudicated. As I said, these people are volunteers and are not paid. That is a separate issue and I believe the country must examine that. In this case, however, it is only reasonable that there would be an independent structure to which they could appeal, and that this independent structure would look at previous cases as well. It is something that must happen and I urge the Minister to make it happen.

Minister for Transport, Tourism and Sport (Deputy Shane Ross): I thank Senator Conway for raising this issue. He is second to none in his respect and advocacy for the Coast Guard. I salute the Coast Guard and the work it does. We both want to see any grievances in the Coast Guard resolved in a way that is satisfactory, independent and fair. We have met on many occasions to discuss this issue with the Irish Coast Guard. On at least one occasion we met Bernard Lucas, the widower of Caitríona Lucas who died in a tragedy. That was a particularly moving meeting and I hope the response I give today will be well received by him as well.

Senator Conway has raised the concerns of a number of Coast Guard volunteers that existing procedures for handling grievances need to be improved. The proposal to establish an independent body to deal with such grievances has been raised by the Senator. To be clear, the number of grievance cases currently stands at three. This represents less than 0.5% of the total volunteer cadre. That is not to demean them in any way but just to point out that any response should be proportionate. It is not in any way to denigrate the grievances or to make a judgment on them. I wish to look closer at the manner in which grievances are currently managed in the Coast Guard. The relevant key documents involving volunteers are the Irish Coast Guard code and the grievance and complaints procedures.

Last year, the Coast Guard completed a review of the code. It includes sections on performance management, disciplinary procedure and a positive volunteering environment. This review was conducted with independent expert input from a human resources consultancy to ensure that the Coast Guard's processes were fair and fit for purpose for an organisation of its type. The review also involved a consultation process with the volunteers which was managed through the coastal unit advisory group. This group is a representative structure for the volunteers made up of six members elected by the units independently of full-time staff in the Coast Guard. The HR consultants recommended various modifications and a revised code was published late last year. These independent experts confirmed that the code represented good practice, particularly given the voluntary nature of those involved.

In terms of grievances, all volunteers have access to a process to address issues about any aspect of their volunteer duties or how they are managed. Volunteers who are unhappy in their role or have a grievance they wish to discuss may approach their designated line manager or where they do not wish to go that route, they can escalate their grievance to their coastal unit sectoral manager. These are full-time staff in the Coast Guard. The matter is dealt with in a private manner and in line with the Coast Guard's human resources standards. Various checks are in place to ensure that where one or other party is not happy with how a grievance is being handled, he or she has recourse to independent mediation.

In terms of the independence of human resources processes within the Irish Coast Guard, the existing system has been enhanced over the past six months. As mentioned, a human resources company has been procured to provide reassurance about the procedures and offer the aforementioned independent mediation, where requested. This ensures a sufficient level of

independence within the existing system proportionate to the level of grievances. The Coast Guard management accepts that the new code will take time to bed down and, to this end, training is being organised at all levels throughout the organisation, including for volunteers. The Coast Guard is also committed to reviewing its code on a regular basis. In looking to further improve the system, the Coast Guard has recently created an additional external review process for volunteer grievance investigations, disciplinary and appeal processes. This policy has been developed in the interests of ensuring that the principles of natural justice are upheld for volunteers involved in grievance investigations, disciplinary and-or appeal processes. Under this new policy, the intention is to allow for a further external review of a case, whether grievance, disciplinary or appeal, to be conducted by a competent third party, most likely a HR company. Its focus will be to determine whether procedures were followed correctly. Such a review would be triggered where all other internal review options have been pursued. A volunteer who requests such a review would, naturally, be informed of the outcome of the review and relevant findings. Effectively, this new process will, hopefully, ensure a final independent arbitration relating to grievance and other processes or seen under the code.

The Coast Guard remains a vital component in our search and rescue service. I reassure Senator Conway that its interests are at the core of the significant transformation that is taking place in the search and rescue system.

Senator Martin Conway: Clearly, there have been some advances in the months since Christmas. I may raise this matter again in September once I have engaged with volunteers to check if they are satisfied. It is good that an external company or human resources expert has been retained to consider future grievances. The fact that there are three formal grievance cases does not mean that other members of the Coast Guard who have not triggered formal complaints are happy and would not like to see the current system strengthened. I request the Minister to instruct the Coast Guard to have the independent external body review all grievance cases closed in recent years to see if correct procedures were followed and make recommendations. I welcome the use of an external body and it is a step in the right direction. To be fair, however, the external body should be asked to review all grievances that have arisen in recent years.

Acting Chairman (Senator Ned O'Sullivan): I ask the Minister to be brief because we are tight on time this morning.

Deputy Shane Ross: The new policy must be given an opportunity to work. I give Senator Conway a commitment that I will ask my officials to review the policy after one year to see how it is working. I will also ask him to have discussions with us on how the volunteers have received the policy because they are the people concerned. In a year's time, we will consider the policy in the light of how people have experienced the policy and we will see if any improvements can be made.

Senator Martin Conway: Will the external company consider the historical cases?

Deputy Shane Ross: I will come back to the Senator on that.

Acting Chairman (Senator Ned O'Sullivan): I thank both the Senator and the Minister.

Medicinal Products Availability

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Senator Rose Conway-Walsh: I thank the Minister of State at the Department of Health, Deputy Catherine Byrne, for coming to the House to respond to my Commencement matter on the status of the levodopa-carbidopa intestinal gel, LCIG, known as Duodopa. The medicine is used to treat advanced Parkinson's disease, a neurodegenerative disorder that affects 12,000 people in Ireland. The uncertainty around the availability of this treatment option for people with advanced Parkinson's first arose in June 2018. At that time, there was an expectation that certainty of supply would be achieved within three to four months. In cases where patients were in critical need of this medicine it was made available through an access programme provided by AbbVie, the company that manufactures the medicine. However, as of 30 April of this year, this route is no longer available to patients or treating consultant neurologists. I understand that 81 patients were treated under this programme. The 82nd patient and subsequent patients will be denied access to the treatment. One such patient is a man from Cork who was diagnosed with Parkinson's disease at the age of 30. He is now married with young children and is still in his 30s. He is significantly affected by his condition and urgently needs to be treated with Duodopa now, not in one month or two months, to ensure he does not miss the window of opportunity during which the treatment can have its maximum benefit for him, as a patient who is suffering unnecessarily.

Last week, the National Centre for Pharmacoeconomics, NCPE, stated on its website that the health technology assessment, HTA, for Duodopa had been completed, which is one year after the reimbursement ceased. The issue needs immediate attention. I ask the Minister of State and her ministerial colleagues to lend their support to ensuring this matter is expedited to ensure reimbursement for this medicine and equitable access to it. People should not have to travel to the UK and beyond to access the deep brain stimulation, DBS, services as some people have been forced to do. The Minister of State knows that Duodopa is a proven and tested product. The positive impact it can have on patients and their carers is immeasurable. Combining a specialist nurse service with this treatment will keep patients out of hospital and, therefore, money is saved and space in hospitals is freed up.

The costs of every other medicine for Parkinson's disease are covered. Why is Duodopa not covered? Patients do not opt for the treatment without first giving it great consideration and when it is not critically needed. However, when it becomes necessary for patients to access this treatment, they must be able to do so. The Minister of State will be aware of the procedure involved in taking this medicine. The treatment requires the medicine to be administered through a patient's intestine and is unpleasant. When there is no other option, however, this treatment becomes necessary. We urgently need a timeline or date for when we can expect to see a long overdue decision on Duodopa. There are a number of patients for whom this medicine provides a lifeline and constitutes their only sense of hope. The matter is, therefore, urgent.

Minister of State at the Department of Health (Deputy Catherine Byrne): I thank the Senator for raising this Commencement matter today. Unfortunately, the Minister for Health cannot be here, so I will take this opportunity to clarify his position on the availability of levodopa-carbidopa intestinal gel, LCIG, for patients with advanced Parkinson's disease. As the Senator may know, the HSE has been given statutory responsibility for medicine pricing and reimbursement decisions by the Oireachtas, under the Health (Pricing and Supply of Medical Goods) Act 2013. That Act specifies criteria for decisions on whether the State will reimburse medicines, a statutory process in which the Minister for Health has no role. The HSE's decisions on which medicines are reimbursed by the taxpayer are made on objective, scientific and economic grounds, including on the advice of the National Centre for Pharmacoeconomics,

NCPE. The NCPE conducts health technology assessments, HTAs, for the HSE, and then makes recommendations on reimbursement to assist HSE decisions. The NCPE uses a decision framework to systematically assess a drug's clinical and cost effectiveness as a health intervention. The HSE strives to reach a decision in as timely a manner as possible. However, because of the significant moneys involved, it must ensure the best price is achieved, as these commitments are often multi-million euro ongoing investments. This can lead to a protracted deliberation process.

On 14 June 2019, the NCPE completed an HTA on LCIG for patients with advanced Parkinson's disease. The NCPE recommended that LCIG should not be considered for reimbursement, unless cost-effectiveness can be improved relative to existing treatments. That recommendation is available on the NCPE website. The HSE's final decision on reimbursement will take the statutory criteria in the 2013 Health (Pricing and Supply of Medical Goods) Act into consideration. Under an interim agreement between the HSE and the manufacturer, dating back to 2014, the HSE has agreed to fund this drug for up to 81 patients. The manufacturer agreed to fund the treatment of any new patients above that cap through a medical access programme. This interim agreement was dependent on the manufacturer delivering two things, namely, additional clinical evidence and a new HTA dossier to enable the NCPE to complete a full HTA on this product. However, the HSE has informed the Department that the manufacturer has unilaterally set aside this agreement. Furthermore, the company announced that it would not be enrolling any new patients in the free of charge access programme after 30 April 2019, which the Senator has already mentioned. The manufacturer stated that it would continue to provide the drug free of charge to patients already on the access programme, which is a total of 24 patients. I want to make it clear to the Senator that the HSE has yet to make a final decision on this reimbursement application and the statutory process is still ongoing.

Senator Rose Conway-Walsh: I thank the Minister of State for her response. I ask her to ask the Minister, or the HSE directly, to sit down with the manufacturer and negotiate on the price of the drug. I understand the processes involved, the limited resources and everything else around it. However, can the Minister of State imagine what it must be like to be patient No. 82 in this situation? I cited the example of the 30 year old patient earlier. We are not playing with numbers here, but with people's lives. If the HSE sits down with the manufacturer and works out a price, then it can be agreed, as has happened in many other cases.

The effectiveness of the drug treatment is borne out by the fact that it is approved in other countries. It cannot be different for an Irish person living in London or somewhere else in the UK than it is for someone living here. We cannot force patients to go abroad. I am no friend of drug manufacturers, and they need to decrease their prices, but we cannot expect them to continue providing treatment free of charge indefinitely either. There has to be some fairness there. I ask the HSE to sit down with the drug company at the earliest possible moment and negotiate the price, within weeks rather than months. I am concerned that we are now going into the holiday period. Is there is any way this could be done before the end of July, so that the uncertainty will be removed for these patients going into August and September?

Deputy Catherine Byrne: The Parkinson's Association of Ireland, among other groups, has been in contact with the Minister. He appreciates that Parkinson's disease is a debilitating condition and that it is a worrying time for patients, families and carers. While the Minister hopes this application will shortly come to a satisfactory conclusion for all concerned, it is important to note that the HSE is the decision-making body on the reimbursement of medicines, under the Health (Pricing and Supply of Medical Goods) Act 2013. Accordingly, the HSE alone

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will make the final decision on whether LCIG will be reimbursed. However, I will bring Senator Conway-Walsh's question back to the Minister and will ask him to contact the HSE to see if the decision on this vital medication, that so many people badly need, can be made sooner rather than later. I will bring that back to him.

Senator Rose Conway-Walsh: I very much appreciate that. Could the Minister of State ask the Minister if it could be included in the July meeting, if at all possible?

Deputy Catherine Byrne: I will.

Sitting suspended at 11.27 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, motion regarding the Courts (Establishment and Constitution) (Amendment) Bill 2019, to be taken without debate on the conclusion of the Order of Business; No. 2, Courts (Establishment and Constitution) (Amendment) Bill 2019 – Committee and Remaining Stages, to be taken at 12.45 p.m.; No. 3, Judicial Appointments Commission Bill 2017 – Committee Stage (resumed), to be taken on the conclusion of No. 2 and to conclude after two hours by the putting of one question which shall, in relation to amendments, include only those set down or accepted by the Government; No. 4, Local Government Rates and Other Matters Bill 2018 - Committee and Remaining Stages, to be taken on the conclusion of No. 3; No. 5, motion regarding the earlier signature of the Local Government Rates and Other Matters Bill 2018, to be taken without debate on the conclusion of No. 4; and No. 6, Private Members' business, motion regarding genetic testing, to be taken on the conclusion of No. 5, with the time allocated to this debate not to exceed two hours.

Senator Catherine Ardagh: I would like to raise three issues today. The first relates to the amendments passed by Members of Parliament in Westminster yesterday. They voted to extend same-sex marriage to Northern Ireland unless power-sharing is restored by 21 October. They also overwhelmingly voted in favour of an amendment to liberalise abortion law in Northern Ireland. While I very much welcome these amendments, their passage is bittersweet. Although they represent social policies with which I agree, I still hope that the Stormont Assembly will get its act together and that the parties will come together because I would love to see these changes being implemented by the assembly in Northern Ireland. The amendments yesterday are a significant first step in ensuring that these social changes are a priority for legislators in the Stormont Assembly. If the assembly is not reconvened by October, these changes will be implemented in October. It is bittersweet. I very much welcome the changes but I would like to have seen them passed in Stormont. I really hope that the parties, the DUP and Sinn Féin, will come together in Stormont to debate these issues and implement these changes.

The second issue relates to the HSE. More than six months ago the HSE offered various jobs to people on its panels without issuing contracts of employment or start dates. Some people have been left waiting for more than six months. The people who have been recruited are calling it a recruitment freeze but the HSE is denying that. The fact remains, however, that people were offered jobs but without contracts or start dates. The Minister for Health, Deputy Simon Harris, must come to the House to explain the reason people on panels have been told

they would have a job but have not been given a contract or start date. That is very unfair.

The third issue relates to processing delays for social welfare payments by Bank of Ireland. We learned that a technical issue has arisen with social welfare payments for people in receipt of a disability allowance and other allowances who have a Bank of Ireland account. I ask that the Minister for Employment Affairs and Social Protection examine the cause of the glitch between the Department and the bank and that it be resolved as soon as possible.

Senator Victor Boyhan: I will not dwell on the issue, but perhaps the Leader will indicate the approximate time at which the Judicial Appointments Commission Bill will be debated today. Committee Stage is due to conclude today. It has been a long journey of many hours. I thank my colleagues who signed many of the amendments, and Senator Norris, for their contributions and time. Despite all the allegations, complaints and suggestions of cronyism regarding the appointment of judges, to which I do not subscribe, this Administration has facilitated and supported the appointment of 48 eminent judges and capable persons. The current system works. We will discuss that later today.

I am prompted to make a point following commentary in *The Irish Times* today on the reappointment of Mr. Phil Hogan as European Commissioner. The suggestion is that the decision was “facilitated” by the support of the Independent Alliance. I do not know whether that is true. However, I wish to make it very clear that under this Administration, of which the Minister for Transport, Tourism and Sport, Deputy Ross, is a member of Cabinet, more than 48 eminent, qualified and suitable people have been appointed to the Judiciary. This emphasises the point that despite all the threats by members of the Government that they might not support the appointments, all of the appointments were endorsed. Those were the right decisions. The persons appointed to the Judiciary are upstanding people of commitment.

Senator Rose Conway-Walsh: Many people who receive various types of social protection payments still find themselves living in poverty. In many cases, pensioners who only receive the State pension are still living in poverty. I come across more and more pensioners who do not even get the State pension because of the many deductions and anomalies that apply. I asked previously that the Minister come to the House to specifically speak about pensions because there is so much to discuss in that regard and a significant number of people who are living in poverty. Different circumstances such as health, geographical location and carer’s duties mean that the standard amount simply does not suffice for pensioners. I previously gave the example of a pensioner who has to travel from Belmullet to Galway for a hospital appointment. That is a six-hour round trip and it costs more than €200 in a taxi. There is no public transport. That is the equivalent of a pension, and more than that amount, wiped out for one week.

I am very pleased to hear that the Minister for Employment Affairs and Social Protection, Deputy Regina Doherty, will consider the Sinn Féin Bill to establish a social welfare commission. The Bill was introduced by the Sinn Féin spokesperson for employment affairs and social protection, Deputy John Brady. The commission would examine the minimum essential income standard for the various household types and recommend the necessary rate increases in pensions to the Minister ahead of the budget each year. I hope we hear back from the Minister soon given that the budgetary process is well under way and that pensioner poverty is tackled once and for all.

The Sinn Féin motion for Dáil Private Members’ business, which calls for a binding Oireachtas vote on the Mercosur deal, will be debated in the Dáil tonight and the vote is likely to take

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place on Thursday afternoon. I remind parties that this may be the only chance we have to register opposition to the deal and its detrimental impact on farming and farm families. I remind Members who have referred to Commissioner Hogan and his new job, that he said two years ago that beef would not be on the menu for the Mercosur deal. Beef is very firmly on the menu - 99,000 tonnes of it. That will have a devastating impact on farming and rural communities. The Commissioner has broken his promise to us on the issue, as has the Government.

Senator David Norris: As my Fianna Fáil colleague has done, I welcome the decision of the UK Government to introduce an abortion regime in the North of Ireland and also its gay rights initiative on marriage equality. It is significant because Jeff Dudgeon, for example, won a historic case - before I won mine - in the European Court of Human Rights. The North was in advance of us at that stage and it is regrettable that this has been let lie. Regarding abortion, 80% of the people in Northern Ireland approve of the regime that is being introduced, so there is no question of it being undemocratic. They have had years to deal with this and they have not done so. With regard to equal marriage, the gay pride march is enormously bigger than the Orange march in Belfast, so that tells us where people's hearts lie on this matter.

I wish to return to something I said yesterday. We were discussing the use of the Seanad Chamber. I fully approve of Travellers and I have a track record in the area. However, I do not approve of subsidiary sections dislodging the proper business of the Seanad. The heckling from the Leader dislodged me from a point I was trying to make, namely, that one of the important points that was being debated at the time was the non-representation in the Oireachtas of the Traveller community. I speak from experience; it took me ten years and six elections, including by-elections to get elected, because people were suspicious of me. Travellers are a minority and, sadly, they are not universally popular. It will take quite a while to get somebody from the Traveller community elected to Seanad Éireann. I strongly suggest that after the next election the Taoiseach of the day, whoever he or she is, make a deliberate decision to appoint somebody from that community as a first stage. I have a candidate in mind, namely, Rosaleen McDonagh, who is not only a Traveller and a very effective spokeswoman for Travellers, but she is also handicapped. She is in a wheelchair. It would be good for this House to have somebody in a wheelchair. We would have to listen very carefully to what that person said. Ms McDonagh ran a number of times for a seat on the Trinity panel and she did quite well but she never got to the point where it was realistic for her to become a Senator. She is somebody who deserves consideration to be nominated by the Taoiseach as a voice for the Traveller community in Ireland.

Senator Kieran O'Donnell: I wish to raise two issues. I was not in the House yesterday, but I welcome the independent report from Mr. Justice Iarfhlaith O'Neill on abuse victims. I know the former pupils of Creagh Lane as I have dealt with them for some time. There was frustration at the length of time Mr. Justice O'Neill's review took but the outcome is the correct one. It was always felt that the prior complaint condition was questionable, in that if someone was convicted of abuse in a criminal court, the prior complaint rule should not have applied under the redress board. I welcome that such a decision has now been put in place. I note from both what the Taoiseach said yesterday and what the Minister for Education and Skills said in the Dáil today that the Minister is looking to expedite the reopening of the redress board. I hope that will be done as quickly as possible and that the former pupils of Creagh Lane can get on with their lives. These were young pupils going to a school and what happened there should never have happened. I welcome the fact that the Taoiseach has apologised on behalf of the State.

The IFA had a briefing on Mercosur yesterday. It is critical now that the standards applied

to beef coming in from the Mercosur countries are the same as apply to beef being sold by Irish and other European producers. We have 270,000 tonnes coming into the European markets from the Mercosur countries as we speak. There is a need for a sit-down on how these standards are applied. I understand it is based on random sampling. It should be put back on the Mercosur producers to provide evidence that they have met the standards. That should apply as quickly as possible. The beef produced in Ireland in particular is of the highest standard and there cannot be any ambiguity around the fact that the quality of beef coming in from the Mercosur countries has to meet the same standards. That is the way forward.

An Leas-Chathaoirleach: Before I call Senator Murnane O'Connor, I welcome the Newtown-Nurney senior citizens group which is also, coincidentally, from Carlow, a county often mentioned by the Senator. Laughing in the Gallery is not allowed, unfortunately.

Senator Jennifer Murnane O'Connor: I welcome our senior citizens from Carlow. We are delighted to have them here today and I hope they have a lovely day. Today I want to talk about the general data protection regulation, GDPR, which is a year old this month. A most complex piece of legislation, the regulation was an attempt to unify existing legislation enacted after the 1995 directive across the European countries. This regulation was designed to guide organisations across the EU on how to protect the personal data of each citizen.

The Irish Data Protection Commissioner reported over 6,000 GDPR related complaints in this first year of legislation, of which approximately 90% were deemed valid. There is massive confusion about the regulation. There is a widespread lack of awareness, a shortage in skills across all sectors and quite a lot of enforcement of regulation without actually complying with it. My colleagues have raised the matter previously but more and more people are coming into my clinics with issues about the regulation. Clarity is needed going forward in order for the legislation to work for people. The GDPR significantly strengthens the rights of individuals but it is important to know that it increases organisations' responsibility as to how they collect and use personal data. For many organisations, there is unfamiliarity with the regulation, in some cases to a staggering degree. People coming into my clinics are complaining that they have been denied access to their own information. According to the regulation, everyone has the right to access to data which has been collected concerning him or her. Others in my clinics and on social media have complained because they have received mobile phone text based direct marketing when they had not opted in to receive such texts. There really is massive confusion. Now that we are one year into it, I would like to see more effort being put in to making people more aware. I appreciate that the several investigations by the data commissioner may raise such awareness but I would like to see more done in this regard. This is huge. It is one of the biggest issues to face Senators and Deputies. We need to make sure people have proper information.

Senator Tim Lombard: I would like to follow on from the statement by my colleague from Limerick, Senator Kieran O'Donnell, regarding the Mercosur deal. There is exceptional unrest in the beef industry. In the last 18 months it has seen a dramatic deterioration in prices. The proposed Mercosur deal will see an increased volume of beef coming into the European Union, which will also deflate prices. The outlook for the beef industry for the next few months is very poor. If we see the price decline that is predicted for the next few months, we are going to have a real, extended crisis in our industry. The point about Mercosur is that it has come already. The confidence is gone from the market and the suppliers. Beef farmers who came to my clinics last week will not buy weanlings when it comes to the autumn and will not be investing in sheds or in their industry because they do not have the confidence to keep going. That is

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going to become a serious issue for our suckler and beef industry.

The Minister has been proactive in this space and has said it is a bad deal for the beef industry. We need to start up the momentum of getting our European friends involved in the debate. Our association with France in particular has to be built upon. The Oireachtas, through friendship groups, the Joint Committee on Agriculture, Food and the Marine and the Seanad itself, has to build those connections to ensure we can win support in Europe to get this deal changed. For this to happen, everyone here has to be involved. The Seanad should send a delegation to France and should become a real catalyst of change to ensure we can get those doors opened. We will not change it all by ourselves and it needs to be changed. The confidence of our beef farmers is drained out of their veins in the last few months. This has been the final kick. We need to move into a different space, build alliances and get change. With that, hopefully, we can get what the beef sector requires. Nor is it just about beef. The poultry sector will be decimated and will have no hope if the proposed margin of poultry product comes into the EU. It is about fighting for this section of society and it is about an agricultural split. Dairy will survive but the beef, pig and poultry industries need a change in this deal, otherwise they will be on a slippery slope, and confidence is at rock bottom at the moment.

Senator Pádraig Mac Lochlainn: There are serious concerns in the south Inishowen area at activities on what was known as Grianán Estate. It is the largest farm in the country. This estate was purchased by Glenmore Estate in 2017 and earlier this year *The Irish Times* reported that it was estimated that hundreds of trees including ash, sycamore, birch, whitebeam and willow, had been destroyed and miles of hedgerows torn out on this farm. The matter has been raised with the Department of Agriculture, Food and the Marine and with the National Parks and Wildlife Service. This massive estate borders an internationally renowned bird and wildlife sanctuary. Right now it is subject to an ongoing Department of Agriculture, Food and the Marine investigation. The wider community is outraged by the dramatic change to the landscape in a much loved area.

12 o'clock

Recent developments have turned concern into absolute outrage. The owners of this farm operate an anaerobic digester and one of the by-products of this is digestate, which is spread on the land. Rural people who live in these areas are used to slurry spreading and farming practices going back as far as anybody can remember. They are not people who would have any difficulty with that. However, the smell of ammonia is just an assault on a large area of south Inishowen. Apparently our current legislation is allowing this to happen. We would expect the Department of Agriculture, Food and the Marine, the Environmental Protection Agency, EPA, and Donegal County Council to defend the interests of the community. A confirmation day was totally ruined in the local hotel because the smell was utterly overwhelming and suffocating. We had a situation recently where somebody was holding a wake for their loved one and the house was overcome. Everybody's home is devastated by the smell. There is need for the Minister for Agriculture, Food and the Marine and the Minister for Communications, Climate Action and Environment to be made aware of the serious and profound problems that have arisen. There is a need for legislative change. The Ministers have to pull together with the EPA, the Department of Agriculture, Food and the Marine and Donegal County Council to solve this problem on behalf of the local community and hold this business to account for what is an assault.

It might be technically legal to do what they are doing but it is utterly unethical to do what

they are doing right now and it has to stop.

Senator Máire Devine: Well said.

Senator Paddy Burke: I congratulate Commissioner Phil Hogan on his nomination for reappointment to the European Commission. No doubt we will see him get a big portfolio in the coming reshuffle of Commissioners. We wish him well in that. The better the portfolio, the better for Ireland. Commissioner Hogan will have the interests of Ireland at heart.

I wish to be associated with the comments that have been made in respect of the Mercosur deal. I call for a debate on the issue either today or tomorrow. If we cannot have it on either day, I hope it can proceed when the House returns in September. Many issues arise from the deal. One is the original 275,000 tonnes of beef already coming into Europe. How much of that is coming to Ireland? Reference was made to the poultry industry. As previous speakers indicated, the deal will have devastating effects on our beef and poultry sectors and on the pig industry as well. It is important that we have a debate on the issue in early September at the latest. There are many issues involved and many aspects to the Mercosur deal. There are pros and cons. I hope that we will have an early debate on the matter.

I welcome the developments at Dublin Port and the proposed expansion and extension thereof. I have raised this issue on several occasions. Dublin Port is highly important to Ireland. The port does not operate on a 24-hour basis and there are difficulties with that. Maybe the expansion envisaged will help that. A €1 billion plan is envisaged for the port and a planning application has been lodged with An Bord Pleanála. I hope these plans will come to fruition in the not-too-distant future and that Dublin Port goes ahead with them. It is vital that Dublin Port works efficiently and effectively. Dublin Port has indicated that it will not take any cruise ships this year. Cruise ships are important not only to the city of Dublin but also to the country as a whole. The sector is not putting any pressure on bed nights in Dublin or anything like that because most of the people stay on board. This would be a major loss to the State and the Exchequer. I welcome the plans put forward by Dublin Port. Perhaps the issue could be debated in the Chamber in the not-too-distant future as well.

Senator Robbie Gallagher: Like other colleagues, yesterday I attended a briefing on the Mercosur deal organised by the Irish Farmers Association. Representatives from the association informed us how Irish farmers are terrified at the potential consequences for the future of farming here and, by extension, the future of rural Ireland. Today, the Beef Plan movement is holding a protest outside the gates of Leinster House to highlight concerns relating to this deal, the consequences for the future of Irish farming and the future of rural Ireland as we know it. They are saying to us that the deal is a complete disaster. They say it is bad for Irish farming and for the environment.

Those of us who live in the Border region already have enough on our plates. I imagine the Leader would agree with me. The dark cloud of Brexit hangs over and it is already affecting economic life around the Border counties as we know it. There has been much talk about the extra 99,000 tonnes of beef that will come into the EU but less talk about the extra 180,000 tonnes of chicken or poultry that will come into the country as a result of this deal. As the Leader will appreciate, this could have grave consequences for the Border community. As Senators are aware, Monaghan and Cavan are home to the poultry industry. If this deal is to go ahead as presented, it will have grave consequences indeed for the communities of Monaghan and Cavan. Echoing the call of the Leader's colleague, Senator Paddy Burke, I request a de-

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bate on this matter as soon as possible. I appeal to the Leader to pass on our grave concerns to Government. This deal cannot and should not go ahead as presented. Otherwise, it will wipe out farming and, by extension, rural Ireland as we know it.

Senator Frank Feighan: I rise to congratulate and thank my good friend, Conor McGinn, a Labour Party MP in Westminster. Mr. McGinn secured an amendment to ensure that same-sex marriage would be introduced in Northern Ireland unless power sharing is restored in October. He is a great friend of Ireland. He is chair of the all-party parliamentary group on the Irish in Britain and he is involved in the British-Irish Parliamentary Assembly. This is really positive and can help to restore power sharing in Stormont in Northern Ireland. This is a major move. I wish to thank all the MPs who voted for this. Although sometimes we deride Westminster, what has happened to ensure same-sex marriage in Northern Ireland is highly significant.

An Leas-Chathaoirleach: Senator Feighan mentioned a good Armagh man. Senator Ian Marshall is next.

Senator Ian Marshall: I rise today to speak in a week when many people are talking and raising serious concerns about the EU-Mercosur deal and the potential impact on the beef industry. This morning, as we speak, outside Leinster House a large demonstration is gathering to express fears and concerns from the farming industry about the uncertainty that the deal presents and the negative consequences that may result.

Yesterday, I listened to the Joint Committee on Agriculture Food and the Marine discuss the merits of afforestation and the replanting of trees in order to address climate change and meet some of our obligations. It is with this in mind that I prefer to speak on a positive note rather than focus on negatives. It is timely that we are having this discussion because only a few days ago a report was published in *Science* by Professor John Crowther, a professor in environmental systems science at Eidgenössische Technische Hochschule Zürich in Switzerland. At Queens University Belfast, we work with this university on a regular basis as partners in a European food project called EIT Food. Professor Crowther states that planting billions of trees is our best chance of saving the planet. He claims there is room on earth to plant 1.2 trillion extra trees and cut our carbon footprint by 66%. I am of the view that the claims are valid. Professor Crowther states, “This new quantitative evaluation shows [forest] restoration isn’t just one of our climate change solutions, it is overwhelmingly the top one”. The researchers believe that a worldwide programme could remove two thirds of all emissions pumped into the atmosphere by humans. They have calculated that 1.7 billion ha of land on which trees are not currently growing could support trees naturally. This equates to an area roughly the size of the US and China combined. They took into account that different areas would support different densities of trees and they excluded urban areas and all fields currently used to grow crops. Furthermore, grazing land was calculated as supporting a few trees, something that would actually be beneficial to cattle and sheep.

This works clearly demonstrates that people do not need to start believing in climate change or change their lifestyles. It does not require major advances in science or technology. It simply involves citizens engaging to support, donate, assist or facilitate the planting of trees. Many world-renowned scientists support this theory, as well as the idea that national governments should have this as a primary component of any plans to deal with climate change. René Castro, assistant director general at the UN Food and Agriculture Organization, as stated, “We now have definitive evidence of the potential land area for re-growing forests, where they could exist and how much carbon they could store.” Initial estimates suggest that a global cost of

\$300 million would restore over 1 trillion trees. This is by far the cheapest option yet proposed.

We need to consider how the men and women on the street today outside Leinster House can contribute and be rewarded for doing so. Telling a farmer to plant a forest is akin to telling people in Dublin to build a house in their garden that they cannot sell for 40 years. It would not happen. All of us need to acknowledge the difficulties and the sensitivities this would present. However, agriforestry on grazing land, utilising corners of fields and strips of low production value land, could be an option. I refer to forestry in harmony with grazing livestock. All of us could identify such areas.

Sometimes the “keep it simple, stupid”, KISS, theory works best. That is the theory we probably need to examine. I urge the Government, in conjunction with farmers in the agricultural industry, to consider some of these solutions to our problems, pursue mechanisms to meet targets, deliver on climate change and, ultimately, give farmers a viable, sustainable future, especially in light of an EU-Mercosur deal.

Senator Máire Devine: That is a novel and interesting piece of research which I am sure we will bring to the climate action committee.

I propose an amendment to amend the Order of Business to take No. 13 before No. 1. The Assisted Decision-Making (Capacity) (Amendment) Act 2015 established several new legal provisions to address issues of consent and capacity in the provision of healthcare treatments. One such provision was the statutory right to develop and have respected, as practicable, advance healthcare directives where a person specified the action to be taken and the decisions to be made in the future while he or she had capacity. All of us would agree that is an important human rights issue. The difficulty, and what this Bill addresses, is the involuntary detention of patients where that is not recognised. If one is involuntarily detained that does not mean one does not have capacity.

I welcome representatives of Mental Health Reform, who are in the Gallery. They worked closely on this Bill with the assistance of Deputy Pat Buckley.

In terms of human rights, we have come a long way along the road to enlightenment from the time of the lunacy Act when everything was taken from people, not just their liberty but their ability to speak, make decisions and have capacity to do what they wanted to do. This Bill will move us further along the road to enlightenment in that regard. I would be delighted if the Leader would accept my amendment - nobody will create any hassle over it - and allow this Bill to progress through this House and become legislation.

Senator Maria Byrne: I welcome the fact that the Ilen boat, the only surviving wooden sailing vessel of its type, which was rebuilt in Limerick, is on its way to Greenland as part of the Salmon’s Wake project. It will highlight the plight of the salmon leaving the River Shannon and heading towards Greenland. I raise this issue because it is a wonderful project which was done under an educational scheme. People across the community - artists, educationalists and craftspeople - came together and showed each other the craft of making the boat by hand.

We had the *Asgard* project in the past, which was involved in sail training. I sailed on the *Asgard*; I was a watch leader. It is time we considered bringing back something like the *Asgard*, a sail training ship, because many youths across the country, both North and South, received very worthwhile training when they were on the *Asgard*. I ask the Leader to bring this issue to the attention of the Minister.

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Senator Kevin Humphreys: I raise the issue of the Environmental Protection Agency report on clean air. The clean air strategy will come out later this year but clean air is not only an issue for Dublin. Smoky coal is still used in towns and cities where it has not been banned. We have been waiting a considerable period of time for that to be addressed. We are aware of the health constraints, especially in respect of older people, and premature deaths due to polluted air. Children in inner city communities are affected in terms of high rates of asthma from polluted air. All these issues relate to dirty diesel, which is a real problem in Dublin, Cork, Limerick and Galway. Diesel double decker buses will not come off our streets until 2030. We need short-term as well as long-term action. The clean air strategy is very much a long-term strategy. I am looking for action to be taken now. I am not talking about action being taken only in Dublin. I want to see real-time air quality indicator visual maps in our most polluted cities and towns where the general public can see online the quality of the air within their cities and towns. That, in itself, will put pressure on the Government to move quickly in respect of this issue.

Senator Marshall spoke about tree planting. That has a real effect but there is also an effect in respect of hedges. In Birmingham, it has been proved that where hedges are planted close to roads it breaks up the pollutant at an early stage and stops the effects up to 30 m away.

I ask the Leader to arrange for a constructive debate on this issue early in the autumn to discuss new ideas and how we can clear the air in our towns and cities by banning smoky coal and start removing diesel cars, buses and lorries in areas with a high concentration of older people and young children in particular. I know the Leader will try to facilitate that request as soon as he can in the autumn.

(Interruptions).

Senator Máire Devine: Share the joke.

An Leas-Chathaoirleach: Order, please.

Senator Kevin Humphreys: The Leader has not been helpful in pointing that out to me.

I sympathise with the staff of this House in respect of the rodent problem in the public bar and the Members' bar. It is upsetting for many members of staff but I refer to-----

Senator Rónán Mullen: The rat was hiding in plain sight.

Senator Kevin Humphreys: -----the rat infestation we have seen in our cities in recent years. I am aware of inner city flat complexes where morning, noon and night residents are plagued by rats and when they complain they are passed off between Dublin City Council and the Health Service Executive. Yesterday, a lady explained that she left for work in her car and when she got there her engine had seized because rats had climbed up into the engine. Her car was destroyed. She will have to carry that cost, which will be very difficult.

For people living in inner city homes, and I know Senator Devine has this issue also, this problem must be addressed. We cannot ask families to live in rat-infested areas. I know this issue is disturbing, and I am using the excuse of what happened in the House to raise it, but families are living in those circumstances in cities and towns. We need a strategy because there has been a growth in the number of reports of rat infestation in cities and towns.

Senator Máire Devine: Well said.

Senator Rónán Mullen: “I think she would like to have the baby in the same way she would like to have a nice doll.” Those were the chilling words used by Ms Justice Nathalie Lieven in a British court recently justifying her decision to force a mentally disabled woman to abort her late-term child of 22 weeks in the womb in violation of her wishes and indeed the wishes of her mother, her legal advisers and a social worker. Her mother was willing to care for the child. Thankfully, that decision was overturned on appeal but Ms Justice Lieven, who had been an advocate for bodies supporting abortion prior to her life on the Bench, described the Northern Irish law, which protects mothers’ lives and unborn children, as torture. I would encourage Senator Ardagh, respectfully, in light of that very recent chilling example of what the British law can amount to, to think about whether it is a matter of sweetness that the British Parliament should threaten to impose an extreme abortion law on Northern Ireland. It is neither patriotic nor wise to be happy about the British Parliament imposing or threatening to impose any laws, especially on socially sensitive areas in a jurisdiction such as Northern Ireland. I thought we had moved beyond that kind of oppressive majoritarian thinking.

The issue that I wanted to raise today is good news.

Senator Jerry Buttimer: Only one issue is to be raised.

An Leas-Chathaoirleach: Senator Mullen is using much of his time.

Senator Rónán Mullen: I am sorry about that. I raised the case of the Hyde family recently. They moved to Australia and their application for permanent residency was denied because their child had been diagnosed with cystic fibrosis. That incredible decision was thankfully reversed as a result of a last minute intervention by the immigration Minister in Australia and the family will be allowed to remain after all. While that is a great outcome, certain concerns about the case remain. One is the media blackout about this case in Ireland. If Donald Trump’s America had refused a visa to a child with cystic fibrosis, we would rightly be talking about it continually. I am concerned about what I see as the hands-off position taken by the Government on this issue. When I raised it as a Commencement matter, the Minister of State, Deputy Stanton, said that it would not be possible for the Tánaiste to comment on the visa procedures applied by other sovereign states. That is a curious statement when we rightly, constantly, pass comment on American procedures and our Government rightly expends time, money and manpower on actively lobbying the Americans to change their visa procedures and laws. If one was a cynic, one would conclude that the Irish lobby in the US is large, well-funded and regularly wines and dines the leadership of the largest political parties. No such lobby exists in other countries.

I ask the Leader to agree that it is not acceptable for the State to take a hands-off approach to issues which affect its citizens, neither in ordinary situations nor *a fortiori* when there is a child with cystic fibrosis who, for a time, appeared to be at the receiving end of a harsh decision. As a State, our policy should be to assist the best possible outcomes for Irish families so that they can live, prosper and contribute to whatever society they want to live in, all things being equal. There should never be any discrimination on the grounds of a family member’s disability of any kind.

Senator Paul Gavan: I second the amendment to the Order of Business from my colleague, Senator Devine.

I call for a debate on the hospitality sector. Sinn Féin’s National Minimum Wage (Protec-

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tion of Employee Tips) Bill 2017 continues to progress in the Dáil. I record my disappointment that Fine Gael opposes a legal right to tips for hospitality workers. The issues in the hospitality sector go beyond that. I refer to the Workplace Relations Commission's reports for the last three years. Some 48% of the food and drink sector was rated non-compliant with basic employment law in 2016, with 58% non-compliance in 2017, and 67% non-compliance in 2018. In other words, the majority of our restaurants and hotels are not compliant with basic law such as issuing a work contract, complying with the National Minimum Wage Act, the Organisation of Working Time Act and the Payment of Wages Act. The standards in this sector are shocking.

I refer specifically to Limerick. Limerick City and County Council provides hundreds of thousands of euro each year to two hotels, the Strand Hotel and Savoy Hotel, neither of which recognise trade unions. Is it not time that we as a country decide, when we are going to award taxpayers' money, that we at least insist on a level of decency? We should call on those hotels to recognise the rights of their staff to join a trade union and be recognised as trade union members. This has gone on for far too long and the Workplace Relations Commission's evidence shows that it gets worse each year. A 67% rate of non-compliance with basic employment law is not good enough. We need a debate on the matter and we need politicians across all parties to act on this issue.

Senator Máire Devine: Hear, hear.

Senator Gerard P. Craughwell: We are coming up on budget time. I had a communication this morning from a member of the public who is concerned about the contributory old age pension. Every year, the Minister announces increases in social welfare benefits. Generally speaking, we hear that pensions were increased by €5. Since 2012, six streams have been introduced in the pension scheme based on the number of contributions that one has paid. This member of the public has set out for me the pension rates in 2018, starting at €243.30 and working down to €97.20. The Minister has announced a €5 increase in the pension but it is *pro rata* for the contributory pension while it is not *pro rata* for the non-contributory pension. The person on the bottom of the scale, with an average of ten to 14 contributions, would have got a pension of €97.20 in 2018 and, following the 2019 budget, an increase to €99.20, which is not an increase of €5. If nothing else, when the Minister addresses it in October, we should clarify the language that is used, since €5 is not being given across the board, but a *pro rata* increase for people on a contributory pension. A man has put together a very genuine case, which I will forward to the Leader's office today, and he might forward it to the Minister. It causes him and many of his neighbours who are on contributory pensions a great deal of distress. Some €5 is a lot of money if one is trying to live on €200 a week, and it is an awful lot if one is trying to live on €97 and only gets a €2 increase. I will forward that information to the Leader and, if needs be, we can have a Commencement debate in the early part of the new session.

Senator Martin Conway: I ask the Leader to facilitate statements and a debate on the future of Moneypoint in the first week that we are back in September. Staff in Moneypoint are currently engaging with management and their unions about job losses. It is quite serious. What will happen in the future to Moneypoint? The ESB has committed to coal burning there until 2025 but much more importantly, what will happen post 2025? The Minister will have eight or nine weeks over the summer to prepare for this debate and I encourage the Leader to facilitate it.

I was at a briefing in Buswells, hosted by a former colleague, Averil Power, who is now CEO of the Irish Cancer Society. If Members have not been there already, I encourage them to go

there. While we have achieved much related to cancer care, especially with the centres of excellence and the fact that so many people survive cancer, there are still many challenges. Some of the requests the Irish Cancer Society has in its pre-budget submission are very reasonable. One is a reduction to a €100 limit for people under the drugs payment scheme. It is looking for an upgrade to and moving forward of trials, the people covered and the funding available. As we will all have experienced in our offices, it is critical that when people are diagnosed with cancer, a more lenient approach should be taken by the primary care reimbursement service, PCRS, when allocating medical cards for treatment. It is extremely traumatic and distressing for a person to have cancer and the last thing that he or she should be worried about is whether he or she will get a medical card. In the upcoming budget in October, the Minister needs to do something to make it easier and more flexible for medical cards to be provided to people who are diagnosed with cancer.

Senator Pádraig Ó Céidigh: The Leas-Chathaoirleach might recall that he recently chaired the Seanad Public Consultation Committee when it addressed the matter of small and medium enterprises.

An Leas-Chathaoirleach: Senator Ó Céidigh did a tremendous report, if I may say so.

Senator Pádraig Ó Céidigh: I thank the Leas-Chathaoirleach. The Leader was very actively involved in helping to promote it, as was Bridget Doody and the team in the Seanad Office. I do not want it to lie at that.

Will the Leader give an undertaking to facilitate a full debate on the SME sector, as he indicated he would do? That debate must include a discussion on procurement. The Exchequer will spend some €100 billion in the next five years on public procurement, of which SMEs will receive approximately 3% to 4% in value terms. If we could double that allocation, it would make a huge difference to SMEs and to the whole economy. The procurement process must be totally overhauled. Will the Leader ask the Minister to come to the House for a debate on that issue? Ireland is 12th in Europe when it comes to SME share of Government contracts. The contracts these companies do get are small, with none securing a project worth more than €300,000. The percentage of SMEs tendering in this country is much smaller than is the case in any other country in Europe, where they secure three times as many contracts as Irish SMEs do here. It is an issue that requires serious examination. We have great SMEs that are run by passionate people. We need to give them a fair crack of the whip. The last thing they want is an advantage or privilege, but they must have a fair chance. I thank the Leader and the Cathaoirleach for all the support they have given me in my role as rapporteur for the report on the SME sector.

Senator Jerry Buttimer: I thank the 20 Senators who contributed to the Order of Business. Senators Ardagh, Norris, Feighan and Mullen referenced the decisions in Westminster yesterday that affect Northern Ireland. I congratulate Mr. Conor McGinn, MP, on his stewardship of the marriage equality debate yesterday and the decisions arising from it. It is an important decision for the UK Parliament and one which I very much welcome. Senator Ardagh had every entitlement to come into the House today and give her view on this matter, as did Senator Mullen. To be fair to Senator Ardagh, she has long been a champion of equality and women's reproductive rights. Senator Mullen has a different viewpoint. The UK Parliament has now taken a decision on these issues as they operate in the North, as did the Irish people in respect of this State. There are people in the North today celebrating the granting of marriage equality, which was previously denied to them. Ironically, this comes at a time when there is a lacuna of representation in Stormont. We all recognise the need to have the Assembly back up and run-

ning as soon as possible.

Senator Ardagh referred to jobs in the HSE. I do not have the answers to her questions. I do find commonality with her point that if a person is given a job and the relevant process is followed from A to Z, it should not take an inordinate amount of time to implement that appointment. Every contract takes a period to be issued, but we need to look at the delays the Senator highlighted. The HSE has been recruiting staff in the first quarter of this year and it is my understanding that there is no public sector freeze on recruitment. If Senator Ardagh has an issue concerning a particular individual, she should take it up with the Minister, or I can convey her concerns to him.

I agree with the Senator that the delays on the part of Bank of Ireland in processing social welfare payments are not acceptable. They place a significant burden and strain on people waiting for those payments.

Later today, after a further two hours of discussion, we will have completed 102 hours of debate on the Judicial Appointments Commission Bill 2017. I will say no more on that other than to point Senators to what is proposed in the Order of Business.

Senator Conway-Walsh referred to poverty among pensioners. To be fair, the Government has done more than its predecessors in respect of the restoration of social protection payments to elderly people. Everybody qualifies for a pension, with means and circumstances deciding whether one is eligible for a non-contributory pension or a contributory pension. The Minister for Employment Affairs and Social Protection, Deputy Regina Doherty, introduced the home-maker's scheme, which has afforded recompense to some women who look after children in the home. The social welfare budget has increased every year under this Government. I do not wish to be discordant but all of us in this House who are active in our constituencies understand the difficulties people are facing. There is an issue in regard to how efforts to reduce energy consumption may impact on elderly people. I will be happy to have that debate when we return in the autumn.

Senator Norris raised an issue yesterday regarding the schedule, which he clarified today. His proposal for the appointment of a member of the Traveller community to Seanad Éireann is deserving of support. The hearings of the Seanad Public Consultation Committee are an important part of our work in this House, giving us an opportunity to deal with issues that might not necessarily be debated in the normal course of business. Our ability to have those hearings enables people to serve as rapporteurs and to present issues that might not otherwise be to the fore in our deliberations.

Senator Kieran O'Donnell referred to the report by Mr. Justice Iarfhlaith O'Neill on victims of abuse. I understand the Minister for Education and Skills, Deputy McHugh, is in the Dáil later today and will address the report, which the Government has accepted. We all look forward to that work being concluded.

Senators Kieran O'Donnell, Lombard, Paddy Burke, Gallagher and Marshall raised issues concerning the EU-Mercosur deal. I facilitated a discussion on this matter last week in the House, which was attended by the Minister for Business, Enterprise and Innovation, Deputy Heather Humphreys. It is important that we continue to have these discussions as there is a long way to go on the deal. The briefing yesterday by the Irish Farmers Association gave a strong flavour of the view from the farming sector. Others, such as Mr. Dan O'Brien, have a different

view. We need a running debate on the issues, which I am happy to accommodate in the new term.

Senator Murnane O'Connor noted the one-year anniversary of the GDPR and pointed to several issues with the regulation. Third-party compliance is challenging and we have seen some €56 million in fines this year already. However, compliance must be a prerequisite for everybody. I am happy to have a debate on the matter.

Senator Lombard's proposal that a delegation from the Seanad might travel to France to discuss the Mercosur deal with colleagues there is worth considering. I hope we can have a discussion in the Committee on Procedure and Privileges on how that might be facilitated.

Senator Mac Lochlainn spoke eloquently about an important local issue in south Inishowen. I do not have information on this particular matter, but I am happy to convey the Senator's concerns to the relevant Ministers.

I join colleagues in congratulating Mr. Phil Hogan on his nomination for a second term as a European Commissioner. He has done an extraordinarily good job, notwithstanding the comments around Mercosur. I hope he will remain in his current position or receive an elevation. We congratulate him on the very good job he has done.

Senator Paddy Burke highlighted issues relating to Dublin Port. The port's readiness for expansion and the other issues to which he referred are worthy of debate in the House.

Senators Marshall and Humphreys referred to climate change. We should all reflect on Senator Marshall's contribution, particularly his comments on afforestation, and Senator Humphreys's points about the EPA's report on air quality in Dublin. The findings in the report underline the importance of implementing the recommendations in the climate change action plan regarding electric vehicles, cycling, park-and-ride facilities, public transport and the elimination of vehicles that run on fossil fuels by 2030. That is why it is important that the Ministers, Deputies Bruton and Ross, will return to the House in the new term to discuss the matter raised.

If I am interpreting Senator Devine correctly, she is proposing an amendment to allow for a debate on her Private Members' Bill.

Senator Máire Devine: I am sorry, but I did not hear the Leader.

Senator Jerry Buttimer: I am happy to accept that amendment.

Senator Máire Devine: Good.

Senator Jerry Buttimer: I thank the Senator for her contribution.

Senator Byrne raised the issue of the *Ilen*, which is a wonderful example of how a project can be put together and brought to fruition through a community education programme. We wish a fair journey to those sailing it to Greenland and congratulate them.

Senator Humphreys discussed rodents, and not just in Leinster House, but across our capital city. It is an issue that needs to be addressed. I hope that all those in the Houses, and particularly staff, are not discommoded after yesterday. A workplace should be in pristine condition. I hope that the issue will be resolved quickly.

Senator Mullen referred to the Hyde family. I have spoken in the House previously in sup-

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port of the family's application. I do not want to use the word "victory", but I congratulate the family on obtaining the right to stay in Australia. The Irish Government plays a role in helping our citizens with visas, although I am not familiar with the level of involvement in this particular case. The Senator had tabled a Commencement matter on the subject, but we now welcome the decision. Thankfully, the issue has been resolved. The Senator referred to there being various lobby groups, but the media had covered the story beforehand and afterwards. To be fair, there is a strong Irish diaspora in Australia that is engaged with Irish civic life and the promotion of many issues. We might consider setting up an Oireachtas subgroup to progress that further. A child's disability should not be a barrier to remaining or entering any country.

I have not read the report of the WRC, but I concur with Senator Gavan that any breach of employment law is unacceptable. We have employment law to ensure that there are rights and standards in the workplace. I am not familiar with the issues that the Senator raised regarding the two hotels in Limerick, but I have a simple - perhaps too simple - view on this, that being, someone should be able to join a union. I was a member of one, and I would encourage workers to enhance their rights collectively by becoming union members. That is why we have employment law. I would be happy to arrange for such a debate in the new term.

Senator Craughwell raised an important issue concerning the budget. I will take that information from him later. The Minister for Employment Affairs and Social Protection, Deputy Regina Doherty, held a series of meetings on the budget in the past two weeks with various groups. As with the summer economic statement, we will have that debate prior to the budget.

Senator Conway raised the important matter of Moneypoint. I will reflect on that. As he correctly stated, the jobs need to be preserved post 2025. The transition must be planned for. I take the Senator's point in that regard. He also referred to the briefing given by the Irish Cancer Society. I congratulate him and join him in his comments about the Primary Care Reimbursement Service, PCRS, and the provision of medical cards to patients who have been diagnosed with cancer. That they have this benefit is a necessity, not a luxury. Dealing with cancer in itself is stressful and people should not have to worry about medical politics.

I concur with Senator Ó Céidigh regarding public procurement and small and medium-sized enterprises, SMEs. For SMEs that want to tender and be considered for contracts, the cost of tendering is a significant issue. A former Minister of State, Mr. Brian Hayes, did some work on this question. It is important that we debate the matter. As the profile of the economy changes, we must update our tendering and procurement processes continually. I would be happy to arrange for that debate in the new term.

An Leas-Chathaoirleach: Senator Devine has proposed an amendment to the Order of Business: "That No. 13 be taken before No. 1." The Leader has indicated that he is willing to accept it.

Amendment agreed to.

Order of Business, as amended, agreed to.

Assisted Decision-Making (Capacity) (Amendment) Bill 2019: First Stage

Senator Máire Devine: I move:

That leave be granted to introduce a Bill entitled an Act to amend the Assisted Decision-Making (Capacity) Act 2015 relating to treatment of patients under the Mental Health Act 2001 and the Criminal Law (Insanity) Act 2006; to improve the provision of mental health services; to promote the rights of persons subject to the Mental Health Act 2001 and the Criminal Law (Insanity) Act 2006; and to provide for related matters.

An Leas-Chathaoirleach: Is there a seconder?

Senator Paul Gavan: I second the proposal.

Question put and agreed to.

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

Senator Máire Devine: That is difficult to know. It would usually be Tuesday, but could I say Wednesday?

Senator Jerry Buttimer: Tuesday.

Senator Máire Devine: Is that next Tuesday?

An Leas-Chathaoirleach: The Senator can nominate any date she likes.

Senator Máire Devine: I nominate 20 September.

An Leas-Chathaoirleach: Is that agreed? Agreed.

Second Stage ordered for Friday, 20 September 2019.

Courts (Establishment and Constitution) (Amendment) Bill 2019: Instruction to Committee

Senator Jerry Buttimer: I move:

That, notwithstanding anything in Standing Orders, it be an instruction to the Committee of the whole Seanad, in relation to the Courts (Establishment and Constitution) (Amendment) Bill 2019, that the Committee has power to make amendments to the Bill for the purpose of amending –

(a) the Court and Court Officers Act 1995 in relation to the adjudication of legal costs,

(b) the Legal Services Regulation Act 2015 in relation to the adjudication of legal costs and the functions of the President of the Court of Appeal, and

(c) the Courts (Supplemental Provisions) Act 1961 in relation to the retirement age of judges of the District Court,

and to make other consequential amendments required to take account of such amend-

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ments.”

Question put and agreed to.

Courts (Establishment and Constitution) (Amendment) Bill 2019: Committee and Remaining Stages

Acting Chairman (Senator Gerry Horkan): I welcome the Minister, Deputy Flanagan, to the House once more.

Section 1 agreed to.

NEW SECTIONS

Acting Chairman (Senator Gerry Horkan): Amendments Nos. 1 and 2 are related and may be discussed together by agreement. Is that agreed? Agreed.

Government amendment No. 1:

In page 3, between lines 15 and 16, to insert the following:

“Amendment of Courts and Court Officers Act 1995

2. Section 27 of the Courts and Court Officers Act 1995 is amended by—

(a) the deletion of subsections (6) and (7), and

(b) the insertion of the following subsection after subsection (11):

“(12) This section shall not apply to an adjudication of legal costs under Part 10 of the Legal Services Regulation Act 2015.”.

Minister for Justice and Equality (Deputy Charles Flanagan): The primary purpose of these amendments is to facilitate the transition from the Taxing Master’s office to the Office of the Legal Costs Adjudicators in the autumn. Due to their highly technical nature, these amendments have been the subject of extensive consultations between my Department, the Courts Service, including the Taxing Master’s office, and the Office of the Parliamentary Counsel to the Government.

Amendment No. 1 proposes amendments to section 27 of the 1995 Act, which deals with additional powers of the Taxing Master of the High Court and of a county registrar exercising the powers of a taxing master. The proposed new subsection (12) clarifies that section 27 shall not apply to the adjudication of legal costs under Part 10 of the 2015 Act. That Part provides for the establishment of a new Office of the Legal Costs Adjudicators, which will replace the Taxing Master’s office. Accordingly, section 27 will not apply to the new office, but it will continue to apply to county registrars in respect of matters of taxation.

The proposed deletion of sections 27(6) and (7) is in line with the proposal to amend the 2015 Act to allow for a lodgement and tender process in the field of costs adjudication. This will be set out in respect of the proposed amendment of section 154(10) of the 2015 Act, which I

will address shortly. The existing subsections (6) and (7) represent an impediment to the lodgement and tender process, as they fetter the allocation of liability of the parties for the costs of an adjudication or taxation of costs. Accordingly, the deletion of the two subsections is proposed.

Amendment No. 2 proposes a new section of the Bill providing for a number of amendments to four sections of the 2015 Act. If the Acting Chair agrees, I will address them individually.

Section 3(a) of amendment No. 2 provides for the insertion of a new subsection (6) into section 141 of the 2015 Act. The section in question deals with county registrars in the context of Part 10 of the 2015 Act which addresses the matter of legal costs. The purpose of this section of the amendment is to align the provision of reasons for legal cost determination by a county registrar with a similar obligation placed on a legal costs adjudicator under section 140(4) of the 2015 Act. This arises in regard to the maintenance by the county registrar of a register of taxation or legal costs, being determinations under the Act. Under section 140(4), costs adjudicators do not have to publish reasons for the determination where they are of the opinion that the adjudication concerned does not involve a matter of legal importance. The proposed section 141 uses identical language to that in section 140(4) to provide for a similar exemption for county registrars. The amendment is put forward in response to concerns raised by the Office of the Taxing Master and county registrars that an unqualified obligation to provide reasons for a determination as currently applies under section 141 would be unduly burdensome at a practical level and create a disparity in how the register of determinations is applied across the board.

Section 3(b) proposes amendment of section 154 of the Act, subsection (10) of which deals with matters relating to the work of the Office of Legal Cost Adjudicators which can be subject to rules of court. The purpose of this section of the amendment is to provide for the introduction of a procedure to enable a party liable for payment of costs to make an offer to settle those costs or a particular item of costs which, if acceptable, would obviate the need for an adjudication or reduce the scope of adjudication. This procedure is known as the lodgment and tender process. To provide an incentive to a party seeking costs to engage with such procedure, it is necessary to provide that a party which unreasonably refuses to accept an offer to settle the amount claimed would be liable to bear the costs of the expense of the adjudication process from the point at which the offer is made. The proposed additional provisions in subsection (10) would enable the making of court rules to facilitate such a procedure and set the respective liability of the parties for the cost of an adjudication where the amount offered is not exceeded by the amount of the costs determined to be paid.

Section 3(c) provides for the amendment of section 160 of the 2015 Act. Its purpose is to correct an erroneous cross-reference. The reference should be to section 163 which deals with the power of the legal costs adjudicator to specify forms in connection with the application for the adjudication of costs. The cross-reference in section 160 should be to section 163 rather than to section 166 which deals with information, documents and records.

Section 3(d) provides for the amendment of section 172 of the 2015 Act and deals with the advisory committee on the grant of patents of precedence. A grant of patents entitles a legal practitioner to whom it is granted to use the title of senior counsel. The purpose of the amendment is to correct the omission of the President of the Court of Appeal from the membership of the advisory committee on the grant of patents of precedence. The omission arose due to the fact that the Court of Appeal Act and the Legal Services Regulation Act crossed each other in time in coming to enactment. Accordingly, the amendment includes the President of the Court of Appeal in the list of members of the advisory committee. It also provides for a temporary

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alternative member of the advisory committee in the event of the death or retirement of the President of the Court of Appeal in a similar fashion to procedure in the cases of the Chief Justice and President of the High Court.

Amendment agreed to.

Government amendment No. 2:

In page 3, between lines 15 and 16, to insert the following:

“Amendment of Legal Services Regulation Act 2015

3. The Legal Services Regulation Act 2015 is amended—

(a) in section 141, by the insertion of the following subsection after subsection (5):

“(6) For the purposes of subsection (3)(f), a County Registrar need not publish the reasons for a determination where he or she is of the opinion that the taxation concerned does not involve a matter of legal importance.”,

(b) in section 154(10)—

(i) in paragraph (c), by the substitution of “adjudication,” for “adjudication, and”,

(ii) in paragraph (d), by the substitution of “attempt,” for “attempt.”, and

(iii) by the insertion of the following paragraphs after paragraph (d):

“(e) a procedure whereby a party to an adjudication may, upon notice to another party—

(i) pay into court a sum of money, or

(ii) make an offer of by way of tender to the other party,

in satisfaction of the costs of the other party that are the subject of the adjudication, and

(f) the respective liability of the parties referred to in paragraph (e) for the costs of the adjudication where the amount of a payment or offer referred to in that paragraph is equal to or greater than the amount of the costs concerned that, in the adjudication, are determined to be paid.”,

(c) in section 160(2)(a), by the substitution of “section 163” for “section 166”, and

(d) in section 172—

(i) in subsection (2), by the insertion of the following paragraph after paragraph (a):

“(aa) the President of the Court of Appeal;”,

and

(ii) by the insertion of the following subsection after subsection (6):

“(6A) On the death or retirement of the President of the Court of Appeal, the senior ordinary judge of the Court of Appeal who is for the time being available shall be a member of the Committee until the appointment of a President of the Court of Appeal.”.

Amendment agreed to.

Government amendment No. 3:

In page 3, between lines 15 and 16, to insert the following:

“Retirement age of judge of District Court increased to 70 years

4. (1) Section 30(1) of the Courts (Supplemental Provisions) Act 1961 is amended by the substitution of “seventy” for “sixty-five”.

(2) The amendment effected by *subsection (1)* extends to a person who is judge of the District Court immediately before the commencement of this section and, in particular, to such judge in respect of whom a warrant made under section 2 of the Courts of Justice (District Court) Act 1949 subsists immediately before such commencement (and the continuance in office, on and from the commencement of this section, of the second-mentioned judge shall be by virtue of the amendment effected by *subsection (1)* and not otherwise).

(3) The reference in *subsection (2)* to a warrant made under section 2 of the Courts of Justice (District Court) Act 1949 includes a reference to a warrant made under that section 2 in the circumstances permitted by section 1 of the Courts (No. 2) Act 1988.”.

Deputy Charles Flanagan: The amendment seeks to amend section 30 of the 1961 Courts (Supplemental Provisions) Act which deals with the retirement age of a judge of the District Court. The effect of the amendment is to increase from 65 to 70 years the age of retirement of a judge of the District Court. The new retirement age will overtake the current practice of continuing a District Court judge in office from the age of 65 to 70 years by means of an annual warrant, which means that in each year the judge concerned must be extended in office. Subsection (1) provides for the increase to 70 years, amending the 1961 Act in a straightforward manner through the substitution of 70 for 65.

Subsection (2) provides that the increase to 70 will apply to serving judges when the amendment is brought into operation. In particular, it clarifies that the increase generally to 70 years applies to a judge who, having already reached 65 years, has been continuing in office by means of a subsisting annual warrant made under section 2 of the 1949 Courts of Justice (District Court) Act.

Subsection (3) further clarifies that an increase to 70 years applies in the case of an annual warrant made retrospectively under the 1949 Act in the circumstances provided for by section 1 of the Courts (No. 2) Act 1988. The circumstances referred to include where the omission to make a warrant is attributable to error or oversight. I was in the House when that Bill was

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passed. It arose in regard to a specific District Court judge who served in my district at the time, district No. 14. I make that point to underline that *tempus fugit*.

I am proposing this straightforward amendment in response to pressing views expressed by the Courts Service and the Association of Judges of Ireland seeking implementation of this measure so as to standardise the retirement age of judges of the District Court with that of other judges and to do away with the system of annual extensions from the age of 65. It will enhance court administration and the continuity of any District Court proceedings concerned. The amendment is based on section 59 of the Judicial Appointments Commission Bill 2017 as passed by Dáil Éireann and which is currently before this House. It is largely a technical amendment more appropriately suited to this Bill.

Senator Ivana Bacik: I welcome the amendment. It is sensible to make this provision and to do so in this Bill rather than in the Judicial Appointments Commission Bill which we will shortly have the pleasure of debating again. I did not get the opportunity to speak on Second Stage of this Bill. I very much welcome it. It is a brief and sensible Bill which seeks to extend the number of judges on the Court of Appeal, which has fulfilled an important and useful function and undoubtedly deserves support.

Amendment agreed to.

SECTION 2

Acting Chairman (Senator Gerry Horkan): Amendments Nos. 4 and 5 are related and may be discussed together, by agreement. Is that agreed? Agreed.

Government amendment No. 4:

In page 3, line 17, to delete “(Establishment and Constitution) (Amendment)”.

Deputy Charles Flanagan: Amendment No. 4 provides for the amendment of section 2 of the Bill which sets out its Short Title. It is to be amended from the Courts (Establishment and Constitution) (Amendment) Act 2019 to the Courts Act 2019. The amendment was recommended to the Government by the Office of the Parliamentary Counsel to reflect the content of the Bill on the basis of the amendments proposed by the Government.

Amendment No. 5 amends the Long Title of the Bill. The amendment was proposed to the Government on the recommendation of the Office of the Parliamentary Counsel. It has the purpose of including in the Long Title reference to existing statutes which are now proposed to be amended by the Bill. This reflects standard practice in the drafting of the Long Title of the Bill. The Acts to be amended now include the Courts (Supplemental Provisions) Act 1961, the Courts and Court Officers Act 1995 and the Legal Services Regulation Act 2015.

Amendment agreed to.

Section 2, as amended, agreed to.

TITLE

Government amendment No. 5:

In page 3, to delete lines 5 to 7 and substitute the following:

“An Act to amend Section 1A of the Courts (Establishment and Constitution) Act 1961 to increase the number of ordinary judges of the Court of Appeal to fifteen; to amend the Courts (Supplemental Provisions) Act 1961; to amend the Courts and Court Officers Act 1995; to amend the Legal Services Regulation Act 2015; and to provide for related matters.”.

Amendment agreed to.

Title, as amended, agreed to.

Bill reported with amendments, received for final consideration and passed.

1 o'clock

Judicial Appointments Commission Bill 2017: Committee Stage (Resumed)

Acting Chairman (Senator Gerry Horkan): The Minister is very welcome back.

Section 53 agreed to.

NEW SECTIONS

Senator David Norris: I move amendment No. 103b:

In page 36, between lines 5 and 6, to insert the following:

“54. Where the Procedures Committee prepares a statement of procedures for submission to the Commission under this Part and where the statement so prepared sets out different procedures in respect of any particular judicial office in cases where some or all of the applicants already hold judicial office, the statement may provide that different selection procedures shall apply to applicants holding judicial office by reference to the particular judicial office held by such applicants.”.

I wish to say in preparation for the debate that Senator McDowell is delayed on very important business in the court and could not be here, unfortunately, so he has asked me to move the amendments-----

Minister for Justice and Equality (Deputy Charles Flanagan): I did not hear that.

Senator David Norris: I am quite sure the Minister did, and his broad smile indicates that he has told a little fib.

Deputy Charles Flanagan: Can we have that again for the record?

Senator David Norris: No.

Deputy Charles Flanagan: The House deserves it.

Senator David Norris: The House has got it so it will have to make do with-----

Acting Chairman (Senator Gerry Horkan): If Senator Norris would like to say it again, he is more than welcome to do so.

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Senator David Norris: I do not really want to.

These amendments, in the names of Senator McDowell and my other colleagues, who have graciously allowed me to move them, are very clear and specific. Appointments for different judicial offices - in the District Court, the Circuit Court, the High Court and so on - may have different aspects. The point of this amendment is to make sure that the committee charged with advising the commission how the appointment process should run can be empowered to make this so. The amendment therefore allows the commission to have authority and empowers it to make sure that different processes are used.

Senator Victor Boyhan: The purpose of this amendment is to ensure that, as the process of appointing for different judicial offices - in the District Court, the Circuit Court, the High Court, etc. - may differ, the committee charged with advising the commission how the appointment process should run can be empowered to make this so. We will withdraw the amendment but we reserve the right to reintroduce it on Report Stage.

Senator Ivana Bacik: I welcome the Minister to the House for another instalment, perhaps the final instalment, of Committee Stage of this Bill. I hear from Senator Boyhan that Senator McDowell is withdrawing amendment No. 103b, which I think is wise. The motivation behind it is clear and admirable but the wording of the provision is inelegant, at best. It is somewhat clunky and the Bill is already full of cumbersome wording and convoluted passages.

Acting Chairman (Senator Gerry Horkan): We do not need to discuss it for too long.

Senator Ivana Bacik: I hope it will come back on Report Stage in a redrafted form.

Acting Chairman (Senator Gerry Horkan): Is it agreed that amendment No. 103b is being withdrawn?

Senator David Norris: I am perfectly certain that Senator McDowell will be in a position to redraft the amendment in a more acceptable fashion.

Deputy Charles Flanagan: That underlines the status of the underlings.

Senator David Norris: The Minister is in good humour and is smiling broadly.

Acting Chairman (Senator Gerry Horkan): There is potential for some 60 more votes so-----

Senator Ivana Bacik: I think we should all take exception to the Minister's comment about underlings as it is uncalled for, even in the spirit of good humour with which I hope he offered the quip.

Acting Chairman (Senator Gerry Horkan): There may be an end-of-term feel about the place at the moment.

Deputy Charles Flanagan: While refusing to explain in full the absence of Senator McDowell, Senator Norris then went to great pains to say that, of those who proposed the amendment, one of them, namely, Senator McDowell would be charged with the responsibility of redrafting it. I merely pointed to the fact that if Senator McDowell is the driver of this car, the others are mere passengers.

Senator Gerard P. Craughwell: What a horrible thing to say.

Senator David Norris: I do not mind. The Minister is a decent, civilised Laois man and I have no objection to being called a passenger or an underling. I have been an underling all my life. It is a very comfortable position to be in and one which I occupy with great dignity..

Senator Gerard P. Craughwell: While the Minister sees me as a passenger, I got into the car of my own free will and am delighted to be associated-----

Deputy Charles Flanagan: The Senator has had a bumpy ride.

Senator Gerard P. Craughwell: The only one who has had a bumpy ride around here is the Minister.

Acting Chairman (Senator Gerry Horkan): Let us not inflame the situation.

Senator Gerard P. Craughwell: I admire the Minister for his tenacity and for hanging in there. If we go through Committee Stage today, I will look forward to Report Stage at around Christmas 2020.

Senator Kevin Humphreys: We should get back to serious business. The remarks the Minister made are a little bit beneath him and I hope he made them in good humour. Senator Norris does not have to explain why Senator McDowell is not here. All good drivers need good navigators.

Deputy Charles Flanagan: I was not referring to Senator Humphreys.

Senator Kevin Humphreys: We made an agreement to finish Committee Stage today. We should do the business and get it finished.

Acting Chairman (Senator Gerry Horkan): I am trying to do the business but I am at the will of Members.

Senator Ivana Bacik: I took objection to the Minister's use of the word "underlings", which has a nasty and derogatory sound. However, the word "passenger" is far less loaded and the Minister has taken on a distinct transport hue, somewhat like the Minister for Transport, Tourism and Sport.

Senator David Norris: Who is the Minister for Transport, Tourism and Sport?

Senator Ivana Bacik: He is, perhaps, the real driver of this entire Bill.

Senator David Norris: The Minister for Justice and Equality is the underling in respect of this Bill, like I am.

Senator Ivana Bacik: There are quite a number of passengers here but only one driver. That is all I will say on the matter. It is clear that the driver is not in the room but he is responsible for transport. While I agree with Senator Humphreys that we should conclude Committee Stage today, we should not forget who the real driver is.

Amendment, by leave, withdrawn.

Senator David Norris: I move amendment No. 103c:

In page 36, between lines 5 and 6, to insert the following:

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“54. Where the Procedures Committee prepares a statement of requisite skills and attributes for submission to the Commission under this Part, the statement so prepared shall include a statement setting out the approach to be taken in determining for the purposes of *section 7(1)* of this Act what constitutes merit and shall, for that purpose, indicate any criteria other than those set out at subsection *(6)(a)* to *(c)* of *section 53*.”.

This is about merit. We have heard a great deal about merit, diversity and other things and about the absolute necessity for judges to be appointed on merit, on which we all agree. Senator McDowell’s amendment would give the procedures committee the capacity to examine what is meant by “merit” and how it is reflected in the appointment of judges. It is very important that judges are appointed strictly on merit alone. Merit includes knowledge of the law and a capacity to determine things. It is a very important criterion, to which the Minister has paid adequate tribute throughout the debate. I understand that Senator Boyhan will withdraw the amendment but that it will be reinstated on Report Stage by Senator McDowell. It is a very important amendment that deals directly, clearly and cogently with merit and it is very significant.

Senator Victor Boyhan: The purpose of this amendment is to allow the procedures committee the freedom to determine what constitutes merit and ensure that appointments to the Judiciary are based on merit and not on other criteria. I will withdraw the amendment but I will reserve the right to reintroduce it on Report Stage.

Amendment, by leave, withdrawn.

Acting Chairman (Senator Gerry Horkan): There remain 24 amendments and six sections to be dealt with, in addition to the concluding part of the Bill, which has to be finished by 3.07 p.m.

Senator Victor Boyhan: We are making progress.

Senator David Norris: I move amendment No. 103d:

In page 36, between lines 5 and 6, to insert the following:

“54. A statement made under this Part shall contain an acknowledgement for the information of applicants that, in respect of any appointment to judicial office, the Government is not obliged to recommend to the President the appointment of any person recommended by the Commission and may recommend the appointment of any person eligible in law to be appointed.”.

Deputy Charles Flanagan: I understand the Senator is going to withdraw the amendment.

Senator David Norris: I have moved it and I await the Minister’s response.

Deputy Charles Flanagan: I am not accepting the amendment because I have already made it clear that the specific provisions in sections 40(2) and 41(3) relate to the advice the Government gives to the President. In this regard, I intend to bring forward an amendment to insert a more general provision that will be applicable to the Bill as a whole. A general broad statement will clearly and unambiguously state that nothing in the Bill may undermine the constitutional prerogative of Government to advise the President in the matter of appointments. In that regard, amendment No. 103d is not necessary.

Senator Victor Boyhan: We will withdraw the amendment.

Acting Chairman (Senator Gerry Horkan): Who is withdrawing it?

Senator David Norris: For information, the amendment proposes that a statement made under this Part shall contain an acknowledgement for the information of applicants that, in respect of any appointment to judicial office, the Government is not obliged to recommend to the President the appointment of any person recommended by the commission and may recommend the appointment of any person eligible in law to be appointed. It gives greater freedom to the Government in making these appointments so that it does not have to confine itself to the recommendation but can go outside it to find somebody who is peculiarly fitted to this particular position.

Amendment, by leave, withdrawn.

SECTION 54

Senator Victor Boyhan: I move amendment No. 104:

In page 36, line 7, after “Commission” to insert “, subject to *subsection (4)*,”.

This amendment mirrors a Scottish Act.

It ensures that the lay members are not assessing that part of the formal statement which will govern how to consider an applicant on criteria they have no qualifications, experience or capacity to assess. I am withdrawing the amendment and reserve the right to reintroduce it on Report Stage.

Senator David Norris: This is following the Scottish precedent and the Minister has urged the significance and relevance of the Scottish experience upon us. It is important that we do not just confine it to where the Minister considers it appropriate but that we look at the Scottish experience in detail. It is perfectly reasonable to suggest that where there are lay members, and there are quite a number of lay members in this situation, the lay members who are not qualified and do not have the capacity or experience to assess these criteria should not take part in this process.

Amendment, by leave, withdrawn.

Senator Victor Boyhan: I move amendment No. 105:

In page 36, between lines 18 and 19, to insert the following:

“(4) Lay members of the Commission shall not take part in the modification referred to in *subsection (1)(b)* insofar as it concerns—

(a) a statement made under *section 53(1)(b)*,

(b) part of a statement made under *section 53(1)(a)* which concerns—

(i) knowledge of the law,

(ii) skills and competence in the interpretation and application of the law, or

(iii) ability to exercise functions as holders of judicial office.”.

Amendment No. 104 is consequential to amendment No. 105. We withdraw this amend-

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ment and reserve the right to reintroduce it on Report Stage.

Amendment, by leave, withdrawn.

Section 54 agreed to.

NEW SECTION

Senator David Norris: I move amendment No. 105a:

In page 36, between lines 18 and 19, to insert the following:

“**55.** (1) Where the Commission has approved a statement in accordance with *section 54*, it shall submit the statement to the Secretary to the Government.

(2) A statement submitted under *subsection (1)* shall not be published under this Part unless and until a motion approving the statement for publication shall have been prepared by or on behalf of the Government and approved by each House of the Oireachtas.”.

Senator McDowell’s interest here is in the constitutional robustness of the provisions of the Bill. He believes that the procedures the judicial appointments commission operates under should be ones that have received a certain amount of scrutiny by the Government. Many times during the 125 hours of this debate, Senator McDowell has referred to the power of the Government. It is reserved for the Government to make the appointments and nobody else should be involved directly in the process of appointment. We want the Government to continue to have the exclusive power to recommend judicial appointments to the President. That is the significance of this amendment.

Senator Gerard P. Craughwell: The amendment would make the process of appointment more robust constitutionally and would ensure that the procedures adopted by the judicial appointments commission are those which would have received democratic scrutiny by the Government, which has the exclusive power to recommend judicial appointments to the President. We will withdraw the amendment and reserve the right to reintroduce it on Report Stage.

Amendment, by leave, withdrawn.

Section 55 agreed to.

NEW SECTION

Acting Chairman (Senator Gerry Horkan): Amendments Nos. 105b, 107a to 107d, inclusive, and 108a are related and may be discussed together. Is that agreed?

Senator David Norris: No. We must discuss each separately.

Acting Chairman (Senator Gerry Horkan): That is fine.

Senator David Norris: I move amendment No. 105b:

In page 37, to delete lines 8 and 9 and substitute the following:

“**Review by the Commission and Recommendations**

56. (1) The Commission shall monitor and review—”.

This amendment relates to the activities of the procedures committee that the Bill will bring into operation. The amendment removes from that committee the responsibility for overseeing and monitoring the implementation of the Bill and instead gives that responsibility to the commission. There is no valid or decent reason that a sub-committee of the commission should have the exclusive power to monitor and review how the legislation is operating. Senator McDowell believes, and I agree, that the full commission should do this. I strongly recommend the amendment to the Government.

Senator Ivana Bacik: I will speak briefly on the amendment, which, I suspect, Senator Boyhan intends to withdraw. I hope it will be reintroduced on Report Stage. It is sensible that it would be the commission that would have responsibility, under section 56, for monitoring and reviewing the implementation of the legislation. I note that among the aspects of the implementation of the Bill to be reviewed are aspects such as diversity among candidates for judicial appointment. The Labour Party brought forward a number of amendments, which I have withdrawn and which I reserve the right to reintroduce on Report Stage, relating to the issue of diversity among candidates for judicial appointment and, in particular, the need to ensure gender balance in the Judiciary. If these amendments were reintroduced on Report Stage they would fit neatly with our amendments Nos. 86, 87, 91 and 93, which I reserve the right to reintroduce on Report Stage.

Senator Victor Boyhan: This amendment would remove the procedures committee as established under the Bill from having the responsibility for monitoring and reviewing the implementation of the Bill and instead vest that responsibility in the full commission. There is no reason that a subcommittee of the commission should have the exclusive power to monitor and review how the legislation is operating. It should be the responsibility of the full commission. I am withdrawing the amendment and reserve the right to reintroduce it on Report Stage.

Amendment, by leave, withdrawn.

SECTION 56

Senator David Norris: I move amendment No. 105c:

In page 37, to delete line 12.

The amendment seeks to remove line 12 on page 37 which reads:

“(1) The Procedures Committee shall monitor and review—

(a) the implementation of this Act including in particular—

(i) the practical operation of the published statement,

(ii) the diversity among candidates for judicial appointment,”

Senator McDowell wishes to remove the line which reads “(ii) the diversity among candidates for judicial appointment,”. The deletion would remove the procedures committee from the responsibility of monitoring and reviewing the diversity among candidates for judicial appointment.

Senator Victor Boyhan: This amendment would remove from the procedures committee

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the mandatory criterion that diversity among candidates for judicial appointment form part of the review of the implementation of the legislation. I am withdrawing the amendment and reserve the right to reintroduce it on Report Stage.

Amendment, by leave, withdrawn.

Amendment Nos. 106 and 107 not moved.

Senator David Norris: I move amendment No. 107a:

In page 37, line 23, to delete “Procedures Committee” and substitute “Commission”.

This is a similar amendment in that it takes the procedures committee out of the situation. The situation involved is commissioning research into the qualification requirements for appointment and for selection and recommendation of persons. Instead it should go back to the full commission. I urge the House to accept the amendment.

Senator Victor Boyhan: This amendment would remove the procedures committee established under the Bill from having the responsibility for commissioning research into qualification requirements for appointment to judicial office and the requirements for selection and recommendation of persons for such appointment and instead would vest that responsibility in the full commission. I am withdrawing the amendment and reserve the right to reintroduce it on Report Stage.

Amendment, by leave, withdrawn.

Senator David Norris: I move amendment No. 107b:

In page 37, line 28, to delete “Commission” and substitute “Minister”.

In most legislation it is the Minister who requests that legislation be reviewed. It is very unusual for the bodies that are established under the Minister’s authority to decide independently that it is necessary to have a review. I hope the Minister will feel able to support this amendment because it is returning to him the powers that normally reside with the Minister in any event. We are following good parliamentary procedure in moving this amendment.

I am not sure if the Minister is shaking his head because he cannot find the place in the Bill or whether-----

Deputy Charles Flanagan: I have it.

Senator David Norris: He is on the ball as always, like a good Laois man.

Deputy Charles Flanagan: I will tell the Senator why I am shaking my head when he is finished.

Senator David Norris: I will pass over to my distinguished colleague, Senator Boyhan. I look forward to listening to the Minister with great interest.

Senator Victor Boyhan: This amendment would give the Minister, not the commission, the power to decide whether a review of the form set out in section 56(1) of the Bill should take place. Most Bills provide for the Minister to request reviews, and do not allow the bodies established under the Minister’s aegis to decide that a review is warranted of their own motion.

I am withdrawing the amendment but I reserve the right to reintroduce it on Report Stage.

Acting Chairman (Senator Gerry Horkan): Would the Minister like to speak to this amendment?

Deputy Charles Flanagan: No. I was asked by Senator Norris if I would accept the amendment. I am less than comfortable accepting any amendment in the name of Senator McDowell without him being present. I do not believe it would be fair of me to do so, having regard to his role in this Bill. In any event, I do not have that choice because Senator Boyhan is withdrawing the amendment, which I am sure is in deference to the role of Senator McDowell.

Senator David Norris: Can I just say-----

Acting Chairman (Senator Gerry Horkan): That concludes-----

Senator Martin Conway: Agreed.

Senator David Norris: When an amendment is properly moved in the House, I do not think the Minister can refuse to accept it just because the initial sponsor is not present.

Deputy Charles Flanagan: He has said that.

Senator David Norris: We need other reasons, which the Minister will have the opportunity to give Senator McDowell on Report Stage, as we hope he will be here in the flesh.

Senator Victor Boyhan: In his capacity as Senator.

Senator David Norris: He is also a former Minister for Justice and Equality, a former Attorney General, and a very distinguished senior counsel.

Acting Chairman (Senator Gerry Horkan): He is also a former Tánaiste if the Senator wants to include the full list.

Senator David Norris: I beg your pardon, he is also a former Tánaiste.

Acting Chairman (Senator Gerry Horkan): If we are doing the list, we might as well do the full list.

Deputy Charles Flanagan: He may be a future Tánaiste.

Senator David Norris: He might be.

Senator Martin Conway: He may be a future Taoiseach.

Amendment, by leave, withdrawn.

Senator David Norris: I move amendment No. 107c:

In page 37, line 29, to delete “Procedures Committee” and substitute “Commission”.

This follows on naturally from the previous amendments we have discussed because we are taking the power away from the procedures committee, and giving it back to the commission, where it belongs.

Senator Gerard P. Craughwell: We are withdrawing this amendment but reserve the right

to bring it back on Report Stage.

Amendment, by leave, withdrawn.

Senator David Norris: I move amendment No. 107d:

In page 37, line 30, to delete “Commission” and substitute “Minister”.

I am moving this on behalf of Senator McDowell. This also follows on directly from the previous amendment which has been withdrawn but will be reintroduced on Report Stage. It is part of granting full powers back to the Minister, and in order to do that it is necessary to delete the word “commission” and replace it with the word “Minister”.

Amendment, by leave, withdrawn.

Amendment No. 108 not moved.

Senator David Norris: I move amendment No. 108a:

In page 38, to delete lines 4 to 7 and substitute the following:

“(5) The Minister shall, having considered any report and recommendations made under *subsection (4)*, lay the report and recommendations, if any, before both Houses of the Oireachtas.”.

Instead of the commission providing a report of the review to the Minister and it remaining in the Minister’s Department, this amendment would ensure it is laid before the Houses of the Oireachtas, like all other reviews in other Bills. This is important for our democracy. In other words, it is to ensure it does not just go to the Minister for his personal decision, but that both Houses of the Oireachtas will have the opportunity to discuss the matter in full. What is the point in having a review if it is going to be confined to the Minister and not laid before these Houses, when it is normal practice to do so? In my lengthy experience in this House the practice has been to put these reviews before the Oireachtas for a full debate.

Amendment, by leave, withdrawn.

Acting Chairman (Senator Gerry Horkan): Amendment No. 109 has already been discussed with amendment No. 102. Is it being moved?

Senator Gerard P. Craughwell: I move amendment No. 109:

In page 38, between lines 7 and 8, to insert the following:

“(6) (a) Lay members shall not take part in the preparation of a recommendation referred to in this section which concerns a statement made under *section 53(1)(b)* of this Act or that part of the statement referred which formed part of the Published Statement within the meaning of this Act.

(b) Lay members shall not take part in the preparation of a recommendation referred to in this section which concerns a statement made under *section 53(1)(a)* of this Act or that part of the statement referred which formed part of the Published Statement within the meaning of this Act insofar as it concerns—

(i) knowledge of the law,

- (ii) skills and competence in the interpretation and application of the law, or
- (iii) ability to exercise functions as holders of judicial office.”.

Amendment, by leave, withdrawn.

Section 56 agreed to.

NEW SECTIONS

Senator Gerard P. Craughwell: I move amendment No. 109a:

In page 38, between lines 9 and 10, to insert the following:

“57. The provisions of this Part shall also apply to the Commission in the discharge of its functions under this Act.”.

Amendment, by leave, withdrawn.

Senator Gerard P. Craughwell: I move amendment No. 109b:

In page 38, between lines 9 and 10, to insert the following:

“57. Where the Commission considers that it is appropriate in any case it may determine to make a recommendation to the Minister without ranking the persons recommended in the order of the Commission’s preference.”.

Senator David Norris: This amendment means the commission, in certain circumstances, can make a recommendation and does not have to list people in order of preference. That is an important point.

Deputy Charles Flanagan: I would like to briefly set the record straight on this. It is an important point and one I will reflect further on, having regard to the arguments put forward. Both I and the proposing Senator will reflect on that and we will come back to it on Report Stage.

Senator David Norris: I welcome the fact that the Minister is so flexible on this matter.

Amendment, by leave, withdrawn.

Senator David Norris: I move amendment No. 109c:

In page 38, between lines 9 and 10, to insert the following:

“Records of the Commission

57. Records of the Commission required to be kept under *section 29* shall not be amenable to discovery in any court proceedings, civil or criminal and shall not be amenable to any order for production, inspection, correction or amendment under any law relating to data protection or freedom of information.”.

This amendment ensures the privacy of the commission’s deliberations. It is important to have this element in the Bill, and for the commission to be able to range widely in its discussions and make reference to matters, which may not be in the public interest to be bruited

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abroad. It insulates the records of the commission from orders for discovery in court proceedings, for example. I am aware of the idea of discovery, which is an important element in the law, because I made some very important discoveries in a libel case I once took. A woman published an interview she did with me in 2000 or 2001, and I wanted to take libel action against her but could not find a barrister prepared to take the case. Subsequently, when I took the libel action, we won discovery of the tapes, which was significant because they differed substantially from the grotesque distortion of my views she had published. I therefore accept that discovery is an important mechanism.

Senator Martin Conway: I hope the Senator was adequately compensated.

Senator David Norris: I was very well compensated, thank you.

This is to ensure the privacy of the discussions of the commission. It is an important amendment. I regret very much that Senator McDowell is not able to be here today but I am sure he will make a very full and complete point when it comes forward on Report Stage. I say “full”. Many people in this House say “fulsome”. That is a completely incorrect use of the word “fulsome”. “Fulsome” is a nasty word and implies very negative things about the process described as being fulsome. I am saying a “full” explanation.

Deputy Charles Flanagan: I am not accepting this amendment. I rise because Senator Norris remarked on my flexibility. Lest he become carried away, I want to make it clear that I am not accepting this amendment because I do not believe the commission can be exempted in such a broad manner. In any event, as the amendment is in the course of being withdrawn, I will not elaborate further.

Amendment, by leave, withdrawn.

Senator David Norris: I move amendment No. 109d:

In page 38, between lines 9 and 10, to insert the following:

“57. When establishing the Procedures Committee under section 16 the Committee shall include in its membership both the practising barrister and the practising solicitor appointed under section 13.”.

It is important to have a wide view from the legal profession of these kinds of matters and to have both a barrister and a solicitor represented in the discussions. For that reason, it is important that we accept this amendment.

Amendment, by leave, withdrawn.

Senator David Norris: I move amendment No. 109e:

In page 38, between lines 9 and 10, to insert the following:

“57. No cause of action shall exist against the Commission or any of its members arising out of the failure of the Commission to recommend any person or category of persons for appointment to judicial office under the terms of this Act and no cause of action shall exist against the State or the Government arising from any failure to advise the President to appoint to judicial office any person recommended for such appointment by the Commission.”.

I would say this is fairly obvious. In order to make an informed decision, the Government needs the widest possible information on the subject. The amendment reinforces that, regardless of any recommendations made by the commission, the appointment of judges remains a power vested in the Government, and that is what the Constitution requires. Any deviation would necessitate a referendum. Further, or in the alternative, if a conflict arises between this Act and the Constitution, the Constitution is what is relied on. This is a very important point. Senator McDowell is raising constitutional issues. He is reinforcing the fact that, regardless of recommendations made by the commission, the power of appointment of judges would remain solely a Government function. It is vested, under the Constitution, exclusively in the hands of the Government. There should be no attempt whatever to dilute or weaken this, and it should be implemented.

Senator Gerard P. Craughwell: This is an issue that has bothered me the whole way through this Bill, namely, that the absolute power with respect to the appointment of judges rests with the Government under the Constitution. Regardless of the findings or deliberations of any commission or committee, at the end of the day, the Minister for Justice and Equality, advising the Government, can pick a candidate who has not come before this commission. As Senator Norris has just said, it would require a referendum to change the law if we were to change the way judges are appointed. I will withdraw the amendment while reserving the right to reintroduce it on Report Stage. However, it is a question that we need to answer when the Minister comes back on Report Stage as to how exactly we can compel a Government to accept the nominees, which I do not believe we can do under the Constitution. I will await the Minister's advice.

Deputy Charles Flanagan: We will come back to this. I note the Senator has withdrawn the amendment while at the same time reserving the right to re-enter it on Report Stage. I merely want to flag a reason for my inability to accept the amendment, which I am sure will also be the case at a later stage when we are discussing the Bill. I specifically sought the advice of the Attorney General on this matter. There is an issue with the requirement in the amendment which would have the result of posing obvious legal issues by ousting completely the jurisdiction of the courts to deal with any legal or constitutional issue surrounding the process for a judicial appointment. It is the belief of the Attorney General, which I share, that this would be liable to constitutional challenge. I do not accept for one moment that Senator Craughwell wished to see that in the amendment. Let both sides reflect further on it. I am assuming the amendment will be re-entered in this or a similar form. However, I ask the proposer of the amendment to bear in mind the advice of the Attorney General as given to me on the matter.

Senator Gerard P. Craughwell: I appreciate the Minister's willingness to engage on these matters. It is not the first time he has shown a willingness through what has been a fairly lengthy process. I ask that, before we come back to Report Stage, we all sit around the table and have a look at that specific issue, given it is the one that has brought me into this debate the whole way through. If we can resolve that and in some way find a solution to it, I would find myself far more comfortable with this Bill.

Senator David Norris: I am very glad the Minister has indicated in this fashion. While I know it is not usual to make the Attorney General's advice available, I wonder if, in this instance, since we are dealing with a former Minister for Justice, Equality and Law Reform, the general outline of that can be made available. This would be of great help to Senator McDowell in redrafting the amendment, if he so decides.

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Deputy Charles Flanagan: I will make two points. First, I will not be departing from the time-honoured principle and convention on the matter of the Attorney General's advice. Second, I say to Senator Craughwell, who invites me to sit around the table, that this is precisely what we are doing. We have been sitting around the table for 125 hours over 16 months.

Senator David Norris: It is a little more now.

Senator Gerard P. Craughwell: We might shorten it the next time around.

Deputy Charles Flanagan: I am prepared to give further consideration to it but I am not sure about any other means by which this issue can be addressed, other than through the Standing Orders of either House. That is why I have been perfectly happy to be here for 125 hours or, indeed, any other time it might take Senators to deal with the matter. However, I do not foresee another forum.

Senator David Norris: I wonder why we were threatened with a guillotine if the Minister is prepared to sit around the table for any number of hours.

Senator Martin Conway: Sometimes it focuses the mind.

Deputy Charles Flanagan: Maybe we should go back to the point raised by Senator Bacik.

Senator David Norris: I do not remember that point.

Deputy Charles Flanagan: I did not impose any guillotine.

Senator David Norris: One was referred to on the Order of Business. I am not accusing the Minister.

Deputy Charles Flanagan: It may have been referred to but it was not proposed by me.

Senator David Norris: I wonder, for the sake of the record, if the Minister will be able to tell us whether this 125 hours, to which he has referred on so many occasions, and I think it is a little more now, is a historical record.

Deputy Charles Flanagan: I leave these matters in the hands of the Clerk of the Seanad and his able team.

Senator Gerard P. Craughwell: I have to say that I am delighted the Minister has been counting the hours because the Leader of the House told Senators this morning that it was 102 hours.

Deputy Charles Flanagan: I defer to the Leader of the House on all occasions-----

Senator David Norris: A great mistake.

Deputy Charles Flanagan: I have been required by the Chairman to do so.

Senator Martin Conway: It feels like 1,000 hours just this week.

Deputy Charles Flanagan: I do not have a clock on me.

Acting Chairman (Senator Gerry Horkan): I will bring this to a close. Senator Bacik wanted to come in.

Senator Ivana Bacik: With respect, an important point is being raised by my colleagues. In the normal course of events where there is a serious opposition within the Seanad or the Dáil to a particular Bill or provisions of it, there would usually be recourse to some discussion - outside of the debate - between the officials, the Minister and the Senators who are opposing particular aspects of the Bill in an effort to reach a compromise. I said this before, at some earlier point during Committee Stage debates. There are numerous examples, such as the Copyright and Other Intellectual Property Law Provisions Bill 2018, with which Senator Norris and I had issues. Senator Norris will recall that we had meetings with officials and with the Minister of State, Deputy Halligan, in an attempt to reach a compromise position. Similarly, with some of the Private Members' Bills I proposed that the Government adopted and amended we met a number of times over the course of preparation of amendments. We achieved good legislation as a result; through this negotiation and compromise it is often more possible in meetings outside of the actual legislative debate. While issues should, of course, be raised on the floor of the House during Committee Stage debates, quite frequently we have recourse to meetings outside of the debates to try to achieve compromise where there is real opposition to particular provisions in a Bill. That has not happened in this case. I have made that comment before. It is a pity that it did not happen and it would have shortened things.

Amendment, by leave, withdrawn.

Senator Gerard P. Craughwell: I move amendment No. 109(f):

In page 38, between lines 9 and 10, to insert the following:

“57. No person shall be eligible for appointment to any judicial office within the meaning of this Act unless he or she is a citizen of Ireland.”.

Amendment, by leave, withdrawn.

Section 57 agreed to.

SECTION 58

Acting Chairman (Senator Gerry Horkan): Amendment No. 110 has already been discussed with amendment No. 6.

Senator Gerard P. Craughwell: I move amendment No. 110:

In page 39, line 9, to delete “*Act of 2018.*” and substitute the following:

“*Act of 2018.*”

(6) Nothing in this section shall be construed as limiting the advice the Government may give to the President with respect to the appointment by the President, under Article 35 of the Constitution, of a person to be a judge.”.

Amendment, by leave, withdrawn.

Section 58 agreed to.

SECTION 59

Question proposed: “That section 59 be deleted.”

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Senator David Norris: I wonder could we have an explanation from the Minister on this?

Deputy Charles Flanagan: Completely.

Senator David Norris: I have to say that I am 75 years of age and I am still fairly active in this House. I completely approve of judges being allowed continue. They do get wiser as they get on - or most of them do - and I think the idea of increasing the retirement age is a very good one.

Deputy Charles Flanagan: Senator Norris will be aware that prior to the debate on this Bill we had debate on the previous Bill that we described as the courts Bill and a similar amendment was made to that Bill, which transposed the import of the current section 49 before us onto that Bill. It was deemed to be more appropriate. That Bill has been passed by the Seanad. The point quite rightly made by Senator Norris will be the subject matter of that new Bill, which I expect to be enacted in its entirety very shortly.

Senator David Norris: I thank the Minister because I was not aware of that. I am very grateful indeed for the clarification.

Acting Chairman (Senator Gerry Horkan): The Courts (Establishment and Constitution) (Amendment) Bill 2019 completed Report Stage earlier today.

Question put and agreed to.

NEW SECTION

Senator David Norris: I move amendment No. 111:

In page 39, between lines 22 and 23, to insert the following:

“Completion of judicial proceedings after retirement

60. The Courts and Court Offices Act 1995 is amended by the insertion after section 47A of the following section:

“47B. (1) Notwithstanding that a person has retired from or otherwise vacated an office to which this section applies—

(a) he or she, with the consent of the President for the time being of the relevant court, may within a period of four months thereafter discharge the function of giving judgment and making an order on foot thereof and making any consequential or ancillary order in any case or matter which was begun and heard before him or her prior to he or she vacating or retiring from that office, and

(b) for that purpose, and for the purpose of any proceeding arising out of such case or matter, he or she shall be treated as having been a holder of that office at the time of discharging the function mentioned in paragraph (a).

(2) Provided that nothing in this section applies in cases where such person was removed from office or imposes or increases any charge on the Central Fund or the public revenue.

(3) In this section ‘consequential or ancillary orders’ includes any certification or settling a case stated for the purpose of an appeal and the granting of any stay in respect of the order and any order dealing with the costs of any proceeding to which subsection (1) relates.

(4) Nothing in this section precludes the President of any court from directing that any “consequential or ancillary order” in any proceeding to which subsection (1) has application may be made by another member of the court in cases where it would be just to do so.

(5) Where the proceedings to which subsection (1) relates were proceedings before a division of a court consisting of three or more members, nothing in this section precludes the remaining members of that division of the court from delivering a reserved judgement or making an ancillary or consequential order, where the President for the time being of the court has consented and where the remaining members of the relevant division of the court are of opinion that no injustice would result.

(6) In this section the term ‘President’ includes the Chief Justice in relation to cases heard in the Supreme Court.”.”.

This was to come after section 59, which has now been removed, so presumably it now comes directly after section 58, and therefore the number I have for the moment is not appropriate. This amendment is to amend the Courts and Court Offices Act 1995 by the insertion after section 47A of the following section:

“47B. (1) Notwithstanding that a person has retired from or otherwise vacated an office to which this section applies—

I presume this means a question of illness. Supposing the judge has a heart attack or a stroke and is not able to fulfil the functions, in those places the amendment provides that:

(a) he or she, with the consent of the President for the time being of the relevant court, may within a period of four months thereafter discharge the function of giving judgment and making an order on foot thereof and making any consequential or ancillary order in any case or matter which was begun and heard before him or her prior to he or she vacating or retiring from that office, and

(b) for that purpose, and for the purpose of any proceeding arising out of such case or matter, he or she shall be treated as having been a holder of that office at the time of discharging the function mentioned in paragraph (a).

(2) Provided that nothing in this section applies in cases where such person was removed from office or imposes or increases any charge on the Central Fund or the public revenue.

I take it that this reference to the Central Exchequer and to funds and so on is to ensure that the Bill is protected against the qualification that Seanad Éireann is prohibited as it currently stands - although we have some business on that to try to remove standing order section 41 - and it could be ruled out of order because it creates a charge on the Exchequer.

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The amendment also provides that:

(3) In this section ‘consequential or ancillary orders’ includes any certification or settling a case stated for the purpose of an appeal and the granting of any stay in respect of the order and any order dealing with the costs of any proceeding to which subsection (1) relates.

(4) Nothing in this section precludes the President of any court from directing that any “consequential or ancillary order” in any proceeding to which subsection (1) has application may be made by another member of the court in cases where it would be just to do so.

(5) Where the proceedings to which subsection (1) relates were proceedings before a division of a court consisting of three or more members, nothing in this section precludes the remaining members of that division of the court from delivering a reserved judgement or making an ancillary or consequential order, where the President for the time being of the court has consented and where the remaining members of the relevant division of the court are of opinion that no injustice would result.

(6) In this section the term ‘President’ includes the Chief Justice in relation to cases heard in the Supreme Court.”.”.

Once again we are following the precedent of our neighbouring island. In so doing we are introducing a very practical element into the Bill. I emphasise that this is not just something from Senator McDowell - I nearly said President McDowell - but that it is from the President of the Court of Appeal who had actually asked that this provision be introduced into the legislation. This is a voice to which we must listen. In addition, we hear a lot these days about delays in the courts system. This would have the effect of speeding up the courts system and ameliorating these delays.

The situation at the moment is that a judge stops being a judge completely and fully. He or she is extinct from being a judge from the very day of retirement. This means that judges are pretty well frozen for the last three months of their operation. This is to make sure that judges are not sitting on cases that might not come to a conclusion-----

Acting Chairman (Senator Gerry Horkan): Is the Senator concluding?

Senator David Norris: I might if I am given a chance. Did I hear a little squeak from the bench?

Acting Chairman (Senator Gerry Horkan): I do not think so.

Senator David Norris: Good. It was a creak. All of the outstanding judgments then have the opportunity to be delivered. This has even more relevance in the appellate courts where more than one judge might be sitting.

Senator Gerard P. Craughwell: My colleague has said all that I had intended to say.

Senator David Norris: No, please, say it again.

2 o'clock

Senator Victor Boyhan: We are making progress today, which is a very positive thing. This amendment mirrors the UK legislation and is a practical one. It is something the President of the Court of Appeal has looked for and it would also reduce delays in the courts. Currently, a judge must stop being a judge on the date of retirement, which means that judgments must be delivered by that date. The inevitable consequence of the reality of that is that judges are in effect benched for the last three months of their time as a judge, in order to ensure that they are not sitting on cases that may not finish and that all outstanding judgments are delivered.

This is even more relevant for the appellate courts where more than one judge sits. I will withdraw the amendment but reserve the right to reintroduce it on Report Stage.

Acting Chairman (Senator Gerry Horkan): Does Senator Craughwell wish to speak?

Senator Gerard P. Craughwell: I do not wish to delay the Bill.

Deputy Charles Flanagan: I do not wish to contravene any Standing Order on the basis that the Senator has withdrawn the amendment, but I want to indicate my support for what all three Senators have said. It is a really important issue and one I will certainly look at. I am not sure if it is one that might be appropriate for Report Stage of this Bill, but it is one that is certainly deserving of favourable consideration in the context of a number of pieces of legislation on the civil law side currently going through either House or in the course of preparation.

I take the Senators' point and thank them for bringing it to my attention. It is a point with which I agree fully but I would like to reflect, in conjunction with the Senators, on how best it might be reflected in law in terms of whether this is the appropriate vehicle. I do not think it is but let us see if I have a better one over the next few months because I accept its importance and the points raised.

Senator David Norris: I thank the Minister for his graciousness in this which shows the importance of Seanad Éireann that in this very lengthy debate we have had and in which I have played a role-----

Senator Victor Boyhan: A very substantial role.

Deputy Charles Flanagan: A starring role

Senator David Norris: I am not quite a star. I am on the secondary list and part of the supporting cast.

Deputy Charles Flanagan: The Senator needs to be careful because Senator Bacik took issue earlier. He is talking about supporting cast.

Senator Victor Boyhan: He is a passenger.

Senator David Norris: I accepted that I was a passenger. The Minister described me as a passenger. How can he possibly think that I am a star, if I am a passenger? I am an underling. The Minister said I was an underling and I accept my humble status.

Deputy Charles Flanagan: Good.

Senator David Norris: I bow to the Minister.

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Acting Chairman (Senator Gerry Horkan): Senator Norris, please.

Senator David Norris: How can I possibly be a star if I am an underling?

This is very important and shows that with this very long-lasting debate, there have been issues of very considerable reference to the effective operation of this Bill.

Acting Chairman (Senator Gerry Horkan): I thank Senator Norris and call Senator Bacik.

Senator Ivana Bacik: I echo Senator Norris's welcome for the Minister's response on amendment No. 111, the last amendment in the long list we have had. This amendment raises an important issue around what happens when a judge retires from office and there are outstanding judgments and so on. It is very good to hear the Minister say he will reflect on this and come back on Report Stage. This is the sort of compromise and negotiation that we could have engaged in far more productively far earlier.

I refrained from speaking on section 57, in which it is provided that the Judicial Appointments Advisory Board, JAAB, would be dissolved. There was an obvious compromise, where we could have seen really effective reform of the judicial appointments system through reform of the existing JAAB, as proposed by, Jennifer Carroll MacNeill, and other researchers who have looked at this. That sort of compromise could have been achieved very effectively through negotiation and discussion outside of, and perhaps prior to, Committee Stage of this Bill.

It is very welcome that the Minister has accepted some amendments offered by the Opposition and has indicated his willingness to look at others, including amendment No. 111.

Senator Gerard P. Craughwell: I wish to place on record my thanks to the Minister and his officials who have sat through the 125 long hours.

Senator Ivana Bacik: Hear, hear.

Acting Chairman (Senator Gerry Horkan): We are not finished yet Senator.

Senator Gerard P. Craughwell: I know we are not but we have just hit the last amendment. The Minister has shown a willingness to engage for such a long period of time, and for the most part, with good humour. We need to acknowledge that and I hope he goes away a happy man for the summer.

Senator Martin Conway: We have reached the last amendment, with 125 hours plus of deliberation. I have been present in the Chamber for the vast majority of those, that is, 123 hours. I have been very much impressed by the Minister's tenacity and commitment to continue this debate, which at times has been extremely frustrating. I suppose it is a reflection of how important this Chamber and our democracy are. We got through it and will finish Committee Stage today and will move on to Report Stage, which, hopefully, will not take 125 hours.

Senator David Norris: I want to pay a compliment to the Minister. He has been tetchy from time to time and has been perfectly entitled to be. He has been very good humoured and cracked the odd joke sometimes. It has taken a very long time but important things have been done.

I very much welcome the fact there was no necessity to operate a guillotine, which is very bad practice. I point out to the Minister that those of us who oppose the Bill have facilitated

this. We have taken this debate in a much more rapid fashion than any other debate that has taken place on this Bill. It has been an example of good co-operation between the Minister and Senators and I am grateful to the Minister. I forward to the Report Stage which will probably be taken in the autumn.

Senator Victor Boyhan: I thank the Minister for his response to the last amendment, which was fair and positive, and for being here, as Minister, for the whole debate.

Senator David Norris: Hear, hear.

Senator Victor Boyhan: It was not an easy task. I also thank his officials. It was a good day for democracy, with many ours spent on this, and that is what this process is about. This is what the Taoiseach told us when he visited us. He wanted us to polish up on legislation. Nothing is personal at the end of the day.

One thing it shows - I am familiar with the Minister and his work - is that he really is a master of his brief. I do not say that to charm him. He is on top of his game but I would expect nothing less of him. He is trained in law and in its discipline and is a very impressive-----

Senator Martin Conway: He is very good at it.

Senator Victor Boyhan: -----Minister for Justice and Equality. I was certainly in awe of his mastery of his brief in the Department of Justice and Equality, but in particular, of this legislation.

I acknowledge that more than 48 judges have been appointed under this administration and all of them are exceptional people and were appointed on merit. Let us not lose sight of that in this debate. We have a very high calibre of men and women serving in the Judiciary and they have done an exceptionally good job. The system to date has worked. Despite all the arguments, complaints, and media coverage that people would veto, stop, or block the appointment of judges, a very impressive list of 48, if not more, judges have been appointed. I wish all of them well and I am more than confident that it was the right thing to do. They are all men and women of merit. It proves the point that despite all the hours spent in debate, this House or the Government did not stop or impede an appointment to the Judiciary, which is an important point to make.

Senator Ivana Bacik: I neglected to thank the Minister and his officials who have sat with great patience and perseverance through a lengthy process, which I am sure was very difficult and tedious at times for them.

Amendment, by leave, withdrawn.

Sections 60 to 63, inclusive, agreed to.

Schedule agreed to.

Title agreed to.

Bill reported with amendments.

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

Senator Martin Conway: Next Tuesday.

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Report Stage ordered for Tuesday, 16 July 2019.

Minister for Justice and Equality (Deputy Charles Flanagan): I acknowledge the juncture we are now at, which is the end of Committee Stage. I thank Senators for their contributions. It was something of a formidable and lengthy debate. I was very pleased to be here for it. I acknowledge what Senator Boyhan said, namely, this debate is a really important part of the essence of our democracy. We have a bit of work to do over the summer months in reflecting on the status of the Bill. We have made some amendments, and there are other areas on which I have indicated I would be happy to hear further, with a view towards amending at a later Stage. I reiterate my support and that of my Government colleagues for the Bill and for the need to ensure that we modernise the manner in which we appoint our judges. However, the Bill, as amended in committee in the Seanad, is far from perfect and requires further work. I would be happy not only to acknowledge what Senator Bacik and others have said but to engage over the summer months in a way that may well give rise to a situation in which, working together, we have a Bill that is entirely fit for purpose. This is important legislation but it needs a substantial amount of work. I have listened for in excess of 100 hours to the points the Senators have made and have taken careful note of important points that were made. I acknowledge the resilience of my officials for being here through the entirety of the debate.

Senator David Norris: Hear, hear. Very well deserved.

Senator Martin Conway: They are preparing for the summer holidays. One can be sure of that.

Deputy Charles Flanagan: They, too, have taken careful note of many of the important points made.

While we are coming into the summer break - and I understand that Senators will finish up perhaps later this week or early next week - I do not anticipate that we will take Report Stage next week, nor in fact do I envisage we will take it immediately on resuming in September. Having regard to the fact that some weeks in August are weeks during which people traditionally have the opportunity to take a break, I see the month of September as being a time for reflecting on the next Stage of the Bill and on how to accommodate many of the important issues raised by Senators into legislation that, of course, must accord with the Constitution. I have taken very careful note of the views expressed by Senators as to the constitutionality of the legislation. I am satisfied, from my discussions with the Attorney General and the advices he has given me, that the Bill accords with our Constitution, as it should. Not only should our Bill be in strict accordance with the Constitution, but it should also be legally robust and practically workable. It is because of this that I believe we should now all go through the product, as completed in committee, with a fine-tooth comb and resume in September. I would be happy to engage along the lines proposed by Senator Bacik. We all need to work together. I would be very keen to have this legislation, which forms a fundamental pillar of A Programme for a Partnership Government, enacted in its entirety during the course of the autumn and into the winter.

Acting Chairman (Senator Gerry Horkan): I did not keep track of how many hours I was in the Chair for this debate but I think it was a fair few. On my own behalf, I thank everybody, particularly today, for managing to get through 25 amendments in just over an hour and not having to use our guillotine at the end.

Senator Victor Boyhan: That is progress.

Acting Chairman (Senator Gerry Horkan): I thank all Members for their co-operation. I thank the Minister for his many hours spent here, however many it was, and all his officials. I do not think we will spend this kind of number of hours on too many pieces of legislation in the future. It is a big day. We have managed to conclude Committee Stage before the summer recess, for which I thank all Members.

Sitting suspended at 2.15 p.m. and resumed at 2.25 p.m.

Local Government Rates and Other Matters Bill 2018: Committee and Remaining Stages

Acting Chairman (Senator Diarmuid Wilson): I welcome the Minister of State, Deputy Phelan, back to the House.

Sections 1 to 5, inclusive, agreed to.

SECTION 6

Senator Paul Gavan: I move amendment No. 1:

In page 8, between lines 31 and 32, to insert the following:

“(6) (a) The Minister may allow for a multi-annual increase in a rate payment and multiannual decrease in a rate payment following a re-valuation if requested by a local authority.

(b) The Minister may by direction in writing amend or revoke a direction under this section (including a direction under this subsection).”.

The Minister of State is very welcome. This amendment allows for the Minister to facilitate a multi-annual increase and a multi-annual reduction in a rate payment following a revaluation, if requested, by a local authority. The amendment is a response to the valuation process, particularly where the local authority area completes the process but has not done so in a number of years. As the Minister of State will know, many business owners can then experience a drastic and very abrupt spike in their rates. This may happen where the property itself has not undergone any improvement works but the area around it has. As was mentioned on Committee Stage in the Dáil, some of these businesses have experienced a 300% to 400% increase in the space of a year, although such increases are rare.

I give credit to Deputy Pat Casey who first introduced this amendment on Committee Stage in the Dáil on behalf of Fianna Fáil. We wanted to make sure it was discussed in this House also. My colleague, Deputy Eoin Ó Broin, is also very much in favour of it, as is our entire party.

In the absence of an effective valuation system that is not sensitive to what large increases can do to a small business, and after possibly decades of radio silence from the Valuation Office, this should not be acceptable. In many ways, this amendment addresses the resource issues of the Valuation Office. If it is not able to hold more regular revaluation processes, another mechanism must be created that allows sensitivity to be shown towards businesses that experience

large increases in rates.

I put it to the Minister of State that this proposal is common sense. I understand this type of model is already in place in Irish Water, so we know the Government can put such a model in place. It would mean that businesses would not face either a sharp spike or decrease in rates as increases would be introduced in phases in line with the Revenue's overall rules to keep this revenue neutral. If the Minister of State does not adopt this amendment, he will let down business people throughout the country. That is the bottom line. It is common sense and has broad support across the Seanad. I hope this Chamber today is used respectfully. I do not want to hear the Minister of State say the amendment cannot be adopted because we are finishing up this week. It is the right thing to do and I ask him to do the right thing.

Senator Jennifer Murnane O'Connor: Fianna Fáil is also in total agreement with this amendment and will support it. As Senator Gavan said, Deputy Pat Casey spoke about this issue in the Dáil. I also believe it is important to provide for phased increases or decreases for that matter. As the Minister of State will be aware, businesses, especially smaller companies, often cannot afford large increases in rates, whether they are doubled or tripled. Rates are important to businesses and jobs and we have to make sure we protect our businesses. Changes should be phased in. I support the amendment.

Senator Gerard P. Craughwell: I support the amendment but I understand the Minister of State's need to get this Bill through the House. Will he give some indication that, once the Bill has passed, he will introduce a statutory instrument or use some other method to reflect the spirit of the amendment? I fully understand how a massive hike in rates may put small companies over the cliff edge. Last night, we heard of a petrol station in, I believe, Cavan which saw-----

Minister of State at the Department of Housing, Planning and Local Government (Deputy John Paul Phelan): It was Monaghan.

Senator Gerard P. Craughwell: -----its rates shoot through the roof because the forecourt had been upgraded. The Bill needs to pass and an undertaking to act afterwards would satisfy me this evening. I will bat that one over to the Minister of State.

Senator David Norris: I have no difficulty whatever in supporting the amendment. My roots are in the midlands and I sometimes visit County Laois. In many of the small towns I see that small businesses are closed, many because of rates they cannot afford. I very much agree with the possibility envisaged in this amendment that rates may not only be increased but also decreased. It is absolutely right in a circumstance where a business is struggling and is on the margins that the council should be allowed to decrease its rates to allow the business to continue and survive.

Acting Chairman (Senator Diarmuid Wilson): Senator Humphreys looks a little agitated. I will let him in at this stage.

Senator Kevin Humphreys: The Acting Chairman is very good.

I very much support the spirit of what is being said. We all hear from individuals who have experienced a large spike in rates but we do not always hear from those who have experienced a large decrease in rates. Within the current legislation, rates income must be neutral following a revaluation. This is the difficulty we face.

As I understand the amendment, it will empower the Minister to provide for phased increases in rates. I am not sure if a phased decrease is legally possible because a case could be taken by a commercial ratepayer on the basis that the rates applied to his or business should be much lower, yet the Government was providing that the necessary decrease would be phased in over a number of years to allow the local authority's funds to balance.

I remember distinctly the previous revaluation, which disadvantaged small businesses and shop owners and was of major benefit to hotels and offices. We never heard anything from the hotel sector when rates in the industry decreased significantly in urban areas. That revaluation put small shopkeepers, pharmacies and small restaurants to the pins of their collars because it resulted in an unplanned increase in costs, which they found difficult to manage. Spikes in rates, especially when unforeseen, are difficult for marginal businesses to manage. We have to try to empower local authorities to assist such businesses over a period.

I understand the bind the Minister of State is in arising from the way in which the legislation is currently laid out. Senator Craughwell proposed addressing this issue through a statutory instrument at a later stage. A more in-depth examination of the matter is probably needed because there could be serious unintentional consequences. While I agree with the spirit of the amendment, I understand the difficulties in framing legislation to allow this to happen.

Senator Paudie Coffey: Senator Humphreys has put his finger on the nub of the issue. All of us understand the intent and spirit behind the amendment and the need for understanding to be shown if there is a sudden increase in the rates payable after a revaluation. If we go back to the whole framework for rates, we all agree that they should be fair, sustainable and neutral. During yesterday's Second Stage debate, I highlighted that where revaluations have occurred, there have been winners and losers. Senator Humphreys referred to a previous revaluation. While we hear about the losers because they are concerned about the increase and the spike in their rates, we rarely hear about the winners who see a reduction in their rates.

I am concerned about the consequences should this amendment be passed and implemented. I would like to hear from the Opposition Senators who proposed the amendment how they would address the shortfall in rates income which would be faced by local authorities if the amendment was in place. I presume those who I would categorise as the winners, namely, those who have had a reduction in rates, are constitutionally entitled to have those reductions and would rightly seek them because they are provided for in the revaluation. This would leave a gap in the funding available to the local authority to deliver the vital services we all want. The question I ask the Opposition, rather than the Minister of State, to answer is how we would address the shortfall in funding available to local authorities in the event that the amendment is passed? I presume the Senators will answer that it will come from central government's magic tax revenues.

The rates system has to be sustainable in its own right. As was said on Second Stage yesterday, rates are a major and fundamental mechanism for funding local authorities to deliver services. I fully understand the intent around the amendment and perhaps there is a compromise or solution the Minister of State might consider when a significant spike in rates payable arises. Perhaps ratepayers could be given time to become accustomed to the higher rate. Rates are a big overhead in any business. Anybody who has run a small business will agree that the rates bill is one of their largest overheads. Local authorities could allow an increased rates bill to be paid over a period. I offer this solution as a matter for debate but I want to know where the shortfall would come from if this amendment was to pass.

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Deputy John Paul Phelan: I am not in a position to accept the amendment, not so much due to time pressure but for the reasons given by Senators Coffey and Humphreys. Phased decreases would certainly be illegal and would be challenged in the courts by any business.

Senator David Norris: Decreases.

Deputy John Paul Phelan: Yes, phased decreases would be illegal. Senator Norris may have been slightly wrong. Decreases in rates are accepted and the revaluation process will produce decreases. One section in the Bill proposes that decreases would become instantly applicable and the rate book would change immediately. Senator Norris's concerns are already addressed in the Bill in that sense. If, for example, a valuation were to fall from €10,000 to €5,000 for a shop in Rathdowney or another town in County Laois-----

Senator David Norris: County Laois has been hit.

Deputy John Paul Phelan: -----any proposal to phase in that decrease would certainly be challenged in the courts. The shopkeeper would ask why he or she is paying €7,000 one and half years after the new valuation had been set.

Senator David Norris: Very good. I thank the Minister of State.

Deputy John Paul Phelan: That is the point I am trying to make. I have no problem with what the amendment is trying to achieve, but the reality on the ground is that this is implemented wholesale across the country. I was in Donegal County Council with some of my officials last week or the previous week. The first thing I always raise when I visit a local authority is the rate of rates collection. The Donegal rate was lower than I would have liked it to be. The reason it was lower was that over a period of years through the recession the council introduced its own version of an alleviation scheme, which saw some rates written down. The freedom that currently exists, which I accept is not exercised by every local authority, is retained in the Bill. The problem I have with it is the illegality of a phased decrease but also, as Senator Coffey pointed out, in a rates revaluation situation that the proportion from different businesses would change but the overall figure coming to the council would not change. My concern is where Carlow County Council would find the extra €250,000 that it loses in that process.

Senator Jennifer Murnane O'Connor: Shops closing is a bigger issue. We see shops closing all the time. We should be able to introduce an incentive in that regard.

Acting Chairman (Senator Diarmuid Wilson): Senator Murnane O'Connor will get an opportunity to contribute again.

Senator Jennifer Murnane O'Connor: I know.

Acting Chairman (Senator Diarmuid Wilson): Senator Murnane O'Connor will get an opportunity to come back. The Minister of State should be allowed to speak without interruption.

Deputy John Paul Phelan: I agree with Senator Murnane O'Connor, but Carlow County Council already has the freedom to do that. The situation varies from county to county on whether such a power is exercised by the members, through the management. All local authorities will work with ratepayers who are in distressed situations if the ratepayers engage with them to devise an appropriate payment plan. One of the things this legislation does is it gets rid of the old archaic system of two moieties and will allow a staged payment system over

the course of a year, which for some businesses might mean they have good months and bad months and they will know when they are able to pay more rates perhaps than in other parts of the year. We are putting that on a statutory footing in this legislation. Equally, I reiterate that such discretion already exists and is used by some local authorities and should be used by more.

I will refer to some of my notes before I get sacked. Once a ratepayer engages with a local authority, the local authority can work with the ratepayer to facilitate an appropriate payment plan. The liability remains, however, and that cannot be defrayed. It would be inequitable to other ratepayers. I am thinking of two retailers on the same street; one whose valuation was more up to date and whose rate did not change and another who experienced an increase in rates due to an out-of-date valuation. It would not be equitable for one ratepayer to continue paying rates at a higher level while subsidising a lower rate payment by a neighbouring retailer. That situation could arise, in particular in light of the fact that, as Senator Gavan pointed out, there have not been revaluations for years but they may have occurred if somebody carried out substantial work to their premises. Therefore, one could have, in effect, two different systems operating on the same street. Furthermore, how would the provision apply to ratepayers whose valuation has reduced? Should they be expected to pay more than they legally owe if there was a multi-annual decrease?

It is worth noting at this point that global utility companies such as the ESB, Eir or Vodafone pay approximately 33% of overall commercial rates. The amendment, as proposed, would have the effect of allowing for a phased approach to an increase in the valuation of a global utility company, such as Vodafone, the ESB or Eir, as well as for the more traditional ratepayers who, proportionately, are a smaller group in many local authorities in terms of the amount of rates they collect. It is expected that utility companies would also be subjected to a phased reduction in the case of their valuations decreasing. The question is whether they would legally challenge it, which of course they would. For context, in 2015, the seven global utilities being revalued that year had their collective rates bill reduced by €24 million following a decrease in most of their valuations. It would be safe to assume that local authorities would have to defend costly legal actions in a scenario where they try to impose greater rates demand on a ratepayer than is merited by the actual valuation of their property or business.

The local authority has the flexibility to engage with individual ratepayers in such cases. In response to Senator Craughwell, the circular that will issue following enactment of this Bill, will ask local authorities to be cognisant of those ratepayers who have experienced significant increases in valuations. In recent years, the Minister has requested that local authorities exercise restraint in the determination of the ARV and, to give them their due, local authorities have done as requested. I have committed to looking at valuation issues and the impact of valuation in the autumn. As I said yesterday, that may require primary legislation on the valuation side rather than on the rates side that we are looking at today, and in particular the impact on businesses which had a significant increase in valuation and hence in their rates bill. The likelihood of such increases occurring will lessen as the revaluation programme completes, and the revaluation cycle becomes regular. As Senator Gavan pointed out, it has been far from regular in the past 30 to 40 years and that is what has led to the significant jumps in valuation because we have not had an ongoing revaluation process. I referred yesterday to progress with clearing the backlog of revisions in terms of the resources that are available to the Valuation Commissioner.

Senator Kevin Humphreys: I wish to speak very much to the spirit of the amendment. We are going through a major transition period regarding the main shopping streets, but even in urban areas, shopping centres in town centres find it very difficult because people have changed

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their way of interacting and they now purchase online. It is always the most vulnerable in society who are worst affected by the transition. We must manage the transition to make sure that the services remain in place. I accept what the Minister of State said about local authorities having discretion to work with businesses but, unfortunately, not all local authorities do so. We must make sure, as we have done in the amendment, that the Minister is empowered to give stronger instruction to local authorities on the management of the transition. We are not going to prevent change. Change is happening in every town and shopping centre. Whether one is in Dublin, Carlow or Donegal, we all see that the shopping centre is changing. We must work to make sure that there is a shopping centre, gym or small community facility in Clondalkin, Tallaght or elsewhere.

The spirit of the amendment gives the Minister a little more direction. I do not think the language of the amendment is quite right yet. What we want to do is empower the Minister to act when local authorities do not engage with businesses or assist them with the transition. There is no role for local authority councillors in that regard because the manager has executive functions in the matter. I refer to setting the rates, the valuation and how the ratepayer is treated. The Minister of State could examine the spirit of the amendment and consider whether he could introduce a statutory instrument to empower the Minister to instruct local authorities to work with small businesses that experience a sudden spike. We could look at percentages for the spike. If the rates go up by 5% it would be automatic but if it is greater than 5% there should be a transition management because the business itself could not support a larger increase suddenly. I will not give the Minister of State the percentage increases but the matter could be examined.

I do not wish to delay proceedings further. I support the intention of the amendment. I can see where it is coming from in terms of the business sector. I have dealt with people who have experienced a large spike. The Minister is constrained regarding the rates. I urge the Minister of State to look again to see if there is a way to achieve what he wants to do as well. I do not say that it is not the intention of the Minister of State because this is what he would like to see as well. The Minister of State might give a commitment to the movers of the amendment that he will work with them to try to resolve the issue, which is well highlighted. It was highlighted by Fianna Fáil on Committee Stage also. There is a willingness on the part of everybody to work with him to try to resolve the problem. I seek a strong commitment from the Minister of State that he is clear about the problem and that we will work together to come up with a solution.

Senator Jennifer Murnane O'Connor: I understand the Minister's point but the level of rates can be different in local authorities. Some can be much higher, others can be much lower and some can be in the middle range; they all get their lists. In terms of the higher levels of rates, for businesses that may be under pressure or are closing, is it not better to work with and reach an agreement with them on rates rather than have a shop close on a main street? We need to consider talking to businesses.

Local authorities are not a bank. It is taxpayers' money. When we are dealing with business people who pay their rates we need to ensure there is a balance. If a business is not in a position to pay its rates - some are and others are not - there must be leniency shown and more discussion between local authorities. Everybody needs to work together in that regard. As other speakers said, some local authorities might have more correspondence with businesses than others and may meet with them but the Minister must make sure that local authorities work with businesses because we do not want to see businesses closed on any main street. Businesses are competing with online shopping, which does not involve paying rates. Many of my friends and

other people I know shop online but I always ask them to support local, shop local. Businesses are now competing in an entirely new era in terms of shopping malls and online shopping. We must make sure that we look after business people by dealing with them and giving them the chance to phase in their rates payments if they are not in a position to pay them.

Senator Paul Gavan: I thank the Minister of State for his response. In fairness, he always gives a thoughtful response on these matters. I will make a couple of brief points, and I thank my colleague, Senator Humphreys, in respect of this aspect. Section 6(3) is important. It states: “The Minister may by direction in writing amend or revoke a direction under this section (including a direction under this subsection).” We have built in the power to address that in the Bill.

On the point my colleague, Senator Coffey, made, I fully understand that this has to be revenue neutral. There will not be a loss of revenue here. The legal issues referred to by Senator Coffey, and the Minister of State, are issues for the Minister but I believe businesses expect a more subtle and realistic approach to rates.

We support this Bill. We are not opposing it overall but we believe the Minister of State has missed an opportunity to phase in these increases in particular. I refer to Irish Water which, I have been informed, has introduced just such an undertaking. If a State authority can do this in one area, I am at a loss as to why the Minister could not consider doing something similar.

Acting Chairman (Senator Diarmuid Wilson): Before I ask the Minister of State if he has anything further to add, I would like to welcome Maria Lehane and Pat Davitt from the Institute of Professional Auctioneers and Valuers, who are guests of Senator Aidan Davitt. You are very welcome to Leinster House.

Does the Minister have anything further to add?

Deputy John Paul Phelan: Yes. First, I am not sure in what context Senator Gavan is speaking but Irish Water do not pay rates yet. It is envisaged in the immediate term as part of the provisions of this Bill, particularly in respect of the changes to the existing section 56 of the rates legislation, that Irish Water will start to pay rates. That is one of the time sensitivities to this. Some local authorities such as Wicklow County Council, for example, and others that have big water utility and Irish Water facilities potentially would be at a severe financial disadvantage if this legislation is not passed because of the revaluation process.

I absolutely agree with Senator Murnane O’Connor about the competition from online shopping. It is not just small towns that are being affected by that. The main streets in many big provincial towns like Carlow or Kilkenny are more in the food and beverage line rather than the traditional hardware and drapery-----

Senator Jennifer Murnane O’Connor: Shops.

Deputy John Paul Phelan: -----we would have seen over the years. I do not disagree with her at all but there is a twofold answer. First, and I accept it is not uniformly exercised across the country, the provision for councils to take account of difficulty to pay is exercised by many local authorities. I gave a particular example of work done in Donegal where, in the teeth of the recession, a conscious effort was made by management and councillors to do exactly what the Senator said, namely, keep businesses open and have rates into the future rather than have large rates bills upfront.

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The other aspect this legislation specifically deals with is the introduction of a staged payment process. As it stands, the two moiety system still exists on the Statute Book. In reality, local authorities will take money whenever they get it in most cases but this legislation allows for a payment plan to be agreed between the local authorities and the ratepayers. It goes back to what I said yesterday. Traditionally, almost everybody on the local authority was a ratepayer, whether they were paying domestic or commercial rates, or both. Following recent elections, however, there are far fewer commercial ratepayers on local authorities. As a result, a “them and us” attitude has built up where businesses sometimes feel that local authorities see them as a soft touch for collecting funds if there is a shortfall when it comes to the annual budget meeting.

What we are doing in this legislation is enabling local authorities to set up modern payment systems with businesses. To use the example of the traditional retailer on the high street, the period after Christmas is a slower period once the sales are over and one might not be paying any rates. One might have an agreement with the local authority not to pay any rates in February, March, April and May and then one pays commercial rates for the rest of the year. That is what the Bill is doing in terms of its provisions.

What is proposed in the amendment presents me with two impossible things I cannot accept. The first concerns the point made by Deputy Humphreys. We cannot have phased increases because that would be challenged, and successfully so, in the courts by any business paying more than it should lawfully have to pay. The other point was from Senator Coffey about making up the shortfall. I believe local authorities are being given the power in this legislation to make sensible decisions. It is being put on statute for the first time in terms of those payment schedules. I told Senator Craughwell that we will be circulating those to the local authorities following the enactment of the legislation.

To answer Senator Humphreys, there is a general regulation making power under section 18, which I spoke about in the Dáil debate. I believe that would cover some of the aspects of the amendment that I accept or at least believe would not be illegal, and might be able to be implemented. I believe the power exists under section 18 to make such a regulation.

I agree with Senator Murnane O'Connor that the local authorities are not a bank, nor are the ratepayers. What happened here in the Second Stage debate was interesting. A much broader discussion on funding local government has to take place. We have a situation where €1.5 billion annually comes from business to pay local authorities and many times businesses do not see where that money is being spent. We cannot strip that out because we will ruin the financial base of local authorities but there is a bigger picture. Should a local tax be levied in the future on those businesses doing online sales into Carlow or Kilkenny from other jurisdictions or other parts of the country? We have to consider online sales tax and such issues. I saw the Tánaiste and another commentator talking about the potential impact on online sales if a hard Brexit happens in that people would have to claim back from the Revenue Commissioners for returned products. I see that in my extended family where packages are coming in the post.

3 o'clock

People's lives are much busier and they might do their shopping online at home at night. They are able to return products freely to Britain at present but in the event of a hard Brexit that would not be the case. That might be a boon for the shops on the high street and might be one of the unforeseen positive consequences should a hard Brexit happen, not that I want to see it

happen.

I understand what the Senators are trying to address, but there are two issues. One is the phased decreases and the other is the shortfall in funding and from where that shortfall could be met.

Senator Gerard P. Craughwell: I wish to make a quick point. The Minister of State is on the ball regarding online taxes. He should remember that there are many jobs in delivering products for stores such as Tesco and the like, so he should not be too quick to start throwing taxes onto online shopping.

Senator Kevin Humphreys: A typical knee-jerk reaction.

Deputy John Paul Phelan: I did not say that.

Amendment put:

The Committee divided: Tá, 9; Níl, 20.	
Tá	Níl
Bacik, Ivana.	Burke, Colm.
Conway-Walsh, Rose.	Burke, Paddy.
Gavan, Paul.	Buttimer, Jerry.
Humphreys, Kevin.	Byrne, Maria.
Murnane O'Connor, Jennifer.	Coffey, Paudie.
Nash, Gerald.	Conway, Martin.
Ó Ríordáin, Aodhán.	Craughwell, Gerard P.
Ruane, Lynn.	Feighan, Frank.
Wilson, Diarmuid.	Lawlor, Anthony.
	Lombard, Tim.
	Marshall, Ian.
	McFadden, Gabrielle.
	Mulherin, Michelle.
	Noone, Catherine.
	Norris, David.
	O'Donnell, Kieran.
	O'Mahony, John.
	O'Reilly, Joe.
	Reilly, James.
	Richmond, Neale.

Tellers: Tá, Senators Paul Gavan and Rose Conway-Walsh; Níl, Senators Gabrielle McFadden and John O'Mahony..

Amendment declared lost.

Question proposed: "That section 6 stand part of the Bill."

Senator Paddy Burke: I wonder how a situation such as that outlined in section 6 might

arise. How would it work in reality? When the manager of the local authority brings forward his estimates for the end of the financial year or the year going forward and the councillors debate the estimates or the budget and decide to increase or reduce the rate by a certain amount, would the direction be given at that stage? How does the Minister of State see this mechanism for the power to limit the annual rate on valuation working? I do not really understand how it would work in practice. It seems the manager would have the power at the end of the day. From reading the section, if the councillors were to adopt a rate that the manager was not happy with, he could override their decision and amend the rate with a direction and his word would be the last word. Is it the case that we are giving more power to the manager? While it is a reserved function of councillors to set the estimates and so on, section 6(5)(c) of the Bill states “which amendment the chief executive is hereby authorised to make”. It seems to me that the Minister of State is giving ultimate power to the local authority manager to override a decision made by the councillors.

Deputy John Paul Phelan: No. The ultimate power is being given to the Minister. A similar provision was in existence until the 1980s, when it was last used. I am not sure when it was removed from legislation. The provision allowed the Minister a power of limitation on the setting of the ARV, which is the annual event that takes place at the budget meeting, as the Senator outlined. Essentially, however, the councillors will be made aware before the budget takes place as the Department circularises the councils every year. It did so particularly during the years of the recession, with the need to keep the ARV as low as possible. Not every local authority has done this over the past ten years. To that extent, this facility already exists. Section 6 provides for the power of limitation. Ultimately, the power rests with the Minister, but the chief executive in this case is, I suppose, an agent of the Minister in the local authority ensuring that such provision is adhered to. I emphasise, however, that the setting of the ARV is still the prerogative of local authority members. Furthermore, in section 15 a new reserve power is being created for members of local authorities. This is the establishment of an alleviation scheme, which must be based on the provisions of a development plan, an area plan or a national Government strategy such as the spatial strategy or the Project Ireland 2040 provisions currently in place. Again, the ultimate power will still rest with the members. The provision under section 8 for the power of limitation is a ministerial one. The chief executive in this case will act as an agent of the Department and the Minister in ensuring that when councillors strike the annual ARV they do so within certain parameters.

Generally speaking, in the 20 years since I joined a local authority, there have not been huge annual increases in commercial rates during what were called the Celtic tiger years. There were certainly increases in various local authorities but they tended to be within fairly modest parameters such as 2% or 3%. We are anxious that local authorities would still act independently but we are conscious that overall national economic circumstances may change, as happened a decade ago. Local authorities voluntarily decided, through their membership, not to have large annual increases in commercial rates because they recognised the value of keeping businesses open and having some money to pay rates in the future, as well as keeping premises occupied on streets in towns and villages throughout the country. This provision places on a statutory footing the existing capability of the Department to circularise the local authorities asking them to use their discretion.

Senator Paddy Burke: What the Minister of State is really saying is that the councillors set the budget and if the manager is not happy with it, he notifies the Department or the Minister. The Minister then issues a direction and the county manager implements it.

Deputy John Paul Phelan: No. What I am saying is that this provision is about the Minister having control over the range, generally speaking, of rate variation that a council may implement. It is not designed for a scenario in which the manager does not like what the councillors have done in a budget and can therefore overrule the budget they have passed. It is about placing on a statutory footing a limitation to the increases or decreases in commercial rates in-----

Senator Paddy Burke: That is the same thing.

Deputy John Paul Phelan: It is not. What the Senator outlined was essentially that if the management of the council did not like the budget that was passed, it could write to the Minister to seek to have it overturned. That is not what this provision will enable the Minister to do. It concerns merely the annual rate struck by the local authority. It ensures that local authorities do not pass on their entire net losses in a given year to the commercial ratepayers in their respective areas. In this way, the losses would be spread more evenly throughout the different sources of funding available to local authorities. However, there is no provision here to the effect that just because a county manager does not like a budget, he can seek to have it overturned. It must be on the basis of the local authority members voting through a rate of valuation change which is outside the parameters within which local authorities normally vary their commercial rates at budget time.

Senator Anthony Lawlor: Having experienced this first-hand in Kildare County Council, I agree with the Minister. That council would have voted against a budget at local authority level if the members and the manager had proposed a rate increase on the commercial sector of 10% while the annual rate of inflation was 2%. That would have been an 8% increase over and above the rate of inflation, which would impact not alone the ratepayers but also their customers in the area, the people who go into the shops and other retail outlets. It is, therefore, very prudent of the Minister of State to put a provision such as this into the legislation. The reason for it is to curtail irrational behaviour on the part of councillors and managers in local authorities. As far as I can see, those who go above the rate of inflation in the context of increasing rates is doing harm to local businesses in their own areas. This is a very prudent amendment. On Second Stage, I proposed that when the Minister of State sends out the circular it should be consistent across the State rather than being selective for various counties.

Senator Kevin Humphreys: The budgetary function of local authorities is extremely important. I speak from experience as the leader of the Labour Party group on Dublin City Council for several years where there were year-on-year reductions in the commercial rates. We said at the time that it was prudent to reduce the commercial rates. It is worthwhile compiling the circular letter and including the information provided to councillors through the strategic policy committees. Often, this information is not provided in a timely manner. Generally, there is a budget information meeting for councillors which is followed very quickly by a vote on the estimates within two weeks. If councillors are to be fully engaged in setting the rate and a budget for a local authority, that engagement has to start at a very early stage. If a budget is to be set in October or November, for example, the engagement needs to be on a department-by-department basis, which is also resisted by the CEOs, formerly the county managers. It is not good enough for overall figures to be provided at a budget information meeting. If councillors really want to have that extensive control and democratisation of local authorities, then they must have the right to get the information to which I refer at a very early stage and at a departmental level. A week into the system is too late to start fiddling around with budgets. One cannot do it. The only way one can have a real impact on budgets in a local authority is to have the engagement four or five months prior to the estimates. That is the only way a councillor can

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act in a responsible manner. He or she can see money being moved from one section to another and that the impact this has on services.

It is not just the rates that affect local businesses, it is also the services provided to such businesses and how that happens. In my experience, this information is not given in a timely manner to councillors in order that they can act in a prudent manner. Members of Dublin City Council were given that information. I am aware that it has not operated in the past five years because the council has been in chaos to some extent. In fairness, Mr. John Tierney, the much maligned former Dublin City Council manager, bought into that level of engagement with the political parties and councillors were able to stand over the budget as a result. It was not a budget that was implemented by the manager at the time, it was proposed by the councillors who took questions on that budget. When looking at powers and if we really want to empower people by sending out circular letters relating to budgets and estimates, it would be very prudent if the Minister of State issued a circular letter in the new year instructing the CEOs of local authorities to carry out proper engagement with councillors at a very early stage.

Senator Michelle Mulherin: On the issue of rates and the curtailing of powers in cases of a sharp increases in rates, there was rates equalisation in place at the time the town councils were abolished. Three town councils were abolished in County Mayo. Rates equalisation brought all the rates up to the higher level, which was the county council rate. Within the Ballina Town Council area, all the shops and businesses experienced rate increases. This may have happened to a lesser degree in Castlebar and Westport - Castlebar is a county town and has a county council and Westport may be a different kettle of fish. I can safely state that in my town of Ballina, the rates have increased and the services have diminished. Already there are issues in Ballina. I am aware that the matter has been well debated, but the abolition of the town councils has resulted in a greater centralisation of power to the chief executives of the councils. I do not believe it has had the desired result in the context of helping all parts of a county or a local authority area.

Commercial rates are a bigger burden on a small independent shop, retail outlet or cafe than they ever are on bigger businesses. This is a general statement, but it is true. The problem with smaller businesses on high streets is that they are competing with online retailers. They cannot compete. We can talk about market forces and it being the changing face of retail but another issue has to come into the debate, which is that we want vibrant town centres and we want these independent shops because their presence serves a public good. They are, however, being treated pretty much like the big guy and cannot compete. Compare this to a business that sells online, does not pay commercial rates and takes the money out of an area.

I feel that we need a new model for the smaller shops. The bigger retailers, multiple retailers and franchises can look after themselves. There could be a threshold established for special treatment for some people in identified two centre areas. Those town centres could be identified in conjunction with local authorities. I can tell that I will get a good answer in respect of that proposal. Hand in glove with that would be an incentive scheme to see people living back in the town centres. There are schemes under the housing programme and other initiatives, but when one goes to the rural market towns or even some of the bigger centres with urban sprawl around towns they are not very appealing places. Frankly, I am of the view that we need a more targeted approach. By leaving it to market forces in some of the towns and villages, people will continue to go elsewhere, spend their money elsewhere, live elsewhere and shop elsewhere. We need something radical.

Senator Jennifer Murnane O'Connor: I agree with the previous speakers. The Minister of State can realise that all of us here are fighting for the smaller shops that are finding it hard to survive. It is important that the Minister of State would meet the chief executives and local authority members. Sometimes there is a lack of information for councillors or a lack of awareness among them. It would be good for the Minister of State to send out regular letters to local authority members. These are the councillors who do the work on the ground and deliver. If the information was to come from the Minister of State and the chief executives of the councils, it would mean a lot to the councillors. They would have more information. I agree there should be more meetings with the local authority members and the chief executives of the council. All of us should work together because we have a very big problem. The smaller towns and rural towns are absolutely feeling the effect of this, and the smaller shops, cafes and businesses are fighting hard to survive. I understand that we have to look after all businesses but we need to have some kind of a mechanism in place for the smaller shops.

Senator Paddy Burke: I agree with Senator Lawlor. This is a very important section. I totally agree with the section but I would be happier if the variation or the direction the Minister of State may give was tied to something. If it was tied to inflation, as Senator Lawlor stated, I would fully agree with that. There might be 5% in one local authority area and 6% in another. As has been stated, there are many money streams for the local authority members to take into account when finalising their budget. Where does the relevant Minister draw the line in a local authority? Would it be at 5% or 2% in one county, 0% in another county or would it be tied to inflation? The guidelines might stated that it is tied to inflation and once it went above the rate of inflation, the local authority would have to notify the Minister. It does not, however, seem to be tied to any relevant piece of work. I would be happier if it was. Otherwise, I fully agree with the section. Some councils and local authorities may feel it is very easy to put a huge burden on the ratepayer. I saw situations where previous county managers felt 70% or 80% of the rates of the local authority were being paid by big business and multinationals when, at the same time, they were crucifying the smaller people, who were getting huge increases, those of them that had lasted in business. I totally agree with this. I hope the Minister of State will limit it to some reference point, whether annual inflation or an average of annual inflation over a number of years, or something like that.

Senator Anthony Lawlor: Because this is a reserved function of the members, perhaps the circular that is sent out to the local authority should also be sent to each of the members, given they are the ones who make the decision on it.

Deputy John Paul Phelan: I agree wholeheartedly with Senators Mulherin and Murnane O'Connor about the small shops. One of the centrepieces in this Bill is the alleviation scheme that is provided for under section 15. I spoke to the officials, when we were drafting this Bill originally, specifically with reference to rural towns and villages where the main street has suffered. There is now online shopping and people's travel habits and work habits have changed, and it is all of those things. It was a question of nailing down that alleviation scheme so that it can be designed by the members of a local authority. For example, in the municipal district of Ballina, they would pick not just Ballina town but Killala and Crossmolina and say that on the main streets in those towns there would be a reduced rate for a period of time, and that is underpinned by what is in the local area plan or the county development plan for the Ballina district of County Mayo. This legislation, for the first time, will give local authority members that power to introduce an alleviation scheme to target town centres in particular, because the Senators are correct that they have a social function.

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I had a situation recently where two constituents, a couple in their 80s, came to me. They had an electrical shop in a town in my constituency and their valuation had increased to a level which was above their annual turnover. The way the husband looked at it, he was going to work in his shop until he died and that was just it. However, it was also the case that, within their town, it happened to be a big shop premises. The way around it, in terms of reducing their valuation from the Valuation Office, was to divide their premises so that more than half of it would be vacant. However, this defeats what the Department of Rural and Community Development is trying to do in terms of keeping town centres looking well and active.

Section 15 allows for the six councillors in Ballina district, for example, to say that, on the basis of their local area plan or their county development plan or the targets of Department of Rural and Community Development, they want to do something for the town centres in their district. That is what section 15 enables councillors to do for the first time. I probably did not explain that.

Senator Michelle Mulherin: Will it allow them to introduce thresholds for smaller businesses and larger businesses?

Deputy John Paul Phelan: It will. At present, out-of-town shops that have been built, whether some of the German multiples or others, can detract from the town centres. If the local area plan has a particular segment of the town of Kilkenny, the city of Kilkenny-----

Senator Paul Gavan: What was that?

Senator Kevin Humphreys: He corrected himself.

Deputy John Paul Phelan: -----where it wants to see targeted development, the councillors will be able to say there will be a reduced rate in that part of the town because there might be a lot of dereliction on that street or in that quarter. That freedom is in the section.

On Senator Paddy Burke's point about linking it to something, the issue is that there is such a variation. Over 50% of the income of Dublin City Council is rates whereas it is 13% for some local authorities. I would like to see it set at inflation but that might not be practicable in every local authority, particularly ones with a very small commercial rates base, which is why we have not specified it.

I point out this is for use in extreme circumstances where councillors go off the reservation, so to speak, in terms of deviations from the ARV. It is not something I would envisage being used generally. To take in the point made by Senators Lawlor and Humphreys, that information is key and they are right, but some local authority members are better than others at looking for it. I would have no problem if a similar letter were to be sent to the members of the local authority as well, and no problem in requesting early access to information for councillors before the budgetary process gets into full swing.

Question put and agreed to.

Sections 7 and 8 agreed to.

SECTION 9

Question proposed: "That section 9 stand part of the Bill."

Senator Kieran O'Donnell: This section deals with the provision for abatement of rates in respect of vacant properties. I welcome the section. This issue comes up quite often in certain areas, especially where a business is struggling and may find it is only using half of the premises. We then have to go to the local authority to try to find a way to get some sort of alleviation. Will this apply not just to a whole building and could there be circumstances where it could apply to a portion of a building for a short period?

What we often find is that the person goes to the local authority but it will effectively say it is only implementing the valuation put in place by the Valuation Office. This could be a common-sense measure if it were used properly. We do not want it to be open to abuse, whereby some people would retain vacant properties where they could let them at a reasonable rent and bring businesses into towns and villages in particular, as well as areas of the cities. I am assuming this is not retrospective and that it will only apply moving forward. I am linking it to section 10, which proposes that there would have to be a database.

In the context of Limerick city, places like Castleconnell, Murroe, Cappamore and Caherconlish are towns and rural villages where we would like to encourage businesses to set up. However, in many cases, SMEs would be reluctant to take a whole building and the owner of the building would be unwilling to let a portion of the building. I note it is a reserved function. Will this level of flexibility be available to allow a local authority to come up with a scheme?

When does the Minister of State anticipate that the regulations for the scheme will be issued to the local authorities? When will this come into being? When will the local authority in Limerick city and county be able to come up with a scheme that allows abatement of rates over a period for hard-pressed businesses, for businesses that may be downsizing, or for businesses that want to set up but which cannot pay the rates for the entire building? Section 9(3) reads, "The Minister may make regulations for the purposes of this section". When will the Minister of State make the regulations? Will the flexibility I propose be available? What role does the Minister of State have thereafter in regard to the reserved function in the context of a scheme that may be devised by councillors? Does the Minister of State have any further function on the basis of the scheme as designed? It is important for there to be a sense of fairness. We spend time going to the local authorities and sitting down with staff to try to get some leeway for businesses. What was done here was done in a practical way and could encourage businesses to set up in rural towns and villages as well as certain areas of Limerick city where buildings are available.

Senator Jennifer Murnane O'Connor: I have a comment on vacant properties relating to sections 9 and 10. It is important that we have a timescale for small shops with an upstairs not in use but which might have been used for storage. That is so important. Another person came to me about a garage. Half the garage was being used and it was too big. He shut off half of it. There are major issues with that.

Certain counties were revalued. The work was privatised and carried out by a company. Some of the revaluations were done off a map. Those doing the work did not go down to each shop and measure the premises. Does the Minister of State have any concerns about that? I know of shops that would have been left with valuations from years ago. The same size would have been on the map but if someone had gone into the shop and revalued it, then the calculation would have been different. Can the Minister of State clarify the position on revaluation? Who is doing it? Does every local authority have someone doing it? Is the Minister of State going to have it privatised? What is the timescale? Can the Minister of State clarify those points?

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Senator Paddy Burke: My questions are on section 9 and the abatement of rates as well as section 15 and the waiver. Are they both the same? Will the Minister of State outline the difference between abatement and a waiver? This is an important section. My local authority introduced an 85% waiver. For a closed property, the local authority charges rates at 15% of the value. Is that a waiver or abatement?

Deputy John Paul Phelan: It is an abatement.

Senator Paddy Burke: Previously, if a premises was not occupied, then zero in rates would have been due. Obviously, rates would be due but the collection would be zero and they would have been written off at the end of the year by the council or the manager. How does it operate under this section? A person could be letting a property. It might be let for two or three months of the year. There might be change or a new lease drawn up and the place might be closed for a further two or three months. Does the person look for an abatement or waiver for that? How does it operate? Does the person apply for the waiver? What if the owner cannot rent or sell the premises? What if there are other complications associated with handing down properties, including disputes and so on? There are many complications with properties when they are closed for one reason or another. In any event, when the Bill is enacted will someone have to apply for the abatement or waiver? Heretofore, if there were problems with the property or disagreements within families, no one took action until D-day came and the asset was disposed of. If the waiver or abatement is not applied for, will a bill have accrued over time? Do the people who own the property or estate find that they owe a sizable amount to the local authority with interest and so forth?

Senator Anthony Lawlor: I have some quick questions. How soon after the legislation, subject to it being passed, will the Minister of State have the regulations ready? Will the Minister of State ensure that the regulations are sent on to all members of local authorities? This is another reserve function of the local authorities. Will the Minister of State ensure that happens? Will he give me his word on that?

Deputy John Paul Phelan: It is a new reserve function and it should rightly be given. I thank the Senators for the good and practical questions. I will start on Senator Lawlor's point. Senator Kieran O'Donnell said something similar at the start. I hope to have the regulations in place for the next budgetary cycle that is coming for local authorities in the fall of this year. However, I am unsure, because there are two officials across the room and two here - all holidays are revoked.

Senator Michelle Mulherin: Is that by abatement or waiver?

Deputy John Paul Phelan: That would be more a matter of abatement.

Senator Anthony Lawlor: There used to be a cup called the Bateman Cup.

Deputy John Paul Phelan: As I understand it, the point that Senator Kieran O'Donnell was making was whether it would still be a requirement on the new occupier to seek a revaluation. If a new occupier was taking possession or occupation of a portion of a building, then it would have to be revalued for that portion.

I cannot really get into the nitty-gritty referred to by Senator Murnane O'Connor about whether the Commissioner for Valuation has the same status as the Revenue Commissioners. The Senator is right that a private company carried out work. As I understand it, there may be

more of that. We may require more of it because there is a backlog. I will certainly raise some of the issues pointed out about maps and so on. These are legitimate questions.

Senator Burke asked about the difference between abatement and alleviation. Abatement effectively is a refund. At the end of the year the local authority in most counties may decide that, while there might be €10,000 owing on a given commercial premises, since it is unoccupied the bill will effectively be written off. Whether we call it a waiver or alleviation, the alleviation scheme is really on the basis of achieving objectives of a local area plan, county development plan or the national development plan. As I said to Senator Mulherin, there may be a target in the Mayo County Council plan for the ten largest towns in the county if we want to get people working and living on the main streets. That would be the basis of the alleviation scheme.

Senator Mulherin raised the question of a business closing. Section 4 for the first time allows a *pro rata* system to be established for the payment of rates. Heretofore if a business closed for a portion of a year, the owner would effectively still be liable for the full rates to be paid. Now, if a business closes for a period for renovations or if it closes through natural causes, notification to the local authority will cease the liability for rates. Equally, if a new occupier comes in, then he or she will be liable for the remaining portion of the year. This is a change from the old legislation of 1836.

Senator Michelle Mulherin: They were at the mercy of the chief executive.

Senator Kieran O'Donnell: We interpret abatement as applying for a refund of rates rather than getting a write-off or suspension of rates.

Deputy John Paul Phelan: In practical terms, it is a write-off and not a refund. Let us consider an example where a person pays €10,000 and gets it refunded. That would not be such a case.

Senator Kieran O'Donnell: It really will get down to the details of the scheme, which will be key.

Deputy John Paul Phelan: Yes.

Senator Kieran O'Donnell: There will be no consultation on the regulations. We will leave it in the good hand of the Minister of State.

Senator Paddy Burke: Does this section cover where a property would be de-rated?

4 o'clock

Some properties that are vacant are currently rateable but many such properties in rural areas will never open for business again. Does the section cover de-rating?

Deputy John Paul Phelan: Yes, effectively.

Senator Paddy Burke: Must an application for abatement be made every year? Will that be covered in the regulations?

Deputy John Paul Phelan: Yes.

Question put and agreed to.

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Sections 10 to 14, inclusive, agreed to.

SECTION 15

Senator Lynn Ruane: I move amendment No. 2:

In page 13, line 27, to delete “Act of 2001.” and substitute the following:

“Act of 2001;

(e) charitable purposes within the meaning of the Charities Act 2009.”.

I thank the Minister of State for coming to the Seanad this afternoon. This amendment would amend section 15 of the Bill, which permits the Minister for Housing, Planning and Local Government to issue regulations to allow a local authority to develop schemes for the waiving of all, or a portion of, the rates due by ratepayers under the Bill. The section lists certain strategies, plans and objectives within different Acts which the local authority can use to justify waiving rates for ratepayers. These include a national spatial strategy under the Planning and Development Act 2000 and other plans which allow for balanced social, economic and physical development. Local authorities are essentially being empowered to waive rates where certain existing public policy and urban and rural development objectives, set out in legislation such as the Planning and Development Act 2000 and the Local Government Act 2001, are met and where the waiving of the rate is justifiable to achieve those aims.

My amendment adds a provision which would allow a local authority to cite charitable purposes in accordance with the Charities Act 2009 as grounds for developing a scheme to allow ratepayers to apply for a waiver of rates or a portion of rates if in keeping with the charitable purposes in the 2009 Act. Examples of these purposes are listed in section 3 of the Act and include important issues such as the prevention or relief of poverty or economic hardship, the advancement of education, as well as more specific issues such as the promotion of civic responsibility, health, conflict resolution, racial harmony and harmonious community relations and the protection of the natural environment. I have not mentioned a number of other excellent purposes listed in the Act but I recommend that Members look at them.

My motivation in tabling this amendment is to give local authorities the space and legislative basis to develop charitable purposes as grounds for exempting groups and organisations engaging in this crucial work. The State needs to support these organisations and exempt them from the financial obligation of paying rates in light of the excellent and worthwhile work they do in supporting community development and positive change. They deserve the opportunity to apply for waivers on their rates. I have in mind in particular youth groups and premises in local authority areas, such as charity shops. Some smaller charity shops are more of a service than a shop in a retail sense. For example, there is a charity shop in Tallaght called Manna, which is run in partnership with the YMCA and a local church. Its annual profit of approximately €1,600 goes straight back into YMCA activities. However, the shop is considered a retail organisation and is paying rates at a level that will see it close its doors at the end of July. It applied for a charitable waiver in 2017 but South Dublin County Council has not yet engaged in communication with it. It has not even received a response to its application and is now receiving sheriff’s notices. The shop operates in a community with a high level of poverty and provides a space where people can engage with its workers, have a connection to Christian organisations and the YMCA and buy clothes at a price of €1 or €2. It is a worthwhile shop in the Tallaght community.

Many other health and well-being services were set up during the years of austerity. I have seen how young men have done training in health and fitness to enable them to open up gyms in the community and provide local jobs. Such organisations would not be seen as charitable but nevertheless contribute to a community and its health. During the years of austerity, many of these places kept people's lives together when, due to harsh economic realities, they had no control in other areas of their lives. People engaged in fitness at a much higher level during the years of austerity than they did at any other time. The number of gym members increased, as did participation in local boot camps and wellness activities, because the only aspect of their lives people could control was their appearance, as they had lost control of everything else. As the economy picks up, many smaller organisations and charity shops that do not make a profit are being forced out of the local economies they were crucial in maintaining during the worst economic period in our generation. I hope the Minister of State will look favourably on this amendment and introduce a decent appeals and waiver system that is transparent and does not operate like the current system, where charity shops such as Manna have to close because they are being threatened with sheriffs.

Senator David Norris: I strongly support this amendment because it is important that charities, particularly charity shops, are treated favourably. I would like to see them fully exempt from rates. Whatever about gyms, it is important that charitable activity is encouraged, especially in villages with derelict or empty shops. Why not put them to use for the community? As Senator Ruane said, people can buy cheap clothes in these shops, which is a socially useful thing to do. I got myself a magnificent overcoat by a well-known designer for €50 in one such shop. I gave the shop an extra €50 because I wanted to support the charity. This was during my presidential campaign when I was wandering around meeting and greeting people, and I got a bloody good coat out of it.

Deputy John Paul Phelan: It was for a good cause.

Senator David Norris: I think they are wonderful, although I am not quite so sure about gyms.

Senator Lynn Ruane: They are not gyms in the commercial sense but more like local boot camps.

Senator David Norris: In that case, I completely agree with Senator Ruane and strongly support her amendment. I raised this issue a couple of years ago in the Seanad but I got nowhere. I hope the amendment gets through today.

Acting Chairman (Senator Diarmuid Wilson): I call Senator Lawlor.

Senator Anthony Lawlor: I am sorry. I spoke yesterday-----

Acting Chairman (Senator Diarmuid Wilson): Do not be sorry, just be alert.

Senator David Norris: Just sit down.

Senator Anthony Lawlor: I was shocked that Senator Norris finished so quickly.

I spoke yesterday about certain charity shops on main streets being run by national organisations, some of which have CEOs on salaries larger than the Minister of State's salary. However, I see merit in what Senator Ruane is saying. This issue could be addressed in the regulations. These shops could be included in an abatement-type programme so they are at least seen to be

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paying something or included as part of the scheme within local authorities. If the Minister of State wishes to have the Bill progress quickly, perhaps he could give a commitment to address this issue in the regulations. I will speak further on this section later.

Senator Paul Gavan: I express my support for this amendment. The high street was devastated a few years ago and is now doing very well, albeit only in certain areas. One of the downsides of that is that community spaces will be squeezed out. Senator Ruane has explained extremely well the damage that is being done and the severe pressure charity shops are already under. This amendment strikes me as very reasonable and I hope the Minister of State will respond to it in a reasonable manner.

Senator Kieran O'Donnell: The Minister of State can correct me on this but my understanding is that charities are entitled to apply to the Valuation Office for a waiver if they have charitable status, provided it is for the benefit of the charity. It is a cumbersome system and it is important that the Department makes charities aware that such a scheme is in place. Many of them are not aware of it and, having dealt with them, I know the system is cumbersome and awkward. We are talking about a waiver scheme but the bulk of the charities Senator Ruane is talking about should be entitled to charitable status under national policy. They are put through a very onerous and cumbersome system to qualify for it.

Senator David Norris: Unlike the vulture funds.

Senator Jennifer Murnane O'Connor: This is an important issue because, as Senator Kieran O'Donnell stated, certain organisations achieve charitable status but others cannot. It is very difficult to get it. There needs to be a balance for charities which make very little profit but give so much to the community and have many people depending on them. We need some sort of waiver or regulation such that we ensure that we look after such charities which provide a service. I support the Bill. The charities will understand the importance of working with their local authority, which is dealt with in this section of the Bill. I support this section of the Bill.

Senator Gerard P. Craughwell: I support Senator Ruane, who made an excellent case for charitable status for these organisations. I can see that will present a problem for the Minister of State. I would not like the House to divide on the matter but rather find another way around the problem. I look forward to the reply of the Minister of State.

Deputy John Paul Phelan: Senator Ruane emailed me to inform me of her amendment. I must confess that I put forward a similar proposal when I was a finance spokesperson in this House in a previous life. Senator Norris said he did likewise. All those who spoke on the amendment are in favour of it. I support what it is trying to achieve, but I wish to get into some of the detail referred to by Senator O'Donnell.

The intention of the amendment may be to allow for the exemption of charity shops from rates. However, the Valuation Acts already provide that certain categories of property are not rateable. These details are set out in Schedule 4, which is currently the subject of a review which will conclude in the near future. The exemptions include a property occupied by a charity and used exclusively for charitable purposes and otherwise than for profit. As Senator O'Donnell outlined, it is probably that many organisations do not avail of the exemption, possibly because they are not fully aware of it or, as Senator Murnane O'Connor stated, because charitable status is no longer as straightforward as was previously the case.

The difficulty is that the exemption does not cover retail activity. Senator Lawlor yesterday

referenced a town in his constituency in which there are several charity shops, some of which are in direct competition with small draper-type shops. I do not hold a candle for the big multiples, whether in a shopping centre or on a main street, but I do for the few surviving small drapery shops and similar that exist in towns throughout the country. In effect, some of the bigger national charitable shops are in competition with those drapers.

There has been no change in policy in this area in recent years. I think Deputy Harris was the Minister of State who oversaw the passage of the most recent valuation legislation in 2015. I am mindful that many Senators expressed concerns on this matter. The aims of Senator Ruane in the amendment can be achieved under the alleviation scheme in section 15. To use her example, if the kind of wellness centre referred to by the Senator which is not just a gym but deals with other issues, possibly mental health issues, were stitched into South Dublin County Council's development plan or the local area plan for Tallaght, it would be covered by the alleviation scheme. I do not wish to enshrine in national legislation a measure from which some of the big charity shops that are in competition with local small businesses will benefit. That is not the Senator's intention either. Local authority members on the ground in Tallaght, Kilkenny and elsewhere know the type of organisations in their area, including the shop she mentioned which is run in partnership with the YMCA as well as wellness centres, and are able to design their development plan or local area plan to provide for such facilities without giving a blanket free-for-all to the charity shop sector. Section 15 will allow the local authorities to achieve what the Senator is seeking to do through the amendment.

Senator Lynn Ruane: As the Minister of State identified, the issue arises in respect of retail premises. I am not an expert on local government and, unlike certain other Senators, did not come to the Seanad from that area. Some of the shops which were visited were told they possibly should not have identified themselves as retail premises. The shops were just trying to be honest in their engagement. There must be some sort of upper and lower limits on what is seen as profit. The annual €1,600 profit turnover of the charity shop to which I referred is being swept up with the larger charity shops which pay lots of wages and so on from their profits, but they are different situations. There needs to be some sort of communication to or guidelines for local authorities regarding an upper limit on what is seen as profit and a consideration of the ultimate goal of small sums such as that to which I referred. Is the ultimate goal to pay a wage or employ someone new or is it a charitable goal? In the case to which I referred, the outcome is charitable - the organisation runs a youth service - even though it is a retail operation. It is about the level of flexibility of local authorities in terms of how they frame what is a retail business and the consideration of its profit. Can we give them more discretion in terms of how they determine what profit-making means in real terms?

Deputy John Paul Phelan: The best way to achieve the Senator's aims is through section 15 because if the amendment were to be introduced, it would allow the bigger charitable shops competing with existing smaller retailers, particularly in smaller towns, to get through a gap. The requirements she outlined could easily be stitched into the local area plan in Tallaght, for example, such that organisations involved in community development etc. would be exempt. They are already exempt in terms of certain properties they occupy, but that could be extended to their retail premises.

The Senator is correct to point out that there is a significant difference between making €1,600 and investing it in charitable purposes and companies that are making significant profits. That is why stitching the amendment into national legislation would be akin to using a sledgehammer to crack a nut and could allow organisations through a gap, which is not the Senator's

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intention. There are 11 recently elected local councillors in Tallaght between the two districts who sit as an area committee and make the ultimate decision on what goes into the Tallaght local area plan. They have a level of local knowledge which I, my successors, the rates commissioner or the staff in the rates section of the Department do not. That is why the alleviation scheme in section 15 is appropriate to these circumstances. It is a new initiative. I outlined to Senator Mulherin its role in terms of planning objectives in the centre of some regional towns. However, one of the other purposes is to allow for that level of local knowledge. The issue of people receiving letters from the sheriff about rates owed was mentioned. We want a rates scheme that is flexible and reactive to the reality of the situation on the ground, wherever that is.

If an issue is underpinned by the county development plan, the local area plan or the city development plan, it can form the basis of how an alleviation scheme or an aspect of same can operate. While that might not include a commercial gym, I see how it could cover the type of centre that was mentioned. The Senator is completely right. I have never been to a gym, but people are more conscious of other local issues and their role in same, particularly during a recession. The membership of gyms and the like has increased significantly. For half the people who go to gyms, it is a mental health issue as much as a physical health one, given that endorphins are, I am told, released when people exercise. The section 15 provision allowing for an alleviation scheme would cater for the types of scenario that the Senator outlined.

I am not in a position to accept the charitable purposes amendment in full. It would have other adverse effects, particularly in provincial towns where small draperies or retailers can be in competition with large charity retail outlets.

I hope that my answer is sufficient for the Senator.

Senator Lynn Ruane: Given that the Department or the local authorities would be developing the scheme, it could be designed to disallow the large charity shops. Does the Minister of State know what I mean?

Deputy John Paul Phelan: Yes.

Senator Lynn Ruane: The amendment gives the power to develop what the scheme would look like. It is not necessarily about providing for a blanket inclusion.

Deputy John Paul Phelan: We accepted an amendment to section 15 in the Dáil to allow for public consultation in this regard, through which the likes of the organisations that the Senator mentioned would be in a position to highlight to the elected councillors, who will be making the decision, and the council's executive the unique position that they occupy. That is different from the position of some of the other - "more professionally run" is not the right term - more business-oriented charity shop organisations. As well as being drawn up and finalised by the councillors, the alleviation scheme will be subject to public consultation in much the same way as development plans and local area plans. Members of the public and businesses can seek to feed their own stories into the final decision on policy at local government level.

Acting Chairman (Senator Diarmuid Wilson): Is Senator Ruane pressing the amendment?

Senator Lynn Ruane: I will make a brief note. We cannot address circumstances case by case. The point I will make is very local. I never do that, so I will allow myself this once. The Minister of State referred to the public consultation process, but the likes of the Manna Charity

Shop will not exist when this Bill is signed into law. The rates section of the Department and the local authority need to prioritise an appeal that was made in 2017 but which has not been denied or communicated on. If something could be done in the interim while we examined other parts of section 15 that could benefit such organisations, it would ensure that a vital service would not close by the end of the month before it could even avail of section 15.

Deputy John Paul Phelan: The Senator might give me the details. This situation most likely pertains to the Valuation Office, but I see the point the Senator is trying to make. Anything that can be done to avoid what she described will be done.

Senator Lynn Ruane: I thank the Minister of State.

Acting Chairman (Senator Diarmuid Wilson): Is Senator Ruane pressing the amendment?

Senator Lynn Ruane: I will withdraw it based on the Minister of State's response.

Amendment, by leave, withdrawn.

Question proposed: "That section 15 stand part of the Bill."

Senator Anthony Lawlor: I wish to make a couple of observations. I assume that the regulations will be made as quickly as possible. There are four hierarchical paragraphs in subsection (1), with one relating to the national and the remainder to the local. Which takes priority?

Subsection (4) reads: "A local authority shall not make a scheme under this section until the adjustment period (within the meaning of section 29 of the Act of 2014) ceases for every specified area within the administrative area of that authority." If Maura Higgins had said that on "Love Island" last night, the fella she was talking to would most definitely have walked away from her.

Deputy John Paul Phelan: I was hoping he would walk away.

Senator Anthony Lawlor: Will the Minister of State explain exactly what that means?

Acting Chairman (Senator Diarmuid Wilson): I ask Senator Lawlor not to refer to people who are not here to defend themselves.

Deputy John Paul Phelan: That provision specifically relates to the harmonisation issue that Senator Mulherin mentioned. Once the period ceases, the local authority can make the alleviation scheme. It is referencing the abolition of town councils and the amalgamation of the various rates that existed. In Kildare, I am sure that Naas Town Council had a rate. I am not sure about Newbridge Town Council.

Senator Anthony Lawlor: It did not.

Deputy John Paul Phelan: Did Leixlip have a town commission?

Senator Anthony Lawlor: No. Naas and Athy did.

Deputy John Paul Phelan: Naas and Athy were-----

Senator Michelle Mulherin: There is loads of money in Kildare anyway.

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Deputy John Paul Phelan: There used not be.

Senator Michelle Mulherin: We have a small rates base in Mayo.

Deputy John Paul Phelan: We hope to have the regulations as soon as possible. What was Senator Lawlor's second question?

Senator Anthony Lawlor: The hierarchy of the paragraphs, which starts with the national spatial strategy.

Deputy John Paul Phelan: There is no hierarchy. The local authority members will decide. They can agree an alleviation scheme that is based on their local area plan, their county development plan and Project Ireland 2040. It can have elements of them all, but there is no hierarchy. It is for the members to devise a scheme that has a basis in policy, be that local or national policy. This is meant to avoid willy-nilly decision making.

Senator Anthony Lawlor: What happens if local policy goes against national policy?

Deputy John Paul Phelan: Local policy does not go against national policy. The Office of the Planning Regulator, which was admittedly recently established,-----

Senator Anthony Lawlor: Local authority members will know it is there.

Deputy John Paul Phelan: -----ensures that such clashes do not happen.

Senator Alice-Mary Higgins: I sit on the Joint Committee on Climate Action, and we have been discussing the issue of retrofitting. Large-scale changes will be required. We have been focusing on housing, but they will also affect businesses and others across the country. I reserve the right to try for an amendment on Report Stage. If a local authority that is trying to achieve a climate or environmental target wants to give an incentive in the form of even a partial waiver of rates or a reduction in same in respect of those businesses that engaged in active retrofitting, how would that fit with this Bill? I may table an amendment on this.

Deputy John Paul Phelan: It would fit squarely within section 15. If it is a policy objective of the local authority or, as in this example, the recently announced Government policy on climate change, what the Senator outlined is something that could have many impacts, particularly in respect of older retail premises. To use the example again of a small drapery shop on a main street in a rural town, insulation and energy preservation might not have been significant issues heretofore, but if the owners retrofit their shop, section 15 as drafted will allow the relevant council - it could be urban or rural - to reduce the rates payable in a given year under its alleviation scheme where premises have been retrofitted. It will fall to each local authority and to council members to make their own scheme. The example given by the Senator is a perfect example of what would fit in section 15.

Question put and agreed to.

Sections 16 to 20, inclusive, agreed to.

SECTION 21

Acting Chairman (Senator Diarmuid Wilson): Amendments Nos. 3 and 4 are related and may be discussed together, by agreement.

Senator Gerard P. Craughwell: I move amendment No. 3:

In page 18, line 43, to delete “year.” and substitute the following:

“year.”,

(e) in Schedule 4 by the insertion of the following paragraph after paragraph 22:

“23.—(1) Any building or part of a building occupied by a member of a local authority which is used exclusively for the purposes of accommodating his or her constituency office and the whole or

part of the expenses incurred in maintaining that accommodation are defrayed by that member or representative.

(2) In this paragraph ‘constituency office’ means an office which is used solely for the provision of representative services by the member of a local authority concerned in his or her capacity as

such a member or representative but does not include the head office of a political party or any other office occupied by a political party.”.

In light of the presentation the Minister gave here last night, and his commitment to look after public representatives with respect to rates, there is no point in pressing this amendment today. I will withdraw it and I thank the Minister for his commitment to those who represent citizens.

Senator Jennifer Murnane O’Connor: The Minister has been in talks with the AILG and councillors, which I welcome, and I am aware that there is a review into the matter. We have many good public representatives who do very good work and it is important that the Minister meets with them. I am happy that the Minister has come to an agreement on this.

Senator Kevin Humphreys: Senator Craughwell seems to be indicating that there is agreement but my understanding is that there is an agreement to meet to discuss these measures, not an agreement on the part of the Minister to concede to the amendment.

Deputy John Paul Phelan: I have agreed to the amendment.

Senator Kevin Humphreys: That is clear, then.

Acting Chairman (Senator Diarmuid Wilson): Despite everything Members have said, Senator Craughwell is not yet a Minister in the Government.

Senator Kevin Humphreys: It would probably be a step down for the Senator to be a Minister, given that he had wanted to be President.

Acting Chairman (Senator Diarmuid Wilson): He may have to make a decision.

Senator Paddy Burke: I welcome the announcement that the Minister made on Second Stage yesterday to the effect that any councillor who wishes to work in an office providing a service to the public should have a rates-free property. I know the Minister is committed to delivering this and I welcome that too.

Deputy John Paul Phelan: I made a commitment to the AILG to address the issue, outside

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the legislative process if I can do that. I recognise that it is a matter of concern for councillors. It was an anomaly in the rates legislation of a number of years ago that the offices of Oireachtas Members were rates-exempt while those of other public representatives were not. I do not think this was done on purpose but was an oversight. The playing pitch has to be levelled fully and I would include MEPs in this also. Commercial rates should apply to commercial activity, whether it is in a charity shop or a large multiple, but they should not apply to stuff that is not commercial activity. It should apply to councillors' offices as well as those of Oireachtas Members.

Senator David Norris: What a surprise.

Deputy John Paul Phelan: It is not a commercial activity.

Senator David Norris: Of course, it is.

Acting Chairman (Senator Diarmuid Wilson): The Minister, without interruption.

Senator Paddy Burke: Does Senator Norris have a different view as regards Senators?

Deputy John Paul Phelan: Senators' offices are included also.

Senator David Norris: I do not have an office.

Deputy John Paul Phelan: I will meet a delegation from the AILG and on 16 July I will also ask LAMA to discuss how best to address it. A review of Schedule 4, which is the exempted properties list, is under way and it would be logical to amend that, although there may be other ways to do it without requiring primary legislation. In any event, it certainly will be addressed.

Amendment, by leave, withdrawn.

Senator Kevin Humphreys: I move amendment No. 4:

In page 18, line 43, to delete "year." and substitute the following:

"year.",

(e) (i) in paragraph 19(1) of the Fourth Schedule, by the substitution of "a member of either House of the Oireachtas or of a local authority or a representative in the European Parliament" for "a member of either House of the Oireachtas or a representative in the European Parliament",

(ii) in paragraph 19(2) of the said Schedule, by the substitution of "the member of a House of the Oireachtas or of a local authority or representative in the European Parliament concerned" for "the member of the House of the Oireachtas or representative in the European Parliament concerned.".

Amendment, by leave, withdrawn.

Question proposed: "That section 21 stand part of the Bill."

Senator Paddy Burke: When there is a revaluation of a county the Valuation Office issues the local authority with a global valuation certificate, with a new valuation for the whole county. However, I have been intrigued over the years by the fact that the valuation never changes.

When new businesses start with huge rates, the valuations of other properties do not go down. In my county, the gas pipeline went right through the centre of the county, from the west coast to the east coast. It had a huge rates bill of over €1 million, which the local authority is lucky to be getting. It should mean the valuation relating to other ratepayers should go down. When new properties come online with big valuations, one would expect the global valuation certificate to change but I have never seen that. It always goes up, in every town, and the valuation of Dublin, for example, has probably quadrupled in the past 30 years.

Deputy John Paul Phelan: The Senator is referring to buoyancy where new businesses open. When the revenue-neutral aspect of the revaluation process is mentioned, it means it is revenue-neutral in terms of the existing rates base. When a new business opens, such as when a wind farm is rated, the initial revenue does not go towards evening out the rates that are collected. “Revenue-neutral” refers to the existing rate base. Global buoyancy is included by amending section 56 of the Valuation Act. One of the main provisions which makes this legislation so time-sensitive is that there are a number of local authorities that will shortly embark on the revaluation process, at the same time as a revaluation for utilities is about to commence. Buoyancy created by new developments by utility companies could have been included in the overall pie of rates revenue in the relevant local authority and could have led to large utilities benefitting greatly from the rates revaluation, to the detriment of smaller businesses. This legislation separates the process of revaluation of global utilities from the process for mainstream business in a local authority area, such as Senator Paddy Burke’s.

Question put and agreed to.

Section 22 agreed to.

SECTION 23

Question proposed: “That section 23 stand part of the Bill.”

Senator Paddy Burke: I want to ask the Minister of State about the local area development plans and economic and spatial strategies. We have seen a recent High Court decision regarding Barna in County Galway where the local area plan stated that the Barna population was now nearly 2,000 people. The plan was put in place in 2018. The projected population for 2021 was an additional 420 people. The councillors said that they expected the population of Barna to grow by 420 up to 2,420 people.

Deputy John Paul Phelan: This would be 20% increase.

Senator Paddy Burke: Yes, that is a 20% increase. This was an application from a developer to build 190 to 200 units of housing. The judgment in the case, with which I have no dispute, said that this development would more than likely put the projected population of Barna over the projected 2,220 figure, and planning permission was refused.

Councillors could set a local area plan by saying that they do not believe the population of the area will grow by more than 10% or 20% over the period of the plan that they are adopting. This can have huge consequences at the end of the day for a country that has a significant housing crisis. This is an area at which the Minister of State should look very closely.

It was not the only reason that this planning application was refused but it sets a trend throughout the country. This is an area that the Government or the Minister of State’s Depart-

ment should look at. Local authorities should probably have more tools available to say what their projected population is going to be. The Government has the Project 2040 strategy which wants to grow the population of the country by over 1 million additional people by 2040. Area action plans that have been arrived at by just saying that the population will grow by 10% or 20% over a given period could have huge consequences for homeowners and for people who want to live or buy a house in a certain area.

Deputy John Paul Phelan: This issue is not really directly related to this amendment and I cannot comment on specific cases but the target of a 20% population increase in any area is not an unreasonable one to set. In the example given, if the population of an area is 2,000, there are roughly 600 to 700 dwellings there. If a planning application comes in for another 200 dwellings, this would appear to be a very significant application in the context of the existing development. I will not discuss individual applications other than to say that I agree with Senator Burke that the population projection increases will have an impact on where people are going to live. That is part of its aim.

There is a clash in this and it exists in the Customs House as it exists everywhere else, between the desire to ensure that people live in areas that are properly serviced with more than just water and sewerage, footpaths and lights, and that they have the other services that come with having a significant population base which is coupled with the other desire and need that people have to live in rural communities. The traditional Irish population dispersal which has always obtained - there is no better example than in the Senator's own county of Mayo - was whereby the population in the middle part of the last century was probably twice what it is now, and was higher again before that.

A balance needs to be struck. The Senator is correct in pointing this out. It needs to be struck between having objectives for reasonable and proper planning and development and ensuring that, in particular, rural areas have the necessary population increase to sustain services and communities into the future.

Senator Paddy Burke: My point is that I do not believe that the limiting factor should be a percentage. I do not know what kind of facilities or services Barna has but if it had a lot of services for roads, sewerage and water that could accommodate 1,000 or 2,000 extra people, why should the limiting factor be 20%, as probably was set two or three years ago?

I believe that the upper figure should be limited or interrelated to the services that are available there. It should not be just a percentage that is taken out of the sky, where we are hoping the population will grow by 20% here and then we find that it could have an enormous effect on the development of much-needed houses in that particular area. If the services are there, with schools, water and roads, this percentage should not be a limiting factor.

Deputy John Paul Phelan: The future of development, particularly what we saw during the worst excesses of the Celtic tiger period, was the sprawl of Dublin in particular into the neighbouring counties and into the midlands, as far as Laois and even parts of my own area in Carlow and Kilkenny, where so many people are commuting. The future population increases are largely going to be based on proximity to work, as we face climate challenges and ensuring that we meet targets. The awful situation that so people face on a daily basis where they have a commute or drive up the M7 from the midlands to Dublin, where they are sitting probably four hours a day in a car in traffic is not sustainable from an environmental perspective. It is the same on a smaller scale in every community throughout the country. We cannot have a situa-

tion where we see dormitory towns develop just because they are serviced. There needs to be approximately to work, education and to the services that people require as to whatever stage they are at in their lives.

Senator Burke is correct to point out that people are not aware of the potential impact that this might have for planning and development into the future, but it is equally important that we radically change from the planning and development strategies that we had up to 2010, in that era of so much development across the country.

Question put and agreed to.

Section 24 agreed to.

SECTION 25

Question proposed: "That section 25 stand part of the Bill."

Senator Paul Gavan: We support the general thrust of the Bill but I and our party have a particular concern about section 25 which we oppose. In simple terms this is because section 25 refers to protected structures and suggests bringing the two-year limit down to one year. I have a problem with that due to the unintended consequence. By way of explanation, in a real example in Clondalkin, a colleague of mine rents a protected structure for €900 a month. The commercial rent for a two-bedroom house in Clondalkin is €2,200, which is kind of shocking.

If I was the landlord of that protected structure, I would take an economic decision and say that I will keep that house empty for a year because then I can move the rent right up to €2,200 and, effectively, I receive a much bigger profit on the back of it than if I continue to rent the apartment. The unintended consequence is that the house would remain vacant for a year in the midst of the worst housing crisis in the history of the State. There is no need for this section. I have given the Minister of State a clear example as to why it needs to be removed. I hope he listens because the consequences are too significant. We have to legislate for the broad population, not the landlord population.

Senator Máire Devine: Hear, hear.

Deputy John Paul Phelan: Senator Gavan's colleague gave an example in the House. If the 24-month period applied, it would still be more profitable for the landlord to hold the property out of letting for 24 months, let alone 12 months. The purpose of the 12-month change is to ensure that there are a limited number of protected structures that are let out. It was felt after the passage of the most recent legislation in this area that there was a potential loophole left that could cause an unintended consequence whereby some of the existing protected structures that are let and some that might be let into the future for housing would not be let. In the example the Senator has given, even if his proposal were to be adopted, it would not prevent the landlord from holding the property out of letting for two years. He or she would still make substantially more money by doing that.

To give the specific answer, before my officials turn on me again, concerns have been raised that it is not possible for works undertaken to protect the structures to qualify for an exemption from the 4% per annum rent increase restriction applicable in rent pressure zones and that this might result in a loss of such units to the sector. Amendments to section 19 of the 2004 Act, enacted in May of this year, provide for works to improve building energy ratings as qualifying

for the exemption. However, because protected structures are exempted from BER regulations, work to improve their energy rating cannot qualify. It was missed at the time the legislation was passing. In recognition of this and to encourage continued investment in protected structures for use in the rental sector, the Bill proposes to amend section 19(5)(a) of the 2004 Act further to allow the first rent set under the tenancy of a protected structure dwelling that was not rented out in the previous 12 months to be set at a level that does not exceed the market rent. Thereafter the 4% rent increase restriction will apply. For dwellings that are not protected structures, a vacancy period of two years prior to the rent setting will continue to be required to qualify for the exemption.

Enactment of the amendment to this Bill during the immediate aftermath of the 2019 Act should help to eliminate a potential negative impact by those changes on the planned refurbishment of protected structures in the rental sector and should help maintain the supply of that particular, albeit small, category of rental properties. It is true that a protected structure in a rent pressure zone might become vacant and a landlord could decide to keep it off the rental market for 12 months to qualify then for the exemption. We must remember that a landlord renting out a protected structure who decides to take this course of action will do so at the loss of a year's rental income. This would likely be a substantial loss, particularly in Dublin or any of the rent pressure zones. It is highly likely that the number of landlords with rented protected structures choosing to take this course of action would be low. I think it would be very low because there are just not that many protected structures being rented at the moment. We should be doing more to encourage protected structures back into active use. The return of the property to the sector 12 months later, even at a higher rent, is still preferable to its permanent loss to the sector. Without this exemption, it is likely that protected structures in the rental market that are in need of refurbishment will not be refurbished or will be sold on the open market with a possible loss of the dwelling to the rental market. We have to secure the supply of much-needed homes that comply with minimum standards for rental accommodation. A key point to remember is that the 2004 Act provides significant protections of tenants from eviction. Any suspected so-called economic eviction should be referred to the Residential Tenancies Board for resolution and redress. The amendment in this Bill should stand to benefit both tenants and landlords. We are talking about a very narrow category of dwellings.

Senator Mulherin mentioned vacancy levels in the centres of many of our towns and cities. Many of the buildings in the centres of towns and cities are protected structures. I was speaking at an event in City Hall in Dublin recently. I was having some tobacco outside the door and one of the ushers was there. We were talking about the upstairs of the buildings across the road from us. They are beautiful brick buildings, I do not know from what era. They are all vacant, most of them protected and not let out. We should be doing more to ensure that protected structures become available on the rental market. The effect of Senator Gavan's proposal would be to ensure that we would have fewer.

Senator Alice-Mary Higgins: With respect, there is something of a contradiction in the Minister of State's answer. He thinks few people will seek to leave a place empty for one year because of the loss, but he says that if it was two years, they would equally benefit. He says he does not believe many will seek to use this as a loophole in terms of leaving a place vacant for one year. While he thinks one year is a disincentive, somehow he does not think two years would be more of a disincentive. I believe it would be. He mentioned the measure in the Finance Bill last year whereby we gave tax reliefs for refurbishment and additional tax reliefs for loans taken out by landlords for refurbishment. The loophole of refurbishment has been

coming up repeatedly in respect of the security of Part 4 tenancies. This is the idea of a core of citizenry who have a sustained relationship with their dwelling place and can make plans. Anything that could incentivise disrupting such tenancies is a concern. It is a fundamental issue. We are going to have to address it not just in respect of protected structures but more broadly. It was raised in the climate committee, when we were discussing how to deal with retrofitting. It cannot simply be the case that these loopholes exist. There must be a mechanism, even if it is a temporary suspension of a Part 4 tenancy and a resumption of it at an established rate with a mind to the 4%. A 4% increase every year is not nothing. It is way out of step with increases in people's wages or incomes. We should not act as if the current rent control limit of 4% in rent pressure zones is not significant.

I sympathise with my colleagues and support their proposal. I am thinking of the description in *Ulysses* of people who are so fortunate as to reside in a Martello tower. That is one sort of protected structure. There are a wide range of buildings that are protected structures and a wide range of established tenants, some of whom are living in the same place for 20 years under Part 4 tenancies. I would hate to see what could be in many cases vulnerable and older tenants potentially being made more vulnerable if not enough thought was put into this section.

Deputy John Paul Phelan: I understand the points the Senators are making. One of the purposes of the previous Bill on residential tenancies that was voted on here, I think in May, was to close off some of those loopholes. Some landlords were abusing the principle of refurbishment and using a lick of paint or whatever as an excuse to impose a rent increase of over 4%. Equally, though, I stand over my point and do not see the contradiction.

5 o'clock

The point I was making earlier to Senator Gavan is that, essentially, to use his example, the difference between a rent of €900 per month versus €3,200 per month is approximately €15,000 per annum. If the landlord held the property out of tenancy for two years it would still be more beneficial for him or her to do it. The purpose of the amendment when it was introduced in the Dáil was to try to ensure that we do not have an adverse effect on the supply of protected structures that are in rental accommodation, albeit small. We should do more to try to encourage protected structures into rental accommodation.

Question put and agreed to.

Sections 26 to 28, inclusive, agreed to.

Schedule agreed to.

Title agreed to.

Bill reported without amendment, received for final consideration and passed.

Local Government Rates and Other Matters Bill 2018: Motion for Earlier Signature

Senator Paddy Burke: I move:

That pursuant to subsection 2° of section 2 of Article 25 of the Constitution, Seanad

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Éireann concurs with the Government in a request to the President to sign the Local Government Rates and Other Matters Bill 2018 on a date which is earlier than the fifth day after the date on which the Bill shall have been presented to him.

I wish the Minister of State well with the Bill. It is a very important piece of legislation that he has brought to the House and that the House has passed. I am sure councillors will be happy with the intended proposal the Minister of State will make when he meets with the Association of Irish Local Government, AILG, and the Local Authorities Members Association, LAMA. The legislation is long overdue and in many ways will ensure local authorities have a closer look at how they view and agree their budgets and the valuations will be agreed as well.

Senator Victor Boyhan: I wish the Minister of State well and thank him and his officials who gave us a briefing. I was watching some of the debate earlier and I thought how many more Members would have benefited if they had gone to the briefing. I thank the officials for their very detailed briefing last week. This is more power to local government and that is the message we need to get out. We must communicate that message. I hope there will be other areas where we can devolve powers and functions to councillors but, ultimately, councils then must take up the challenge and run with the powers we give to them. I thank the Minister of State and in particular his officials for the briefings and answering the queries as we went through the process.

Senator Anthony Lawlor: I also thank the Minister of State and his officials. This is an excellent piece of progressive legislation that gives more power to local authority members. I remember calling for it when I was a member of a local authority, in particular the amendment to allow a local authority to decide what rates should be paid within its region and what type of alleviation scheme to introduce. I hope we can get the regulations out as quickly as possible because that will mean there is potential for the scheme to be up and running before the year end.

Senator Jennifer Murnane O'Connor: I thank the Minister of State. I too met with his departmental officials. The biggest issue I had related to crèches and playschools. I got a lot of confirmation for them and I thank the officials for that. This is a significant improvement for businesses, local authorities and councillors. All of us are working together and we want to make sure that our areas are well looked after. The Minister of State and I share the same area and I know we will give 100% to our area and make sure we do our best.

Minister of State at the Department of Housing, Planning and Local Government (Deputy John Paul Phelan): I thank Senators for the debate and their interesting and thoughtful questions. I also thank my officials for their work and for giving up their summer holidays.

Question put and agreed to.

Genetic Testing: Motion

Senator David Norris: I move:

That Seanad Éireann-

bearing in mind:

- that screening for genetic disorders would allow for life-saving treatment for at least one child per week,

- that this represents a considerable saving to the Exchequer in terms of obviating lengthy, expensive and ultimately ineffective treatment,

- that Italy has gone from 4 to 40 screenings in one year,

- that the Italian authorities have offered to assist Ireland in expanding the genetic testing system here,

welcomes the positive attitude of the Minister for Health, Deputy Simon Harris, and requests the Government to immediately instigate a programme of expansion of screening for genetic disorders in Ireland.

This is one of the most important debates in which I have taken part in the past 32 years in which I have been a Member of the Seanad. As a result of the debate this evening we may in fact operate to save the lives of up to 50 newborn children. We are greatly honoured to be the presence of the family of Les Martin, his wife, Lynda, his daughter, Holly, and his two sons, Cathal and Ciarán. They are a remarkable family. If one looks at the picture on the front of the briefing document they gave us, they could be an advertisement for a health farm but, unfortunately, they are an advertisement for an ill-health farm because of the situation regarding two of their children.

I previously raised the issue in February because I was contacted by Mr. Martin. The two children, Cathal and Ciarán, suffer from metachromatic leukodystrophy, which is a very rare disease but it can be addressed. If children are diagnosed early enough they can go through life without any serious disadvantage. That is the situation we are addressing. Cathal was two and a half when he was diagnosed, which was far too late and, unfortunately, there is virtually no hope for him. There is, however, hope that by pushing this measure we can ensure that no further children are left to die. This will be lasting testimony to the brief life of Cathal Martin. Les Martin's other child, Ciarán, was taken to Italy for treatment.

I am sorry, I should have said that I particularly welcome and appreciate the presence of the Minister tonight because I understand that he is not at all well. He has come here from his sick bed to be with us and that is extremely important. It is an indication of how seriously the Department of Health is taking this matter. I know the Minister has met with the Martin family. They are interested in having a law passed. At the instigation of a Senator, Paola Taverna, a law was passed in Italy which has radically changed the situation of these children. I have taken steps to prepare such a law. I was speaking with the Minister of State, Deputy Finian McGrath, and he said that his Department will be happy to co-operate with me. I hope to have such a law prepared by the autumn. With the co-operation of the Government, I believe it will be passed.

As I have said, the Martins are a wonderful, engaging family with three children. There is a need for an expanded national screening programme and for laws to protect children from these very difficult situations. At the moment eight rare diseases are screened for in Ireland. In the United States that number is 35 and in Hungary it is 26. Italy increased the number from four to 40 within the space of one year. We can do the same and we must in order to help these children.

The cost of the screening process is €50 per child. It is a heel-prick test. A tiny sample of

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blood is taken from the heel of a child. This is done between 48 hours and 72 hours after the birth or before the baby goes home from the birth centre. A small blood sample is taken from the baby's heel and then blotted and dried on filter paper. It is a dried blood spot. The sample previously used to screen for phenylketonuria, congenital hypothyroidism and cystic fibrosis as part of the compulsory regional screening system. It can now be used to screen for 40 disorders. No further samples are needed. This is what we need to do here.

It is a perfectly simple thing and it costs only €50. I know the Minister understands this situation. He should think of the millions of euro that will be spent on treating these children as they proceed on their tragic journeys. It is unnecessary. It is really tragic for a beautiful family such as this to have deal with their children having such conditions. The cost would be €3.5 million in a year but it would save hundreds of millions of euro in treatment costs. There are 62,000 children born in this country every year. One in 1,250 will have a rare disease. The HSE says that it is possible to implement this immediately, so let us do it.

We should also consider the possibility of having a rare disease day in Ireland to let people know about them. Without Les Martin and his family, none of us would know about this. It is his campaign that has alerted us to it. The HSE seems to be on board. The Department of Health produced a rare disease plan for the period from 2014 to 2018. So far only two of the 48 items in that plan have been actioned. I will quote from page 26 of this plan. Under "Weaknesses of current National Newborn Screening Programme" it says "Newborn screening is an essential public health responsibility, not currently mandated by law and lacking the appropriate legislative framework in Ireland." This evening I am committing myself to introduce such a law in co-operation with the Government. The plan goes on to say:

There is no health economics evaluation of newborn screening. There is a lack of patients' advocacy groups, in particular for newborns, and a lack of public understanding of the merits and public health consequences of appropriate newborn screening for the Irish population. Difficult economic conditions and a health system under reform and reorganisation present considerable challenges to the Newborn Screening Programme.

We are somewhat out of the woods with regard to the financial collapse. I know we still have a debt of €205 billion, which is pretty shocking, but 300,000 families are living at home with children with rare diseases. They are acting as carers for these unfortunate children. Mr. Martin has told me that he has spoken at length with the four key people in the HSE and the Department of Health who run the screening programme and they agree with his suggestion. They agree that expanding screening is the correct thing to do but they cannot say so publicly because the HSE operates on the basis of collective decision-making and so has to show a collective front.

The answer is to screen for everything. That decision will be made by the national screening board which will soon be in place. I very much welcome its establishment. I also welcome the Minister's positive attitude with regard to these matters. I am concerned, however, that it will take the board ages to act and that it will look into every single individual condition. That would take forever. We need a law which will introduce such screening. Let everything else follow from that.

Mr. Martin used an interesting analogy. The construction of the M50 allowed for the development of industrial areas and adjoining towns in subsequent years. People are concerned. They ask what will happen if, after introducing these measures, other issues arise. Let us put

a catch-all phrase in the Bill which would cover any further rare diseases for which treatment is available. Concerns about privacy have also been expressed to me. There is concern about the selling on of genetic information and so forth. This legislation would include a privacy clause to deal with such a situation. There are also side benefits to this. The detection of 50 new patients with rare conditions offers a wonderful opportunity to examine these conditions and to study them scientifically and medically. There is the possibility of terrific investment in research.

Questions on this issue have been raised in the other House. On Wednesday, 19 June there was a Fianna Fáil motion on maternity care to which Sinn Féin proposed an amendment - and I commend Sinn Féin on this - which said that we must guarantee the right of every child born in Ireland to be screened for all diseases for which there is a viable treatment. This was voted on in the Dáil on Thursday, 20 June. That is a wonderful advance but we need a bit of action on it. It is not enough just to have a vote. We have to see a bit of action to go along with the vote.

The law will ensure that the screening programme proactively looks outward every two years to revise the lists of conditions screened for, thereby protecting it into the future and consigning to the past the sight of grieving parents. We have two grieving parents with us this evening. They are asking for their kid's disease to be included so that the next child might be saved. I know it is wrong to involve the President of Ireland, Michael D. Higgins, in these matters and I do not intend to do so, but there has been communication with him and he has indicated that he sees this as a human rights matter. That is all I will say on that point. He is not saying that we must introduce a law, just that the issue is one of human rights. Once again, the President is 100% right.

The referendum on the repeal of the eighth amendment was passed. I was in favour of repeal. Abortion is a very difficult issue to address and the Minister did so very honestly and very openly, as did the Leader of the House, Senator Buttimer. He was absolutely excellent in chairing that committee. We were able to open ten abortion clinics in one year. Why can we not do the same to save lives? The saving of life is even more important than providing facilities for abortion. We spent so much time convincing ourselves that abortion should be allowed, why should we not do something for the babies that continue to live?

The HSE might argue that we cannot screen for every disease if we do not have the facilities to care for those who have them. That logic is flawed. The patients are going to exist anyway. They are going to come into existence and they will die. Screening is available for €50 a child so there is no excuse whatsoever to delay its introduction. I will once again say that I am extremely grateful to the Minister for coming from his sick bed to address us this evening. It is a token of the interest he takes in the matter. As I have said, he has met with the Martin family already. I believe the Seanad will do something extremely important and historic.

I have met the parents and their children. They are the most delightful children anyone could possibly meet. This is important. Cathal has very little chance but he will leave behind a lasting memorial for the lives of up to 50 children who will be saved as a result of his circumstances.

Acting Chairman (Senator John O'Mahony): I understand that Senator Boyhan wants to second the motion. We will then hear from the Minister.

Senator Victor Boyhan: I second the motion. I will be brief. I thank Senator Norris for

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using Private Members' time to discuss this important issue. I welcome the Martin family and their children. I also welcome the Minister and note the importance he has afforded this debate by being present.

The motion seeks, in the context of the heel-prick test administered to newborn babies, to increase the number of disorders tested for from eight to 40 in order that doctors might identify potential illnesses that could possibly be cured or curtailed if diagnosed at an early stage. The campaign, as Senator Norris stated, is being pursued by the Martin family on behalf of their son, Cathal, and others. Cathal is terminally ill with metachromatic leukodystrophy. I understand that the Minister has met the family and that he is sympathetic and generally supportive of an increase in the level of testing. I hope he will inform the House that he is not going to oppose the motion.

This motion is important. As Senator Norris stated, every citizen in Italy has the right to be screened at birth for all conditions for which there are feasible treatments. It is my hope that we can apply this in an Irish context. I look forward to hearing the Minister's response.

Minister for Health (Deputy Simon Harris): I thank the House for the opportunity to speak about our national newborn screening programme. In particular, I thank Senator David Norris for tabling this Private Members' motion on such an important topic. I am a long-time admirer of the work of the Senator. The families affected are lucky to have such a champion in him. When Senator Norris takes an interest in a human rights issue, he takes it seriously and will see it through. I look forward to working with him in that regard.

I understand the genuine interest in this matter and I share it. We have all heard about the real-life experiences of parents whose children have been affected by rare diseases. Most recently, as the Senator stated, I had the opportunity to meet Les and Lynda Martin, whom I welcome to the Oireachtas. They are parents to two young boys, Cathal and Ciaran, battling a rare disease. I welcome their sister, Holly, as well.

What seems complex and difficult to the rest of us is personal to Les, Lynda and their family. They have shown remarkable courage and determination in telling their personal story. People do not tell their personal stories because they want to do so. They do not do it for the sake of it but because they want to improve the system and ensure that no other family has to endure the difficult circumstances they have endured. People tell their personal stories to change minds, hearts, policies and laws. In telling their story, the Martin family have brought a renewed focus and priority to this matter and I thank them for that. Les and Lynda opened the doors of their family home to me. I was delighted to be given an opportunity to meet them, their children and Biscuit, the family dog. They are a special family and one I hold in high regard. I thank them for being here this evening.

Like so many facing adversity, they strive to make the situation better for those around them in future. I am keen to work with them and the House on this matter. Senators have already referenced how there have been cross-party initiatives and efforts across the spectrum to progress this issue. I commit to working with all Members to achieve our united goal of making our screening programme the best and strongest it can be and to working with other countries to achieve best international practice.

Ireland has a well-established newborn screening programme. It was one of the first countries in the world to introduce a national newborn screening programme, which it did in 1966.

We were world leaders in this area. Newborn screening, more commonly known as the heel-prick test, is offered in respect of all newborn babies in Ireland through their parents or legal guardians when they are between three and five days old. It is a completely safe procedure that checks a sample of the baby's blood for eight rare conditions that are treatable if detected early in life. We have expanded the programme in recent years. Up to December 2018, we were screening for six conditions. Since then, the test has been expanded to screen for eight conditions. Most babies born in Ireland will not have any of these eight rare conditions that the heel-prick test checks for. It is important to state that for expectant parents who may be watching this debate. However, for the small numbers of babies who do, detecting a condition early has major benefits. It means treatment, established as effective, can start early. This can then improve their health and prevent severe disability or even death. Each year, over 100 babies are identified and treated. Yet, the benefit is greater still. It helps a family to plan, prepare and make decisions on future choices as well. That knowledge and certainty is important.

As Senator Norris mentioned, Italy recently enacted legislation for mandated national screening. Extended screening has become a mandatory national public service in Italy and every newborn there receives a free and compulsory test. The test can provide early diagnosis, shortly after birth, in respect of almost 40 rare metabolic hereditary diseases. The Italian approach is certainly generating much discussion and debate at EU level. Unlike what Senator Norris has suggested, the health authorities in Italy also screen for some conditions that are not treatable. That is a matter of ethical debate. They screen for conditions that are treatable and also those that are not. Last month, at the request of Les Martin, I had the opportunity to speak to my Italian counterpart, Ms Giulia Grillo. I also had the opportunity to meet her Italian delegation at the recent Employment, Social Policy, Health and Consumer Affairs Council in Luxembourg. I had the chance to discuss their approach and to ask if we can learn from them and their experiences. They kindly offered to host my officials on a visit to Rome to discuss further their policies and to see their facilities. I am pleased to say that my officials, at my request, have accepted that invitation and are now working out a suitable date for the visit.

Senator David Norris: That is excellent.

Deputy Simon Harris: It is important to state that we are not standing still in Ireland. I would hate anyone to think that. In an Irish context, we have already started the ball rolling in the right direction. As the Senator indicated, a national screening committee will be established this year. The mind boggles that we have never had one before but we will now have a national screening committee in our country. The idea is that it will strengthen the governance, transparency and oversight of any proposed new national screening programmes or changes to existing programmes.

Let us remember where this came from. This was a key recommendation of the Scally review of 2018. I am glad to report that the work is progressing well. I am pleased to tell the Seanad that I have appointed the chairperson of that new national screening committee. I have appointed Professor Niall O'Higgins as chairperson. He is an excellent and eminent physician. He is highly regarded and has a significant track record. I look forward to working with him. I met Professor O'Higgins last week. While I respect completely the independence of this new national screening committee - its independence is important - I asked that, as part of its initial body of work, it prioritise a review of the national newborn blood-spot screening programme and look specifically at how Ireland should best proceed with an expansion in line with international best practice. I am pleased the chairperson has agreed to this course of action. Les Martin is constantly eager for me to make progress and not wait. I fully understand that. In the

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meantime, I have asked my Department to do some preparatory work and analysis that we can hand over to the screening committee. I am pleased the committee will be set up this year. It will work closely with and learn from the equivalent national screening committee in the UK.

Ireland has always evaluated the case for commencing a national screening programme against the international accepted criteria and the evidence bar for commencing such a programme should and must remain high. Different people will have different views on this. As a relatively new parent, I would have liked the option of my baby being tested for many conditions, even for some that are not treatable so that we, as parents, could know more. Other parents may prefer not to know and that is fine as well. In my time as Minister, I have adopted a view of being pro-choice. I am very much pro parents' choice in this regard as well. The mandatory element of the programme in Italy concerns me somewhat. I am keen for a parent to have the right to know and have the test. However, I would also respect the contrary view from an ethical point of view especially for conditions that are not treatable. Some parents may wish not to know. I have had a chat with Les Martin and others in that regard. It is about choice and providing the option.

It is correct that the number of conditions screened for by member states in Europe varies significantly. My Department has done an initial body of work in this regard. For example, Malta only screens for two conditions. As indicated, Italy screens for over 40. We screen for eight. The United Kingdom screens for nine. This is not a scientific tally but it seems the average number that countries screen for is a number reaching the teens. It is fair and objective to say that Ireland is screening below the European average. Italy is very much above average and Malta is well below it. This variance does not necessarily reflect major differences in the genetic background of populations, or estimated prevalences, but rather highlights different member states' approaches to the estimation of risks and benefits in their populations and responses to the cultural demands and ethical difficulties arising from a lack of evidence to screen for many of these rare conditions.

Newborn screening is only a small but important part of what is a very exciting new era of genomic medicine. There is considerable debate about it and I have read much of it. It has the potential, if done correctly, to transform medicine, to get into personalised medicine by using new technologies and therapies, and also meet ever-increasing and understandable expectations.

There are internationally accepted criteria that need to be met before commencing a population screening programme. We must continue with a robust, methodologically sound and detailed analysis of the evidence in each case. A point I would make to Senator Norris, which I have made to Les Martin and some of the rare disease advocacy groups, is that I have no difficulty with a law in this regard, none whatsoever, but I would have a difficulty with, and I do not believe it is the Senator's intention, crossing over that line into clinical expertise. There is a role for clinical leadership here and a role for political leadership. Together we must try to get to where want to go, where we listen to the voice of our clinicians, where we bring our clinicians with us, where we allow them to learn from other countries about best international experience and where we, as policymakers, set the policy. We have a policy role and they have a clinical and medical role and a medical ethical role. I would hope that the combination of the leadership this House has shown tonight, the leadership I will offer and the leadership the national screening committee will offer, from a clinical perspective, we can align in that regard. That is extremely important.

We have seen in this country in recent months and years the importance of having confidence in our screening programme, clinical robustness behind our screening programme and proper governance and transparent structures. That is not in any way to dampen or pour cold water on this motion. It is merely to be constructive in terms of how we take these next steps but I say that believing we can take them and that we should expand our newborn screening programme. It does not feel right to me that Ireland is screening for fewer conditions than the European average. That does not sit well with me. That is the why I have asked the new national screening committee, as its first body of work, to examine how we can expand the screening programme and learn from best international practice.

I am genuinely grateful to Senator Norris for the opportunity this debate provides. To answer Senator Boyhan's question, I am certainly not opposing the Private Members' motion, and I thank him for his comments. As I said, I am currently implementing the recommendation in the Scally report to establish a national screening committee. Its inaugural meeting will take place this year. I have asked that the important issue of newborn screening and its expansion, in line with best international practice, be its first body of work.

That is not all I want to do, and I know it is not all Les and Lynda Martin, want to do with respect to rare diseases. There is much more we need to do in that respect. Senator Norris rightly mentioned our national rare diseases plan. I understand the reason we use the phrase "rare disease" but it does not capture it. Much of this is not that rare. A large number of people in Ireland are impacted by rare diseases and we need to do much more. One of the actions I agreed at an excellent meeting I had with Les Martin and advocacy groups in my Department last week was that in advance of Rare Disease Day, which will take place on 29 February 2020, which is a rare date and which provides an important opportunity to recognise our rare and wonderful citizens, I would like us to put in place programme of work we would do. The screening is one part of it, and I have outlined what I intend to do in that regard, but we should also examine having a public awareness campaign about rare diseases.

Senator David Norris: Hear, hear.

Deputy Simon Harris: In fairness to the HSE, running of public health and information campaigns is one of the tasks it does very well. I have seen it do it with the HPV vaccine and many other initiatives. By running a rare disease campaign, we would make other citizens aware of them and we would signpost families to support. One of the requests that has been made to me is to try to bring families together. "Loneliness" might be the wrong word to use but there is a feeling of isolation and not knowing where to turn, and families want to learn from each other. I have committed that my Department and the HSE will work with the advocacy groups and that we have a gathering of families impacted by rare diseases, whether we call it a workshop, a summit or a conference, so they can talk to each other and talk to us and tell us what we need to do. There would also be an element where we could bring clinicians together so that they could talk to, and learn from, each other.

I assure Seanad Éireann and, most importantly, the families and people affected by rare diseases that I intend to have a very busy programme of work between now and 29 February 2020, as we prepare for Rare Disease Day, that will help, in a meaningful way, to raise public awareness, support families, put in place the signposting and information people need when they get a diagnosis as that information is currently lacking and have the work of our national screening committee under way. We have an exciting agenda and I know Members of this House will help with that work and assist us in improving awareness of rare diseases and helping families

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in what can be extraordinarily difficult journeys.

Senator Colm Burke: I thank the Minister for his response and Senators Norris and Boyhan for raising this extremely important issue. I recall attending a meeting dealing with the issue of rare diseases in Farmleigh a number of years ago. As a result of that meeting, at which representatives of quite a number of the organisations concerned were gathered, it was decided a national rare diseases office would be established. That was an important development.

There are more than 6,000 rare diseases affecting a very small number of people, including children. I have worked with quite a number of the organisations concerned during the past six or seven years and I know the dedication and commitment of the parents concerned to try to improve matters, not necessarily securing major achievements for their families but making sure families affected in the future will get the benefits of the changes that are required. I know one person who was involved in the issue of rare diseases at that time but since he started a campaign to highlight the issue six or seven years ago, both of his children have died. I know of his commitment and dedication to bringing about the change that was required.

I should have said initially that I welcome the Martin family and acknowledge the work they have done in highlighting this issue. I mentioned there were more than 6,000 rare diseases and if we can identify any one of those at a very early stage and medical treatment can be provided to benefit both to the child and his or her parents, it is important we make sure we bring about the necessary change in order to do so.

The Minister outlined that two additional diseases were brought under the screening programme in December 2018. A national screening committee is to be set up and Professor O'Higgins has been identified as its chairman. That is an important appointment. It is important to identify people who have the necessarily skill and the knowledge to bring forward programmes that can help to identify children who have a very rare condition and to make sure the expertise can be made available to those children at the earliest possible date.

While, unfortunately, there has been much criticism of some aspects of our childcare, it is important we acknowledge the Minister's commitment to and work in this area, in pushing forward against adverse media comments at times, for instance, with respect to the new children's hospital which is an extremely important development in this country. Rather than expertise being based in different locations, it will all be based in one location. By doing that, patients will have access to a team effort. That is an extremely important development.

The big disadvantage a person with a rare diseases in Ireland faces is that a person with a rare disease in the United States would find that 500 families might be affected by that condition whereas that condition may affect only three or four families in Ireland. They therefore find themselves battling, and it is a solo battle. It is important we give support to these families and the organisations working to try to identify new treatments that are available and constantly keeping up to date on developments in other countries.

What Senator Norris has proposed is the correct way forward. We must ensure, however, that a proper structure is put in place to establish the screening service and that it is made available to all children at the earliest possible date. If we can save even one life, we should try to bring forward the change required into the screening programmes we have at present. There is a fairly big difference between a test that provides results in respect of eight diseases and one that provides results in respect of 40 different diseases. None of these diseases is identifiable

immediately. It is only through the screening programme that it is possible to identify them and predict that a child will develop a particular disease. We must therefore bring about any change that might identify these diseases at the earliest possible date.

Reference was made to the screening committee. I agree with Senator Norris that this is not about the process of delaying the implementation; it is about trying to fast-track it and bring about that change. I welcome Senator Norris's proposal, the Minister's response and the work he has done to date. It should be remembered that the Scally report recommended that a national screening committee be set up. In fairness to Dr. Scally, he has examined the positive aspects of the cervical screening programme but also identified where there were glitches in the system, as a result of which people have suffered adverse consequences. It is important we learn from the mistakes that were made, looking constantly for new ways of identifying medical conditions and ensuring that the appropriate treatment is offered at the earliest possible date.

Senator Diarmuid Wilson: I welcome the Minister of State, Deputy McGrath, to the House and thank the Minister for his contribution. I speak on this debate on behalf of my Seanad colleague, Senator Swanick.

Fianna Fáil will fully support Senator Norris's motion calling for the expansion of genetic testing in Ireland. Early diagnosis, intervention and prevention are beneficial to both the health of babies and the health of the budget by obviating lengthy and expensive treatments. Ireland is already behind other EU countries in the number of screening tests carried out on babies. Newborn screening is the most important and common type of genetic testing. Newborns are required to be tested for certain gene abnormalities because care and treatment can begin right away. In Ireland newborn blood spot screening for six conditions is offered to all infants on heel prick samples collected between 72 and 120 hours after birth. A newborn blood spot screening does not result in a diagnosis; it shows only whether or not a baby is at high risk of having one or more of the conditions screened for. As the Minister and Senators Norris and Colm Burke said in their contributions, Italy introduced expanded newborn screening, ENS, for all newborns and on August 2016 saw the passing of legislation envisaging that all newborns in Italy undergo ENS free of charge a few hours after birth. The test enables early identification of about 40 genetic metabolic disorders, difficult to diagnose yet easy to detect through ENS. Treatments and cures for such diseases already exist and their early use during the first days after birth, before the symptoms are visible, can significantly increase a child's quality of life or even prevent death. Early intervention through drugs and tailored diets can limit irreversible damage to the brain and other organs which may lead to cognitive and physical disabilities that are often severe or even lead to the baby's death. Estimates indicate that one newborn out of 1,500 is affected by a disorder detectable through screening.

I have quite a bit more written in this speech but, quite frankly, it would be repetitive to read it out. It has already been said by the contributors so far, so I do not intend to read the rest of the speech. I welcome the Martin family and thank them for the efforts they are making in this regard. Again, we will fully support Senator Norris's motion and we look forward to the measures it proposes coming into law fairly soon.

Senator Máire Devine: Cuirim fáilte roimh an Aire Stáit. I welcome the motion and I am proud to speak on behalf of Sinn Féin. I thank Senator Norris for extending the opportunity to add my name to this very worthy motion. The issue has already been discussed in the Lower House, where a Sinn Féin amendment to a motion included a call for a newborn screening test. In this State newborn babies are screened for only eight conditions. In Britain the figure is 9;

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in Switzerland, 13; in Sweden, 24; in Portugal, 25; and in Italy, 40. The failure to screen babies in Ireland to a higher standard has devastating effects on many families. Sinn Féin's work on this is in response to the courageous campaigning by Les Martin, who is in the Gallery. Les has gone to great lengths to highlight the solution to this problem. He has organised a successful online petition and he presented a briefing in the audiovisual room organised by my colleague, Deputy Brady, earlier this year. He has outlined time and again what could be done and what we need to do. He has woken us up to what should happen and we now need to act on it. Deputy Brady told Les's story in the Dáil in June. What struck me was the courage it takes to talk about one's own struggles and circumstances and to use them to prevent similar situations happening to other families. Les and his family should absolutely be commended on this, and we thank them.

The committee appointed a chair today, which is to be very much welcomed. The Minister talked a little about expanding the programme but it will not be mandatory, and of course it should not be. At present 99% of parents take up the agreed screening, as strongly recommended. Every mother with her newborn baby is aware of the heel prick test, or newborn screening, to use the other terminology for it. It is the first medical investigation or test of the mother's baby when he or she is three to five days old. It is a kind of rite of passage for every mother holding her newborn.

We need to reform and expand the newborn screening programme to guarantee that every child in the State has the right to be screened at birth for any disease for which there is a viable treatment. As this motion recognises, this is what was done in Italy when a law was passed to the effect that every Italian citizen is entitled by right to be screened at birth for any disease for which there is a viable treatment. The approach is to the effect that if the technology and research are there and backed up, we should use them. As we have heard, the expansion of the programme would not incur a huge cost but would have a significant impact on and benefit for families and babies and would in the long run save the State millions of euro. Early detection and early intervention are very important.

Having been a nurse and spoken to colleagues, midwives and public health nurses, I have learned they see this as a no-brainer. The programme is in place already and further testing does not inflict any more discomfort on a baby. Let us just expand the programme. It is an opportunity, at a cost of €50 per child. This is a pittance by comparison with the return in terms of an infant's health and his or her health throughout life.

In an email to us, Mr. Martin stated the problem in asking everyone to do something is that everyone leaves it to everyone else. I feel a little guilty about not responding promptly and ask Mr. Martin to forgive me. Motions are not legally binding and this has caused serious frustration for me and colleagues in this House after the passing of previous motions. Motions, however, communicate where the House stands on issues and are a function of democracy. I ask the Minister of State to take this seriously. I believe he will and that the Minister, Deputy Harris, will also do so. I ask them to act immediately. It would be appropriate for one of them, or both, to come back early in the next term to update us on advancements. I am delighted to see this motion before the House.

I congratulate Senator Norris on taking up the mantle for the rest of us on behalf of this House. I thank and congratulate the Martin family, especially the dad, Les, a man on a mission. Now he has handed the mission over to us and we will not fail him.

Senator Alice-Mary Higgins: I am sharing my time with Senator Dolan. I welcome those in the Visitors Gallery. I commend Senator Norris on his thoughtful contribution. This is an important motion.

I had the opportunity to speak on a very similar motion or resolution last week at the OSCE, where Italian parliamentarians — this issue has been led by Italy — tabled a successful resolution on neonatal care as a social development target. Maybe that is relevant in this context. As with the motion before us, the resolution focused on the issue of diagnosis. I had the opportunity to contribute to the OSCE debate and I proposed some small amendments to the resolution. I did not feel it necessary to propose amendments to Senator Norris's resolution but I will still flag the issue I wish to raise.

It is extraordinarily important that every family have the opportunity to gain access to information on any treatable condition it is possible to know about. There is also a case to be made for conditions that may not be treatable. It is important that society plans for the best possible quality of life for individuals born with a condition that may not be treatable in the longer term. It is a matter of ensuring that society has the resources to provide support and care for all its citizens, including those who may carry a condition for a period.

While an expansion from eight to 40 under the testing programme is certainly very positive, there is an residual underlying issue. It applies just as much now as it would under the acceptance of the very good proposal by Senator Norris. The matter must be addressed in a balanced way, however. I hope that the national screening committee mentioned by the Minister, Deputy Harris, will be able to engage on this. I refer to assurances regarding how this is done. The HSE website states samples are never used for commercial purposes. That is key because there have been very serious concerns over the database of heel prick genetic information that was gathered and due to be destroyed by the State but which was not. There is a lack of clarity over what mechanisms were put in place over future use of the data. This information must be for the individuals, their families and the public health service. It is vital that there be no commercial usage, not even indirect commercial brokering of usage. This is so data will not fall into private hands. I say this in the context of recent concerns being addressed in terms of Genomics Medicine Ireland, GMI, which is currently developing a genetics database that it hopes to contain more than 400,000 samples. That is its goal. Some very concerning issues arose in regard to GMI in that it has been asking questions about where biobanks might be stored, indicating that the genetic data it is collecting would be shared first with pharmaceutical companies and only become available for public use after a couple of years. That is not the case at present with the publicly delivered heel prick test. It is vital that the latter test remain something the State does and supports in regard to families.

The 90% take-up of the heel prick test was mentioned. I would like it to be 95% because I would like all children to benefit from a diagnosis in the planning of their lives and the best possible treatment for them. To give the public the assurance it will need to engage constructively on the testing, it will be very important for any new legislation to have appropriate privacy provisions and firewalls applying to any commercial usage of genetic material. The proposer of the motion is very well intentioned.

Senator John Dolan: I was delighted to see this motion coming before the House. I am very pleased to have the opportunity to support it. I thank Senator Norris for it. I thank, in particular, the Martin family for the work they have done on this and for the public service they have done at a time when they have plenty on their plate.

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Rare diseases are not rare. There will be more of them identified as we get better at diagnostics and all the rest. The issue of public awareness, mentioned by the Minister, Deputy Harris, is important. I am happy he mentioned it. Last week, the new chairman of the HSE talked about the importance of investing in amelioration, prevention and early intervention. We need to get to this side of the equation so we can dampen down the cost of trying to provide services for those concerned later on. Reaching out to people — advocacy groups, families and parents — has to go beyond simply raising awareness among the public. It has to be tangible and practical. The Minister said we will work with the advocacy groups. Real and practical support has to be offered. The Minister of State, Deputy Finian McGrath, will be well aware of Down Syndrome Ireland, a password for advocacy over decades. There are many other such organisations throughout the country. The support has to be practical.

We need to refer to Sláintecare in this debate. It has a role to play in moving to the side of the equation to which I refer. We have had the recent independent review group report, the Catherine Day report. It underlines very strongly the advocacy role of organisations, which are often seen only as hard service providers. We should bear in mind their closeness to families and the involvement of families therein. If I am repeating some points, I am doing so very deliberately.

Mr. Martin and his family should not have had to push and lead themselves. There is still too much of this in this country.

I have seen up close the effect on families of delayed diagnosis or no diagnosis, particularly where there could have been one, in parallel with reluctance or slowness on the part of the health services in giving support where there is no diagnosis.

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It is as if the services are saying that they know what families are going through but that the families need to go home. That is not acceptable. It is inhuman. We have to be seen to stand by people at their hour of greatest need. We all have to find ways to do that. The Minister, Deputy Harris, spoke about people experiencing more than loneliness. People are left feeling that they are totally on their own in a country that is not a basket case but is among the wealthier states on this globe.

I thank Senator David Norris and welcome the remarks made by the Minister. We have a number of vehicles, including the independent review group report and Sláintecare, to move on those practical matters.

Senator Rónán Mullen: Cuirim fáilte roimh an Aire Stáit. Tréaslaím le mo chara, an Seanaoifir Norris, as an rún seo a chur faoinár mbráid. I commend Senator Norris. He and I often disagree deeply on important and sensitive issues. This is an important area of human dignity on which we certainly agree. I have some questions but I would not like to be seen as being in the ranks of the sceptics on this. I hope to contribute to this debate later, when some of the issues, including those mentioned by the Minister and other contributors, can be discussed. It is not the first time that Senator Norris has brought something important and socially relevant before this House. Some of the best and most important moments in the Seanad occur when there is an intersection of people's lived experience, and on that matter I welcome the visitors in the Gallery and the efforts of politicians in the Houses. Any initiative which seeks to screen newborn children for serious conditions at an early age should be welcomed. Such testing

would obviously have the benefit of allowing early interventions which may prevent or greatly diminish the impact of those conditions, and give parents and clinicians a head start in addressing them. There is a phrase, “Knowledge is power”, though I would never want to use a phrase like that in this context because no medical person should ever have power over a child or parent. We can certainly say that knowledge is care and responsibility. Knowledge always has to be facilitated.

In raising certain issues, I do not want it to be taken that I am against the motion. I have questions and concerns which need to be teased out. I do not profess to be an expert in the area of DNA screening but I understand that there is a debate in other jurisdictions about the effectiveness and the benefits of testing. For example, we know from experience of a recent case here, which I will return to in a few minutes, that when it comes to DNA testing, false positives and false negatives can occur. A positive test for a condition does not mean that a child will necessarily develop that condition, merely that the genetic markers exist which give the child a predisposition towards it. It is legitimate to ask and for these questions to be answered whether this will lead to families, or even the taxpayer, being exposed to unnecessary stress or if we could find ourselves investing in costly treatment or medical attention which might not be needed. I stress that I am not drawing a conclusion on that matter, merely raising what I believe to be valid issues that need to be addressed.

In the United States, there is a school of thought that DNA testing should only be targeted at children within families where there is a history of a particular serious condition. In other words, there is a question of what benefit there is in engaging in non-specific testing where there is no indication of a reason to be concerned about the child’s health. These are legitimate questions to think carefully about when making our answer. It is important, in making that answer, that we do not obstruct necessary testing.

It is acknowledged that any form of DNA screening or sequencing is costly and time-consuming. I heard Senator Norris’s figures on that. Somebody contacted me to say that there was a wait of over a month for a genetic test for haemochromatosis which cost €70. I am not certain how these procedures are to be costed and done in a cost-effective way. There are significant shortages in our maternity services, with chronic shortages of both midwives and obstetricians. We are well below the staffing levels which would be considered safe by international standards. It is wrong that, notwithstanding these shortages, €12 million has been diverted from maternity services to pay for abortions out of taxpayers’ funds. Money which was previously allocated to safely delivering babies is now being spent on ending their lives. I noticed that Senator Norris very honestly and baldly asked a question with great logic and reasonableness, even though we come from a different perspective. If one takes as a given what I never will take as a given, that unborn children’s lives can be taken away with the protection of the law, and there is a situation, as we have, in which there are tax-funded abortions, then *a fortiori*, money needs to be spent on saving lives. Choices need to be made and that is why it is legitimate to consider the various pressures on our health system when one considers taking on another social good which will come at a financial cost.

If DNA screening is to be introduced for newborn babies, the Minister needs to explain how, at a time when the services which safely bring these newborns into the world are under pressure and having their resources reduced, we can devote resources to introduce a relatively expensive system of screening for those same newborns. If any such investment was not carefully costed and linked closely to the social good that would flow from it, it would not serve the taxpayer well. Beyond maternity services, the crisis continues. There are 10,000 children

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who have been waiting for 18 months or more to see a specialist, including 3,000 waiting to see orthopaedic surgeons. We need to invest in those basics, as well as aspiring to have gold standard treatments. I am asking questions and far from drawing a firm conclusion. This motion talks about the potential savings for the Exchequer but it seems that such testing would need to be specifically targeted at high risk cases. I could be wrong about that and others may have a different view.

Genetic testing is an enormous cash cow for the pharmaceutical industry. Eurofins Biomnis, the company which produces the “Harmony” test, and which, to be fair, employs a large number of people in Dungarvan, has made substantial profits. There is nothing wrong with profits *per se* but it is important to be aware of the interests involved. There have been allegations that doctors have an unhealthy or inappropriate financial interest in promoting such tests in certain cases. This has prompted the General Medical Council in Britain as well as the Medical Council here to issue warnings about potential conflicts of interests. These are all matters to be very carefully considered and I hope I do not appear to be obstructive. One has to look at the issue in the round, from all reasonable perspectives.

I note that the motion is specifically confined to DNA screening of newborn children, but this cannot be divorced entirely from the issue of neonatal screening. I mentioned false positive and false negative results and the potential stress to parents. The House is aware of the recent case in Holles Street, where a false positive test ended up costing a child his or her life and causing devastation to the child’s parents. I hoped that the Minister, Deputy Harris, would still be here when I raised this because it would have been an opportunity for me to ask for an answer. I raised this case at the Joint Committee on Health last week on foot of a letter from solicitors representing the parents. It is fair to say that they feel they are in the dark and are not being kept informed. Perhaps something has emerged since then to give the lie to that but there is an issue here with regard to whether the Department of Health is treating the family with the respect they deserve, in keeping them fully abreast of everything that is happening. It was not clear at the meeting whether a HSE investigation is supposed to be happening. The Government has been slow to give clarity on the case compared with other high profile cases. I get the impression that there is almost a wish that it would go away. I know an investigation of sorts is taking place but I wonder what kind of accountability exists between the hospital, the HSE and the Department of Health, given the significant issues of public interest that arise here, whatever one’s views are on the morality, rightness, wrongness or injustice of abortion. I decided to ask this when I saw the Minister come into the House because these debates offer an opportunity to ask questions about connected areas. Perhaps the Minister of State will help me in that regard now that I have raised it in his presence. Although I have a fear that the adoption by the State of DNA testing of newborns could lead to calls for the State to provide such testing for children *in utero* and perhaps even to demand it in certain cases-----

Senator David Norris: Nonsense.

Senator Rónán Mullen: -----that would not stop me supporting the necessary DNA testing because I believe that knowledge is good if it can do good and be used for a good purpose. It is also legitimate to be concerned about what people in power do with knowledge. If medical science can identify a newborn baby’s predisposition to cancer, cystic fibrosis or some other serious condition, is it only a matter of time before it can identify such markers in unborn children? I worry about the slippery slope in that regard. As I stated, I accept that concern alone does not dislodge the legitimate claims of newborn babies and their parents for access to information that will bring comfort, improve health and facilitate good legitimate decision-making by those

families. However, the more we learn about what is and will become possible in our society, the greater the responsibility on public authorities to act ethically in the light of such capabilities. I have deep concerns that we are already on the road to eugenics in this country in certain key respects. Many people in this country would oppose that with every fibre of their being. In doing so and being concerned by that, one should never oppose the need for the accessing and sharing of knowledge. There is legitimacy to the points raised by Senator Higgins regarding what is done with information pertaining to individuals in these cases, how it is handled and who gets access to it. I apologise for going a little over my time.

Senator Ivana Bacik: I welcome the Minister of State to the House and commend my colleague, Senator Norris, on proposing this important motion which I am delighted to support and which I and my Labour Party colleagues co-signed. I also commend Senator Boyhan who ably seconded the motion. I pay special tribute to Les Martin, who was in the Visitors Gallery and has been present all afternoon along with Lynda and their children Holly, Cathal and Ciaran. They had to wait a good deal of time for the motion to come up, but they have been tireless in campaigning and calling for the expansion of newborn screening as called for in the motion. They have shown incredible courage while dealing with their heartbreaking story of having two sons who are battling the rare disease of metachromatic leukodystrophy. It shows incredible courage to do what they have done and to keep working to ensure that other children and families do not have to deal with this in the same way. It is good to hear a majority of strong support from across the House for this important motion. It is unfortunate that some irrelevant issues were raised by the previous speaker, but I will not dwell on them.

Through Senator Norris, Les Martin has provided us with evidence of very careful research and extensive information about the sort of expanded newborn screening programme that is being proposed. I am very grateful to him for that and, in particular, for giving us so much information on the Italian law, which I wish to address. It is important to note that bill 167 which was passed in Italy in 2016 essentially does what Senator Norris's motion proposes. I am very heartened by the very positive response of the Minister, Deputy Harris, to the motion, his indication that this will be a priority issue for the national screening committee which has been established and his announcement that Professor Niall O'Higgins has been appointed as chair of the committee, which is very welcome. The Minister also spoke personally as a parent. I vividly recall, as is the case for most parents, the heel prick test carried out on my two children within a few days of their birth. Others have spoken on the very high rate of take-up of the test in Ireland. Senator Devine memorably referred to it as a rite of passage and she is correct in that regard.

Senator Máire Devine: It is a rite of passage for the mother as well as the child.

Senator Ivana Bacik: It is quite traumatic for a new parent to see his or her child given this little prick but, in fact, it is a minimally invasive test which fulfils an important purpose for newborn children, namely, to screen for eight conditions, as is now the case in Ireland, or for up to 40 conditions as is the case in Italy. It is an extraordinary and positive scientific development that this can be done and that in many cases the conditions and diseases which are screened for are treatable.

Italian law No. 167 provides for a small blood sample to be taken from the baby's heel between 48 and 72 hours after birth. The sample previously used to screen for only four conditions is now used to screen for 40 disorders. No further samples are needed. The birth centre ships the sample to the screening centre, with delivery within 24 to 48 hours. The screening

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centre analyses the sample on the arrival day or the following day. Extensive information is provided to parents, but the test is free and compulsory. I listened intently to the comments of the Minister on the test and his view that if expanded, the screening should not be mandatory. Interestingly, it is mandatory in Italy. We have mandatory vaccination programmes.

Senator David Norris: Hear, hear.

Senator Ivana Bacik: From a children's rights and child health perspective, I respectfully suggest that we should have mandatory screening in this area.

Senator David Norris: Absolutely.

Senator Ivana Bacik: We already have a very high level of take-up because parents recognise the importance of the screening test. The Italian law and the information provided to parents state that positive results do not always mean there is a disorder. Of course, there is follow-up testing and so on. That is vital and must be built in. The key point is the right to be screened at birth for any condition for which there is viable treatment and, indeed, for some conditions for which there is not. The mandatory nature of the test in Italy only relates to those disorders which are listed as being required by law. There are other disorders which may be included and for which parental consent must be given. Those are the sort of issues that might be teased out by the national screening committee. I offer those views on the motion proposed by Senator Norris.

I listened with great interest to the comments of Senator Higgins. Clearly, there is now an international and transnational interest in this issue. I note that there was a debate in the European Parliament on the issue of expanded newborn screening in January of this year at the behest of the Italian health minister and others. As Senator Higgins stated, it has also been discussed at the Organization for Security and Co-operation in Europe, OSCE. It must be of some concern that there is such discrepancy or inconsistency across the EU in terms of the number of disorders which are being screened for. According to the figures provided by the Minister, two disorders are screened for in Malta, eight in Ireland - it was only six until 2018 - as many as 29 in Poland and 40 in Italy. It is clear that Italy is leading on this issue. Les Martin informed us how his family's experience was one of the catalysts for change in the law in Italy, which again shows the incredible courage he and his family have had in pushing for change in the law in Ireland and elsewhere.

I note from the information provided by Mr. Martin that the motion is supported by a range of front-line organisations such as the Jack and Jill Children's Foundation, LauraLynn Children's Hospice Foundation, Enable Ireland and Rare Diseases Ireland. These organisations represent parents and families who are on the front line of caring for children with life-limiting conditions and who see the benefit on a human level that would be derived from passing a law of the sort that was passed in Italy.

Of course, the humanity of this is the key issue, but there is also a very clear economic cost saving aspect because when conditions are detected and treated there is an immense saving to the Exchequer in terms of ongoing lifelong care, as been pointed out by Les Martin. That is another compelling argument for expanding our newborn screening programme.

As Senators and the Minister made clear, we already have a newborn screening programme and this would simply involve expanding it. It would not involve any new invasive treatment or intervention for newborns. A strong and compelling case can be made to expand the pro-

gramme and implement a law along the lines of that implemented in Italy. I very much look forward to continuing to press, along with Senator Norris and other colleagues, for the introduction of expanded screening and to assist and support the Minister in his endeavours to so do. I welcome the strong support and commend Senator Norris and the Martin family for all their work on this important issue.

Acting Chairman (Senator Kieran O'Donnell): If there are no further speakers, I think we could allow the Minister of State to say a few words.

Senator David Norris: I would welcome the Minister of State's contribution.

Minister of State at the Department of Health (Deputy Finian McGrath): I thank the Acting Chairman for facilitating me. I wanted to make a short contribution. I thank and commend Senator Norris on raising this urgent matter on newborn screening and genetic testing. Earlier, I was talking to Les and Lynda Martin. I saw Cathal, Ciaran and Holly. I met them previously. I was talking to Senator Norris before the debate and said that when one meets them, one would be impressed with their dignity and sincerity when facing a very difficult situation as young parents. To have the courage, vision and tenacity to seek this debate and change is amazing. I thank them for their bravery and integrity. They have my support as Minister of State and I will work with Senator Norris and other Senators and Deputies on this matter.

I have a particular interest in this in my own portfolio, as Senator Dolan mentioned, with regard to disability. In the broader health field, I am also very involved in the issue of cystic fibrosis. Looking at member states of the European Union and around the world, the number of conditions screened by European states varies. For example, there are five in France, 19 in the Netherlands, 24 in Portugal, four in Greece, 13 in Switzerland, five in Luxembourg, two in Malta, 17 in Denmark, nine in the United Kingdom, eight in Ireland at present, 18 in the Czech Republic, 26 in Hungary, 13 in Slovakia, four in Lithuania, Italy is at the top with 42, and 12 are screened in Russia. That is the international experience of this. The Minister, Deputy Harris, said that he has written to his Italian counterpart and that he met with the head of the Italian delegation at the recent Employment, Social Policy, Health and Consumer Affairs, EPSCO, Council meeting to learn more about this initiative to test for 40 rare diseases. Officials are liaising with Italian colleagues to visit Italy and study the Italian approach and policies regarding newborn screening.

In response to Senator Mullen, departmental officials are working closely on this to study all its aspects. I met them after I met Les. They are seeking information from other European Union states about the current policy approach. Senator Mullen raises legitimate questions which have to be answered and it will be part of the debate and work that Senator Norris is involved in. Senator Mullen raised an individual case. He and the family are entitled to an answer. I will follow up on that after today's debate, having listened to Senator Mullen's concerns.

I thank Senators for the broad support for this matter and for their contributions. While I know they are not here at present, I think Les and Lynda Martin for their bravery, courage and integrity. Our hearts went out to them as a young couple with three beautiful kids who found themselves in that situation. The least that we can do is support them. I thank Senator Norris for bringing this to the Seanad.

Senator David Norris: We are very fortunate to have two such Ministers as Deputies

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Harris and Finian McGrath. They are both passionately devoted to these areas of welfare for our citizens. Considering that the Martin family was hanging around for two hours before the debate began, I think those children were remarkably well behaved.

Senator Ivana Bacik: Hear, hear.

Senator David Norris: They were terrific. It was lovely to meet them. Cathal is very unwell but Ciaran is pretty bright. They are a lovely family. I am glad that the question of Italy was mentioned. The Italians, who have really led in this regard, have offered every possible assistance to this Government to introduce something similar to the Italian law. That is remarkable. I am delighted that the Minister for Health took up that opportunity and met his Italian counterpart and representatives there. That is very welcome news. It is also welcome that Professor Niall O'Higgins has been established as chair of the national screening committee.

The question of public information is vital. We need to let people know. I am very much in favour of mandatory screening. To hell with the rights of parents. What about the rights of the children? Children have every right to be protected against these things and I do not give a tuppenny damn for the rights of the parents. The rights of the child come first. They must be primary. I am sure Senator Mullen will forgive me for saying that he somewhat parachuted in with his interest in abortion and so on but I would like to reassure him-----

Senator Rónán Mullen: Senator Norris raised it too.

Senator David Norris: Senator Mullen mentioned the stress on parents. There is a hell of a lot more stress if one finds that one's child has a condition and that it is too late to do anything about it. That is where the stress really comes in. What is money when it comes to the saving of children's lives? We have the possibility of saving up to 50 children's lives.

With regard to the samples being used for commercial purposes, it is a real situation, but on the other hand, I heard a debate on the wireless about this just the other day. A woman rang in to say she had certain issues and could not give a damn if it was used for commercial purposes because that she would be bloody happy if she got a cure for her disease. This is an aspect which has to be taken into consideration.

Senator Higgins has given me an OSCE document about sustainable development goals and so on. It is an excellent document which I do not have time to read into the record but I thank Senator Higgins for giving it to me. I welcome that this motion will pass unanimously and will have Government support. It is a good day for Seanad Éireann.

Senator Ivana Bacik: Hear, hear.

Deputy Finian McGrath: Hear, hear.

Question put and agreed to.

Acting Chairman (Senator Kieran O'Donnell): When is it proposed to sit again?

Senator Colm Burke: At 10.30 a.m. tomorrow.

The Seanad adjourned at 6.30 p.m. until 10.30 a.m. on Thursday, 11 July 2019.